

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1246/AHD/2018
निर्धारण वर्ष/Asstt. Year:2010-2011

Bhimani Chemicals Pvt. Ltd., 510, Mahakant Complex, Opp. V.S. Hospital, Ahmedabad-380006. PAN: AABC5513H	Vs.	D.C.I.T. Circle-1(1)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divatia, A.R
Revenue by :	Shri V.K. Singh, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **21/07/2022**
घोषणा की तारीख / **Date of Pronouncement**: **27/07/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income (Appeals)-1, Ahmedabad dated 20/04/2018 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2010-11.

2. The only issue raised by the assessee is that the Ld. CIT(A) erred in confirming the order of the AO by sustaining the disallowance of the deduction claimed u/s 35AC of the Act for making the donation of Rs.30,00,000/- to M/s.Navjeevan Charitable Trust.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of trading of dyes & chemicals. The assessee in the year under consideration has given donation amounting to Rs.30,00,000/- to M/s Navjeevan Charitable Trust which was registered under the provision of section 35AC of the Act. Thus, the assessee claimed the deduction for the amount of donation under the provision of section 35AC of the Act.

4. However, the AO found that there was a search operation u/s 132 of the Act carried out at the premises of M/s Navjeevan Charitable Trust. As a result of search, it was found that the M/s Navjeevan Charitable Trust is involved in the bogus activity and thereafter certificate of registration of the trust was cancelled vide letter dated 28/12/2016 by the Principal CIT. Thus, the AO treated the amount of donation paid by the assessee for Rs. 30,00,000/- as bogus and accordingly added the same to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A who confirmed the order of the AO.

6. Being aggrieved by the order of the learned CIT-A the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 43 and contended that this Tribunal in the group case of the assessee in the case of the P.M. Bhimani Orgochem Pvt. Ltd. vs. DCIT in ITA Nos. 2586, 2587 & 2588/Ahd/2017

for A.Ys 2010-11, 2011-12 & 2012-13 have decided the issue in favour of the assessee.

8. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that this Tribunal involving identical facts and circumstances in the group case of P.M. Bhimani Orgochem Pvt. Ltd. vs. DCIT in ITA Nos. 2586, 2587 & 2588/Ahd/2017 for A.Ys 2010-11, 2011-12 & 2012-13 have decided the issue in favour of the assessee. The relevant extract of the order is reproduced as under:

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.

9.1 Before us, no material has been placed on record by the Revenue to demonstrate that the decision of Tribunal as discussed above has been set aside/ stayed or overruled by the higher Judicial Authorities. Before us, the Revenue has

not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of case referred above nor has placed any contrary binding decision in its support. Thus, respectfully following the above decision of the Co-ordinate Bench, we allowed the ground of appeal of the assessee.

10. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 27/07/2022 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
27/07/2022
Manish