

IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH MUMBAI

Before Shri Shamim Yahya (AM)

ITA No. 1780/Mum/2021
Assessment Year: 2012-13

Sanjay Bhavanji Rambhia, vs. ITO-Circle 16(3)(1)
A-301, Platinum the Residence, Mumbai 400020
Tejpal Scheme Road No.5, Vile Parle (E),
Mumbai 400057

Appellant.

Respondent.

PAN AABPR3659M

Assessee by : Shri Vijay Biyani
Revenue by : Ms. Usha Shrote

Date of Hearing : 05-04-2022
Date of pronouncement : 26-04-2022

ORDER

PER SHAMIM YAHYA, A.M.

This is an appeal by the assessee arising out of order Ld. CIT(A) dated 23.08.2021 pertaining to assessment year 2012-13.

2. The ground of appeal read as under:-

The learned Assessing Officer/Learned Commissioner of appeal has erred in disallowing alternative claim made u/s. 80G during proceedings u/s 154 in respect of donation of Rs. 1,11,111/- for which claim was made inadvertently u/s. 80GA in the return of Income and was disallowed in the order passed u/s. 143(1).

3. Brief facts of the case are that in an order passed section 154 of the income tax act the Assessing Officer observed as under:-

3. The application for rectification filed by the assessee is duly considered and placed on record. The claim of deduction of Rs.1,11,111/- u/s80G now in the rectification proceedings is a fresh claim which was never made by the assessee

in the original return of: income filed by the assessee on 28/09/2012 wherein in fact as discussed in detail in order u/s.154 dated 23/06/2020, the assessee had made claim of deduction of Rs.1,11,111/- u/s.80GGA. This claim of deduction u/s.80GGA was disallowed by the CPC u/s. 143(1) passed on 01/11/2013. Subsequently as per the e-filing records, another return in form ITR-3 for rectification was filed by the assessee with the CPC on 18/02/2014 (i.e. after the original return was processed) claiming it as original return. In this return the assessee has withdrawn the claim of deduction u/s.80GGA of Rs.1.11,111/- made in the return of income filed on 28/09/2012 but reduced the equivalent amount from the business income as expenses incurred. In support of such claim of enhanced expenses and the validity / genuineness of the same, no reasons have been submitted by the assessee. Therefore, cognizance of the same was not taken in the order u/s.154 dated 23/06/2020 and duly rejected for the reasons discussed in detail in the said order:

3.1 Now vide the instant application for rectification under consideration, the assessee has made a new claim that the donation of Rs.1,11,111/- be allowed to it as deduction u/s.80G of the I T.Act. 1961. It can be seen from the happenings in the instant case that the assessee after filing his return of income for the year under consideration has been constantly changing his claim of deduction in respect of amount of Rs1,11,111/- as per his convenience without filing a valid revised return for such subsequent claims. In this regard reference is drawn to the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd. 284 ITR 323 wherein it has been observed by the Hon'ble Court that any revised claim before the AO has to be in the form of revised return which is not the fact in the instant case. The assessee has not filed any revised return and the time to file any revised return has already elapsed. Therefore, the fresh and new claim of deduction of Rs1,11,111/- u/s.80G made now in the application for rectification is not acceptable since there is no mistake appellant from records and therefore rejected without going in to the merits of such claim.

4. Upon assessee appeal Ld. CIT(A) confirmed the AO's action by observing as under:-

6. The appellant during the appellate proceedings, has not clarified or emphasized upon the issue discussed by the AO in his rectification order dated 23.06.2020. The appellant even had not submitted any word in his submission regarding the first rectification order passed by the AO on 23.06.2020. The appellant intention during assessment proceedings and even in appellate proceedings found to be ingenuine. Moreover, it is found that the appellant constantly changing his claim of deduction in respect of donation amount of Rs.1,11,111/-. The original return dated 28.09.2012 he claimed the donation u/s 80GGA. In another return filed on 18.12.2014 withdrawn the claim of donation. In rectification application it is requested that he wrongly claimed deduction u/s 80GGA, which should be claimed us 80G of the Income Tax Act. Therefore, the donation the intention of the appellant regarding the claim of donation of Rs.1,11,111/- is found to be ingenuine.

7. Further, as per submission made by the appellant, the approval received u/s 80G(vi) of the Act from Commissioner of Income Tax, Valsad, is observed to have been expired on 31.03.2011 i.e. way before the donation date which is 07.01.2012. Therefore, on given circumstances, the claim for deduction of donation of Rs.1,11,000/- u/s 80G is hereby dismissed.

5. Against the above order assessee is in appeal before the ITAT. I have heard both the parties and perused the records. Learned counsel of the assessee pleaded that assessee should be granted an opportunity before the assessing officer to canvass the appeal properly.

6. Upon careful consideration I note that the assessing officer has rejected the assessee's claim referring to Hon'ble Supreme Court decision in the case of Goetze India Ltd. 284 ITR 323.

7. In the said decision Hon'ble Supreme Court itself has held that their aforesaid order will not impinge on the ITATs, power to admit grounds otherwise than by revised return. Furthermore I note that Ld. CIT(A) has referred that the donee's approval had expired by the time the donation was made by the assessee. If this fact is correct assessee's claim cannot be sustained. However since this is a matter of verification of records I consider it appropriate to remit the issue to the file of AO. The assessing officer shall examine the documentary evidence of the validity of the donee's approval. If the same has not expired the assessee's claim shall need to be considered as per law. If the same has expired the assessee shall not have any legal claim for deduction. Accordingly the issue stands remitted to the file of Assessing Officer.

8. In the result this appeal by the assessee stands allowed

Order pronounced in open court on 26.04.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated 26.04.2022

N.V Sr.PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar/Sr.PS)

ITAT, Mumbai