

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.1664/Hyd/2019		
Assessment Year: 2016-17		
Dy. Commissioner of Income Tax, Circle 16(1), Hyderabad.	Vs.	M/s. Laan Research Private Limited, Flat No.510, Plot No.5,6,7,8,9,10,11,12, Nanakramguda, Serilingampally, Hyderabad, Telangana - 500008. PAN No.AACCL2053M.
(Appellant)		(Respondent)
Revenue by:	Sri Swaroop Mannava - DR	
Assessee by:	None	
Date of hearing:	15/09/2021	
Date of pronouncement:	17/09/2021	

ORDER

Per S. S. Godara, J.M.

This Revenue's appeal for A.Y 2016-17 against the order of the CIT(A)-4, Hyderabad in Appeal No.10271/18-19/ACIT. Cir.16(a)/CIT(A)-4/Hyd/2019-20, dated 19.01.2019 involving proceedings under section 143(3) of Income Tax Act, 1961 (in short, "the Act").

None appeared at the assessee's behest. Case file perused. We accordingly proceeded ex-parte.

2. Coming to the Revenue's sole substantive grievance that the CIT(A) has erred in law and on facts in deleting section 35(1)(ii) disallowance of Rs.1,75,00,000/- made in the course of assessment dated 21.12.2018, we note that the lower appellate discussion to this effect reads as under :

4. *The appellant company is engaged in the business of consultancy services. During the assessment proceedings, the AO examined that the appellant company has claimed expenditure on Scientific Research u/s 35(1)(ii) of the Act towards payment made to approved association, namely M.s Matrivani Institute of Experimental Research and Education, and the appellant company claimed deduction @ 175% at Rs.1,75,00,000/- against the expenditure on this account was at Rs.1,00,00,000/-, made as donation to M/s. Maitrivani Institute of Experimental Research and Education, Kolkata. The AO has requested the Institute for certain information such as income tax returns, ledger account and bank account statement, for which the AR has not responded. However, the appellant company furnished the Copy of certificate of Registration of Societies, West Bengal, copy of Ministry of Science and Technology, New Delhi according recognition from 28.01.2014 to 31.03.2017, and factum of publication of such grant of recognition in the official gazette of India. The appellant company has produced before the Aa that the amount of RS.1,00,00,000/- was remitted to the above Institute through UTR No. HDFC R52016011272851276 through HDFC Bank Account to the credit of the Institute's Axis Bank Account No. 915010062746816. The AO also observed that the Ministry of Finance, Department of Revenue CBDT vide notification NO.78/2016 in F.No.203/29/2005/ITA.II dated 6th September, 2016 which stated that the Central Government has rescinded the notification of the Government of India, Ministry of Finance, Department of Revenue No.229/2007 dated 21st August, 2007 with effect from 1st April, 2004, and shall be deemed that the said notification has not been issued for any tax benefits under the Income Tax Act, 1961 or any other law of the time being in forced. The CBDT, vide Memorandum dated 21st September, 2016, has conveyed that the Central Government had withdrawn the notification granting approval u/s 35(1)(ii) of the Act to M/s Matrivani Institute of Experimental Research and Education, Kolkata. In light of the above notification, the Aa disallowed deduction u/s 36(1)(ii) of the Act, the total weighted deduction claimed by the appellant at RS.1,75,00,000/- and added to the income returned.*

4.1 *The AR, vide the submissions made before me, has explained in detail, along with documentary evidence that Matrivani Institute of Experimental Research and Education was a registered society u/s 12AA of the Act and its scientific research facilities were very much approved u/s 35(1)(ii) of the Act by the Central Government when the appellant company made the donation to this institute, and it was valid from Asst. Year 2004-05 onwards. The AR quoted explanation to sec 35(1)(ii) of the Act in this regard. The AR further stated that the Aa,*

without considering the same, has disallowed the weighted deduction claimed by the appellant company u/s 35(1)(ii) of the Act for the donation of Rs.1,00,00,000/- remitted on an approved institute M/s Maitrivani Institute of Experimental Research and Education. Kolkatta. The contention of the AR is that the appellant company has donated the amount to the said society on 1st January, 2016 for the Assessment Year 2016-17 and claimed the same amount as exemption u/s 35(1)(ii) of the Act. The notification was issued by the Central Government on 21st September, 2016, therefore the appellant company cannot recover the said amount once paid to the society, as the notification is only prospective and cannot be retrospective. Moreover, the donation made to the said society was with an intention to claim deduction u/s 35(1)(ii) of the Act. The AR placed reliance on the ITAT judgement pronounced in the case of DCIT, Circle-12(1) Vs. M/s MACO Corporation (India) Pvt. Ltd. dated 14th March, 2018, which is based on the same grounds.

4.2 I have carefully considered the assessment order, submissions of the AR and sec 35(1)(ii) of the Act in detail. The Taxation Laws (Amendment) Act, 2006, with retrospective effect from 01.04.2006, has introduced an explanation to Sec 35 of the Act as under :-

The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or at er institution to which clause (ii) or clause (iii) applies, shall not be denied merely one ground that, subsequent to the payment of such sub by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn.

Hence, the aforesaid provisions of the Act are very clear that the payer (the assessee herein) would not get affected if the recognition granted to the payee had been withdrawn subsequent to the date of contribution by the assessee. Hence, no disallowance u/s 35(1)(ii) of the Act could be made in this case. In many judicial cases, where a donation is made by an assessee to an approved institution and claimed deduction, the subsequent withdrawal of the approval of such institution would not entitle the department to disallow the deduction to the assessee. As far as the eligibility of the appellant is concerned, the AO has not expressed in the entire assessment order that the appellant is not eligible to claim weighted deduction of donation paid u/s 35(1)(ii) of the Act. As per the documents produced at the time of appellate proceedings, it is observed that the appellant company has made donation during the relevant assessment year and during the relevant asst. years, these concerns were duly approved concerns u/s 35(1)(ii) of the Act, and the subsequent withdrawal of approval of such concerns would not entitle the Department to disallow the genuine claim of donation paid by the appellant. In the above case law, it was also held that the withdrawal of recognition u/s 35(1)(ii) of the Act in the hands of the payee organizations would not affect the rights and interests of the appellant company for claim of weighted deduction u/s 35(1)(ii) of the Act. Since the AR has explained that the appellant company has paid the donation based on the profile of the organization, and also produced documentary evidences, I am of the considered opinion that the disallowance made by the AO of Rs.1,75,00,000/- u/s 35(1)(ii) is not

correct and hence be deleted. Therefore, the appeal raised on this ground is allowed.”

3. Learned departmental representative vehemently contended during the course of hearing that the CIT(A) has erred in law and on facts in reversing the impugned Sec.35(1)(ii) disallowance despite the fact that the CBDT's notification had cancelled the specified recipient's institution's registration. We find no merit in the Revenue's instant sole grievance since the CIT(A) has considered amendment in Sec.35 w.e.f. 01.04.2006 (supra) that the impugned deduction would not be denied merely on the ground that the corresponding registration of the above institute has been subsequently withdrawn. We therefore express our full concurrence with the learned CIT(A)'s action in deleting the Sec.35(1)(ii) disallowance. Ordered accordingly.

4. This Revenue's appeal is dismissed.

Order pronounced in the Open Court on 17th September, 2021.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 17th September, 2021.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. Laan Research Private Limited, Flat No.510, Plot No.5,6,7,8,9,10, 11,12, Nanakramguda, Serilingampally, Hyderabad, Telangana – 500008.
2	The Dy. Commissioner of Income Tax, Circle 16(1), Hyderabad.
3	CIT (A)-4, Hyderabad
4	Pr. CIT – 4, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order