

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7013/Del/2017 : Asstt. Year : 2014-15

ACIT, Circle, Panipat (APPELLANT)	Vs	Mittal Processors Pvt. Ltd., Opp. Sanjay Gandhi Eye Hospital, VPO Sewah, Panipat (RESPONDENT)
PAN No. AABCM8569N		

**Assessee by : Sh. P. C. Yadav, Adv.
Revenue by : Ms. Shweta Yadav, Sr. DR**

Date of Hearing: 05.02.2022	Date of Pronouncement: 11.03.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A), Karnal dated 28.09.2017.

2. Following grounds have been raised by the Revenue:

"Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.90,00,000/- on account of donations given to M/s Herbicure Bio Herbal Research Foundation and M/s School of Human Genetics and Population Health, Kolkata and on account of deduction of Rs.67,50,000/- u/s 35 of the Act, completely overlooking the fact that the given additions were made by the AO after duly confronting the assessee with complete report of the Investigation Wing and the CBDT notifications, as is evident from the record of proceedings as well as the assessment order.

Whether on the facts and in the circumstances of the case, the CII(A) has erred in holding that the addition was made by the AO by flouting the principles of natural justice by not appreciating the fact that the

entire evidence was placed before the assessee by the AO in response to which the assessee never sought any further details or cross examination of any person named in the evidence.

Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,57,50,000/- by completely ignoring the CBDT Notification No. 79/2016 and 32/2016 vide which the CBDT has withdrawn the approval earlier granted u/s 35(1)(ii) to M/s Herbicare Healthcare Bio Herbal Research Foundation and M/s School of Human Genetics and Population Health, Kolkata.

2. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the confessional statements of the persons concerned and in thus deleting the addition of Rs. 4,72,500/- on account of commission payment @ 3% by the assessee in lieu of the accommodation entries provided by M/s Herbicare Healthcare Bio Herbal Research Foundation and M/s School of Human Genetics and Population Health, Kolkata.

3. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 10,22,729/- on account of expenses related to exempt income u/s 14A read with 8D of I.T. Rules, clearly overlooking the spirit of section 14A according to which the tax exempt income need not to be necessarily included in the income of the year under consideration for the disallowance to be triggered in respect of expenses that shall eventually result in exempt income in future years.

Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 10,22,729/- on account of expenses related to exempt income u/s 14 read with Rule 80 of I.T. Rules by falling to note that the intention of section 14A is clear, as Rule 8D (2)(ii) [while explaining B] and 8D(2)(iii) unequivocally use the expression " does not or shall not form part of the total income ." (emphasis supplied) thus clearly factoring in even the future possibility of tax exempt status of the impugned income against which the expenses to be disallowed are incurred.

Whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the CBDT Circular 5/2014 dated 11.02.2014 in which clarification has been provided on disallowance of expenses under section 14A even in cases where corresponding exempt income has not been earned.

3. The assessee filed return of income on 29.11.2014 declaring taxable income of Rs.12,24,49,380/-. The assessee company is involved in trading of hosiery Rags, Synthetic Waste, Polyester Yarn, Trading of Energy & Power and cement.

Disallowance u/s 14A:

4. The assessee has made investments in the following wholly owned subsidiary companies:

Investment in wholly owned subsidiary companies	31.03.2014	31.03.2013
Mittal Dying Pvt. Ltd.	99,990	99,990
2145000 Equity shares @ Rs.10 each at a premium of Rs.50	12,87,00,000	12,87,00,000
Mittal Hydro Ventures Pvt. Ltd.	29,99,990	
	3,73,35,261	82,83,000
JK Integrated Textile Park Pvt. Ltd.	-	22,91,400
DSP Black Rack Strategic Bond Fund	10,00,000	-
Total	17,01,35,241	13,93,74,390

5. The AO disallowed an amount of Rs.10,22,720/- u/s 14A. The AO disallowed the amount resorting to the Circular No. 5/2014 dated 11.02.2014 of CBDT. The Id. CIT(A) deleted the addition holding that the assessee has not earned any exempt income in the year under consideration. The decision of the Id. CIT(A) is supported by the judgment of the Hon'ble Jurisdictional High Court in the case of Cheminvest Ltd. Vs CIT

378 ITR 033. Since, the absence of any exempt income is not in dispute, we hold that no disallowance is called for and the Id. CIT(A) has rightly deleted the addition.

Disallowance of Donation:

6. During the year under consideration, the assessee has made donations to M/s School of Human Genetics and Population Health, Kolkata of Rs.45,00,000/- and M/s Herbicare Healthcare Bio-Herbal Research Foundation, Kolkata of Rs.22,50,000/- and claimed deduction u/s 35 amounting to Rs.67,50,000/- and total deduction of Rs.1,57,50,000/-. The assessee has claimed the above said donation and charged to Profit & Loss a/c. The Assessing Officer has disallowed an amount of Rs. 157.50 lakh on the reason that the donation given to Herbicare Healthcare Bio-Herbal Research Foundation and School of Human Genetic and Population Health are bogus.

7. The AO has referred to the information received from the DDIT(Inv.), Panipat regarding donation given to Herbicare Healthcare Bio-Herbal Research Foundation and School of Human Genetics & Population Health and held that the assessee has failed to prove the genuineness of the donations given. The extract of the content of the information received from the DDIT(Inv), Panipat is as under:

"...The information received from Kolkata Directorate as extracted from the data in CD there appears the name of M/s Herbicare Healthcare Bio-Herbal Research Foundation, Kolkata and M/s School of Human Genetics and Population Health, Kolkata only. Since, address of third organization i.e. Shri Arbindo Institute of Applied Scientific Research Trust is Galaxy Industries Compound,

9-K, Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai-400096 as obtained from letter of DIT (Exemption), Chennai regarding approval u/s 80G(5)(vi) of the IT. Act on 21.06.2012 filed by the assessee no information has been received by this office in respect of donations made to M/s Herbicare Healthcare Bio-Herbal Research Foundation, Kolkata and School of Human Genetics and Population Health, Kolkata w.r.t. the statements recorded during the course of survey u/s 133A of the I. T. Act, 1961 on these organizations by the Kolkata Directorate.

7. In this statement, Shri Kulbhushan Mittal MD deposed that apart from him there are other two share holders of this company namely Sh. Rajender Kumar Mittal his father and Smt. Aarti Mittal, his wife. He and his wife are the directors of this company. He was specifically asked to state on what basis these institutions were selected for donation. In reply to this question as appearing on page 3 of his statement, he has stated that donations were made to the scientific institutions on the basis of request/call letters received from them. But he denied that he knew any member directors of these scientific institutions personally. He also stated that none of the other directors/share holders knew these persons. He was asked whether activities of these scientific institution were verified by him or other director/share holder of the company before giving the donation and he replied that no physical verification was made but donation have been made to meet CSR obligations....”

8. The revenue has also had information with regard to the statements given by the directors of the donee companies namely, Sh. Shopan Raj Das Gupta and Smt. Sujata Khos in which they have categorically admitted the fact of bogus donations received. Based on the statements, the AO disallowed the donation given by the assessee to these companies.

9. Aggrieved the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) deleted the addition holding that the statements of Sh. SRD Gupta and Others were not confronted to the assessee and the opportunity of cross examination of the persons has not been accorded to the assessee.

10. During the arguments before us, the Id. DR argued that the CBDT has rescinded the notification issued on 14.03.2008 vide notification dated 06.09.2016 wherein it has been categorically held that it shall be deemed that the said notification dated 14.03.2008 has not been issued for any tax benefit under the Income Tax Act, 1961 or any other law of the time being in force.

11. On the other hand, the Id. AR argued that the Id. CIT(A) has rightly deleted the addition as the cross examination of the directors of the recipient company has not been granted at any point during the assessment proceedings.

12. Heard the arguments of both the parties and perused the material available on record.

13. We have gone through the explanation below. The provisions to Section 35(1)(iii) which reads as under:

"Explanation – The deduction to which the assessee is entitled in respect of any sum paid to a [research association], university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum 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."

14. It is not in dispute that when the assessee paid the donation during the F.Y. 2013-14, the recipient company has been duly conferred approval under clause (ii) of Sub-Section (1) of Section 35 of the Income Tax Act, 1961 read with Rule 5C and 5E of the Of the Income Tax Rules, 1962. Hence, we hold that the assessee cannot be disentitled for the benefit accorded in accordance with the provisions of the Income Tax Act. The appeal of the revenue is hereby dismissed.

15. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 11/03/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 11/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR