

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 7667/Mum/2019 (Assessment Year 2015-16)

M/s. Asian Star Company Ltd. 114, Mittal Court-C Nariman Point Mumbai-400 021. PAN : AAACA4856B (Appellant)	Vs.	DCIT, CC-2(3) Old CGO Bldg Annexe, Room No. 803, M.K. Road Mumbai-20. (Respondent)
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Assessee by	Shri Suchek Anchaliya
Department by	Shri Brajendra Kumar
Date of Hearing	24.05.2021
Date of Pronouncement	12.07.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 29.11.2019 pertaining to assessment year 2015-16.

2. Grounds of appeal raised by the Revenue read as under :-

1. On the facts and in the circumstances of the case and law, the Learned CIT(A) erred in upholding the stand of Ld. Assessing officer in not allowing additional deduction u/s 35AC of the Act amounting to Rs. 6,46,000/- without appreciating the fact that the additional claim of the appellant is genuine along with supportive document.

2. On the facts and in the circumstances of the case and law, the Learned CIT(A) erred in upholding the stand of Ld. Assessing officer in not allowing additional deduction u/s 80G of the Act amounting to Rs. 33,42,500/- without appreciating the fact that the additional claim of the appellant is genuine with supportive documents.

3. Brief facts of the case are that the assessee has efiled its return of income on 30.11.2015 declaring total income at Rs. 57,39,40,480/-. The assessee company is in the business of trading of manufacturing of polished diamonds and jewellery. During assessment proceedings assessee filed letter dated 24.03.2017 claiming additional deduction u/s. 80G and u/s. 35AC of Rs. 38,42,500/- and Rs. 6,46,000/- respectively against the total deduction

claimed of Rs. 5,00,000/- in the return of income. The AO rejected the claim on the basis of the decision of Goetze (India) Ltd Vs. CIT 284 ITR 323(SC).

4. Upon assessee's appeal learned CIT(A) upheld the Assessing Officer's action by concluding as under :

“In view of the above position of Law, on plain reading of this section wherein, it has been very clearly mentioned that, the deduction under this section shall not be allowed if the assessee failed to file a certificate for the payment made to above-referred authorities along with his return of income. In the present case assessee has not complied with sub clause (a) of section 35AC(2). Thus, assessee has not fulfilled condition given in sec. 35AC(2)(a) of the act. Further, the amount which has been donated by a person is allowed to be claimed as a deduction under Section 80G, at the time of filing his income tax return. The assessee has claimed Rs. 5,00,000/- u/s. 80G in the return of income, which has duly accepted by AO as in mentioned is the assessment order.

Since assessee has neither revised the return as per provision of section 139 nor has specifically complied with provision of section 35AC(2), the appeal is rejected and stand of AO is upheld.”

5. Against the above order the Revenue is in appeal before us.

6. We have heard both the parties and perused the records. We find that the assessee's claim has been basically rejected on the premise that assessee has not made the claim through a valid return. In this regard revenue authorities have relied upon Hon'ble Supreme Court decision in Goetze (India) Ltd. Vs. CIT (284 ITR 323). We note that in the same order Hon'ble Supreme Court has held that the aforesaid order will not impinge upon ITAT power to admit a claim otherwise than by revised return. Accordingly we in the substantial interest of justice direct the Assessing Officer to adjudicate the said ground/claim on merits after giving the assessee proper opportunity of being heard.

7. In the result, appeal is allowed for statistical purposes.

Pronounced in the open court on 12.07.2021

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 12/07/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS