

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

(Conducted through Virtual Court)

**ITA Nos.2586, 2587 & 2588/Ahd/2017
Assessment Years: 2010-11, 2011-12 & 2012-13**

P M Bhimani Orgochem Pvt. Ltd., vs. The Dy. Commissioner of
511, Mahakant, Income Tax,
Opp. V S Hospital, Circle-3(1)(1), Ahmedabad.
Ellisbridge,
Ahmedabad – 380 006
[PAN – AACCP 1527 G]
(Appellant) (Respondent)

Appellant by : Shri S.N. Divatia, Advocate
Respondent by : Shri R.R. Makwana, Sr. D.R.

Date of hearing : 08.12.2021
Date of pronouncement : 10.12.2021

ORDER

PER BENCH :

These 3 appeals are filed by the same assessee against 3 separate orders, all dated 12.10.2017, passed by the CIT(A)-9, Ahmedabad for the Assessment Years 2010-11, 2011-12 & 2012-13.

2. All these 3 appeals are identical and, therefore, we are taking up the facts of Assessment Year 2010-11.

3. The grounds of appeal raised by the assessee in ITA No.2586/Ahd/2017 for Assessment Year 2010-11 are as under :

1.1 The order passed u/s.250 on 12.10.2017 for A.Y.2010-11 by CIT(A)-9, Abad upholding the disallowance deduction u/s. 35AC of Rs.15 lakh made by AO is wholly illegal, unlawful and against the principles of natural justice.

1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowance.*

2.1 *The Ld. CIT(A) has grievously erred in law and on facts in confirming that the donation of Rs.15 lakhs to Navjeevan Charitable Trust u/s.35AC was not genuine and thereby disallowing the claim of deduction u/s. 35AC of Rs.15 lakhs.*

2.2 *That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld that the donation of Rs.15 lakhs to Navjeevan Charitable Trust u/s. 35AC was not genuine and thereby disallowing the claim of deduction u/s. 35AC of Rs.15 lakhs.*

3.1 *The observations made with regard to the activities and genuineness of Navjeevan Charitable Trust as well as the ultimate conclusion reached by **Ld.CIT(A)** to uphold the claim of deduction u/s. 35AC of Rs.15 lakhs are not admitted by the appellant in so far as the same contrary to the evidence on record and prejudicial to the appellant.*

It is, therefore, prayed that the claim of deduction u/s. 35AC of Rs.15 lakhs upheld by the CIT(A) may kindly be deleted.”

4. The assessee was engaged in the business of trading in dyes and chemicals. The assessee filed its original return of income declaring total income at Rs.33,51,799/- on 15.09.2010. The return of income was processed under Section 143(1) of the Income Tax Act, 1961. Thereafter, a notice under section 148 of the Act was issued on 09.02.2016 after recording the reasons for reopening. In response to the notice under section 148 of the Act ,the assessee requested to treat the original return filed to be treated as return filed in response to notice under Section 148 of the Act vide letter dated 02.06.2016. The reasons recorded were provided to the assessee on its request. A notice under section 143(2) of the Act was issued on 18.07.2016. The assessee raised objection in respect of reasons recorded which was disposed of by the Assessing Officer on 21.07.2016. The Assessing Officer observed that a search action under Section 132 of the Act was conducted by Investigation Unit, Mumbai on 27.10.2014 on M/s Navjeevan Charitable Trust. The Trust was notified by the National Committee, Ministry of Finance, Government of India for the purpose of deduction under Section 35AC of the Act. The investigation into the financial transactions of the Trust showed that the Trust had received donations of about Rs.80 crores in the past 5 financial years. The said amount was transferred to around 20 parties (as expenses). The Assessing Officer further observed that a list of donors

who have donated to Navjeevan Charitable Trusty in 6 financial years includes the name of the assessee. The year-wise details of donations made by the assessee to Navjeevan Charitable Trust are as under :-

| <u>F.Y.</u> | <u>Amount of donation</u> |
|--------------------|----------------------------------|
| 2009-10 | Rs.15,00,000/- |
| 2010-11 | Rs.10,00,000/- |
| 2011-12 | Rs.5,00,000/- |

5. During the course of assessment proceedings, a statement under Section 131 of the Act of Shri Jignesh Jayeshbhai Bhimani, one of the Directors of P M Bhimani Orgochem Pvt. Ltd. was recorded on 03.08.2016. The Assessing Officer made addition of Rs.15 Lakhs thereby observed that the assessee failed to discharge its onus to produce Shri Subhash Rajaram Kadam or any other Trustee and thus the donation made by the assessee company are mere accommodation entry which do not qualify deduction eligible under Section 35AC of the Act.

6. Being aggrieved by the Assessment Order, assessee filed appeal before the CIT(A). The CIT(A) has dismissed the appeal of the assessee.

7. The Ld. AR submitted that similar issue involving the Navjeevan Charitable Trust and the donation was decided by the Tribunal in ITA No.968/Ahd/2018 for Assessment Year 2014-15 in case of Inspiron Engineering Pvt. Ltd vs. DCIT, order dated 19.03.2020, which was allowed in favour of the assessee therein.

8. The Ld. DR relied upon the Assessment Order and the order of the CIT(A)

9. We have heard both the parties and perused all the relevant materials available on record. The assessee challenging the order of the CIT(A) thereby confirming the addition related to donation to Navjeevan Charitable Trust under Section 35AC of the Act. The assessee has made donation in the year 2009-10, 2010-11 & 2011-12. At the time of donation to Navjeevan Charitable Trust, the Trust was operational and there was no investigation in those Assessment Years. The Revenue at no point of time pointed out that the donation made by the assessee to SHG and PH were returned back to the assessee in the form of cash. In fact, all the records were before

the Assessing Officer which stated that the assessee has made those donations as per the approved terms of donation under the Income Tax Act. The decision of the Tribunal in case of Inspiron Engineering Pvt. Ltd. vs. DCIT (supra) is identical to the assessee's case wherein it is held as under :-

"7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us arises with respect to the donations made to the institution "SGH & PH" and "NCT". Regarding the donations made to "SGH & PH" it is the undisputed facts that at the relevant time of donation to "SHG & PH", the institution was approved under section 35(1)(ii) of the Act though such approval has been withdrawn on a later date by the Government by issuing notification. Thus, the assessee cannot be denied the benefit of deduction provided under section 35(1)(ii) of the Act merely on the ground that the approval was withdrawn by the Government on a later date. In this regard we place our reliance on the order of this tribunal involving identical issue which has been decided in favour of the assessee in the case of ACIT v/s M/s Thakkar Govindbhai Ganpatlal HUF in ITA No. 2318/AHD/2017 wherein it was held as under:

5. We have duly considered rival contentions and gone through the record carefully. In the case of S.G. Vat care P. Ltd.(supra), the tribunal has recorded the following finding:

2. In the first ground of appeal, the grievance of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.8,75,000/- on account of alleged bogus donation to Herbicare Healthcare Bio-Herbal Research Foundation.

3. Brief facts of the case are that the assessee has filed return of income on 20.11.2014 declaring total income at Rs.4,47,910/-. On scrutiny of the accounts, it revealed that the assessee-company has given donation to Herbicare Healthcare Bio-Herbal Research Foundation, Calcutta. A survey action was carried out at the premises of the donee wherein it revealed to the Revenue that this concern was misusing the benefit of notification issued by the Income Tax Department. It has been getting donations from various sources, and after deducting certain amount of commission, these donations were refunded in cash. On the basis of that survey report registration granted to its favour was cancelled. On the basis of the outcome of that survey report, the Id.AO construed the donation given by the assessee as bogus. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

4. Before us, the Id.counsel for the assessee contended that donations were given on 25.3.2014. At that point of time, donee was notified as eligible institution and fall within the statutory eligibility criterion. Certificate for receiving donation was cancelled on 5.9.2016. There is no mechanism with the assessee to verify

whether such donee was a genuine institute or not, which can avail donation from the society.

5. *The Id. DR, on the other hand, contended that in the investigation it came to know about bogus affairs conducted by the donee. Hence, these donations are rightly been treated as bogus, and addition is rightly made.*

6. *We have duly considered rival contentions and gone through the record carefully. The AO is harping upon an information supplied by the survey tern of Calcutta. He has not specifically recorded statement of representatives of the donee. He has not brought on record a specific evidence wherein donee has deposed that donations received from the assessee was paid back in cash after deducting commission. On the basis of a general information collected from the donee, the donation made by the assessee cannot be doubted. Neither representatives of the donee have been put to cross-examination, nor any specific reply deposing that such donation was not received, or if received the same was repaid in cash, has been brought on record. In the absence of such circumstances, donation given by the assessee to the donee, on which the assessee no mechanism to check the veracity, can be doubted, more particularly, when certificate to obtain donation has been cancelled after two years of the payment of donation. It is fact which has been unearthed subsequent to the donations. Therefore, there cannot be any disallowance on this issue. We allow this ground. "*

6. *There is no disparity on the facts. On the basis same survey report, the genuineness of the donation has been doubted in the case of the assessee also. Therefore, the issue in dispute is squarely covered in favour of the assessee. Respectfully following the order of the ITAT in the case of S.G.Vat care P.Ltd., we do not find any merit in the appeal of the Revenue. It is dismissed.*

7. *In the result, appeal of the Revenue is dismissed.*

7.1 *As the issue decided by this tribunal in the case above, is squarely applicable to the present facts of the case, therefore we disagree with the finding of the authorities below. Accordingly we hold that the assessee is entitled for the benefit of the donation made to "SHG & PH" under section 35(1)(ii) of the Act.*

7.2 *Regarding the donation made to the "NCT", we note that the benefit of the deduction under section 35AC of the Act was denied to the assessee on the reasoning that the trustee of such trust in the statement given under section 133A during the survey operation has admitted the fact the NCT is engaged in the activity of providing the accommodating entries to the parties. However, admittedly there was no cross-examination provided to the assessee of the trustees who have admitted to be engaged in providing accommodating entries. Thus the question arises whether the assessee can be denied the benefit of the deduction under section 35AC of the Act on the basis of the statement recorded*

during survey operation which were not cross verified despite the request was made to the AO by the assessee. In our considered view the answer stands in favour of the assessee. The statement recorded during survey operation cannot be used against the assessee until and unless it is cross verified in view of the judgment of Hon'ble Gujarat High Court in the case of CIT v/s Chartered Speed Pvt. Ltd. reported in Tax Appeal No. 126 of 2015 wherein it was held as under:

"It is an undisputed position that the statement of the persons concerned which were recorded by the department, those persons were not made available for cross examination, may be for one reason or another inspite of the attempts made by the department. Therefore the Tribunal has rightly found that the statement of those persons cannot be read against the assessee."

7.3 Furthermore, the revenue has not brought any tangible material suggesting that the donation paid by the assessee to "NCT" has come back to it in the form of cash. Thus in the absence of necessary documentary evidence, we are not inclined to confirm the order of the authorities below.

7.4 In view of the above, we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed."

10. No distinguishing facts were pointed out by the Ld. DR at the time of hearing. The assessee has made the donation as per the provisions of the Income Tax Act and no defect was pointed out by the Assessing Officer or by the CIT(A) regarding the donation to Navjeevan Charitable Trust. In fact, the Revenue authorities could not establish that the said amount was returned back to the assessee from any of the records as well. Appeal being ITA No.2586/Ahd/2017 for Assessment Year 2010-11 filed by the assessee is thus allowed.

11. ITA Nos.2587 & 2588/Ahd/2017 for Assessment Years 2011-12 & 2012-13 are identical and no distinguishing facts were pointed out by the Ld. DR, hence both these appeals as well are allowed.

12. In the result, all the three appeals filed by the assessee are allowed. Order pronounced in the open Court on this 10th day of December, 2021.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 10th day of December, 2021
PBN/*

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*