

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1202/Mum/2020
(A.Y. 2014-15)**

Kirit Laxmichand Lapsia A-43, Bharat Thirth CHS, V. N. Purav Marg, Chembur - 400 071	Vs.	ACIT-17(2) R.No. 137, Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAPL7289E		
Appellant	..	Respondent

Appellant by :	M.Subramaian
Respondent by :	Tejinder Pal Singh Anand

Date of Hearing	08.09.2022
Date of Pronouncement	15.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-28, Mumbai which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. *Learned assessing officer erred in issuing notice u/s 148 as he has not brought any subjective findings against the appellant to allege income escapement. Thus the assessment order on basis of invalid notice u/s 148 is bad in law and is required to be squashed.*

2. (a) *It is stated in information/reason provided to us that CBDT has withdrawn the approval given to the above said entity vide notification issued on 15th September 2016 Thus the entity was covered and qualified for exemption vide approval that was valid during the F.Y 2013-14 In light of above, donations given to the institute cannot be termed as bogus donations And deductions taken by assessee u/s 35(1(ii) of the Act qualify the provisions under the Act*
- (a) *Your appellant is not related involved in any activity /research undertaken by institute nor is aware of any malafide and fraudulent intentions of management.*
- (b) *Intention and objective of appellant to donate the cited amounts are purely on grounds of purpose for which the CBDT had approved the exemption status of the institute.*
- (c) *Your appellant has not received any cash amounts or commissions from any persons.*
- (d) *There is no subjective and specific confirmation from any person in regard to commissions or cash backs received by your assessee.*
- (e) *The reason to believe has not brought any subjective concrete findings in order to allege income escapement in your assessee.*
- (f) *There is no evidence to draw the conclusion that the entire donation which the appellant had donated to trust had come back to the appellant in cash. Reliance is placed on judgment in case of PCIT Vs Tejua Rohitkumar Kapadia (Supreme High Court) Appeal Number Special Leave Petition (civil) Diary No. 12670/2018 Date of Judgement/Order 04/05/2018 wherein Supreme Court has in the case of PCIT VS Tejua Rohitkumar Kapadia upheld the Gujarat high Court Order and dismissed the special leave petition filed by Department on the issue of deletion of Addition for Bogus Purchases.*
- (Copy of relied judgment is attached herewith)*
- (g) *Reliance is placed in board circular F. No. 225/351/2018-ITA (II) wherein Para 5 directs the field formations as "I am further directed to state that while handling investigations/ enquiries in these cases, the concerned Assessing Officer should examine the specific transactions related to the sum donated and cash trail should be clearly identified"*

In the instant case there is no cash trail wherein your appellant is found to have received any cash back against the donations made."

2. The fact in brief is that return of income declaring total income of Rs.39,85,780/- was filed on 28.03.2015. Subsequently, information was received from the DDIT(Investigation), Mumbai that assessee was one of the beneficiary who had made donation of Rs.11 lac during the year under consideration to School of Human Genetics & Population Health (SHG& PH). It was also reported that survey action was carried out by the DDIT(Investigation) Kolkata in the matter of bogus donation u/s 35(1)(ii) of the Act on School of Human Genetics & Population Health (SHG& PH) and it was found that they have provided accommodation entries of bogus donation to the donors and they have accepted that they have refunded amounts after deducting service charges. Post survey information was received from the DDIT(Investigation), Kolkata that assessee was one of the beneficiary who had also made alleged donation of Rs. 11 lac to School of Human Genetics & Population Health (SHG& PH). It is further stated that CBDT vide its notification no. 82/2016/F. No. 2003/64/2009/ITA(ii) dated 15.09.2016 had withdrawn that notification granting approval u/s 35(1)(ii) of the Act to School of Human Genetics & Population Health (SHG& PH). On the basis of aforesaid information the A.O had reopen the case of the assessee by issuing of notice u/s 148 of the Act on 28.03.2018. During the course of assessment a show cause notice was issued to the assessee by the A.O, however, assessee had not filed any reply. After referring the finding of DDIT(Investigation) Kolkata, the A.O stated that School of Human Genetics & Population Health (SHG& PH) was found to be engaged in providing the bogus donation entries u/s 35(1)(ii) of the Act through various brokers in lieu of commission. The A.O further stated that the commission rate in the market was 12 to 18%. Therefore, the A.O stated that it is clear that assessee has taken the accommodation entry in the

form of donation of Rs.11 lac to (SHG& PH) against which it had claimed deduction of Rs.19,25,000/- u/s 35(1)(ii) of the Act. Therefore, the deduction of Rs.19,25,000/- claimed u/s 35(1)(ii) of the Act was disallowed and added to the total income of the assessee.

3. Aggrieved, the assessee carried the matter in appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts reported by the A.O.

4. During the course of appellate proceedings before us the ld. counsel vehemently contended that assessee had made donation and correctly claimed deduction u/s 35(1)(ii) of the Act since the CBDT has subsequently withdrawn the approval given to the said entity vide notification issued on 15.09.2016. The ld. Counsel further submitted that donation given in the F.Y. 2013-14 was qualified for exemption and he has placed reliance on the decision of jurisdictional High Court and ITAT in the case of i.e (i) National Leather Cloth Manufacturing Co. V. Indian Council of Agricultural Research & Others 241 ITR 482 (Bom); (ii) Vora Financial Services (P) Ltd. Vs. Assistant Commissioner of Income Tax 171 ITD 646; (iii) Motilal Dahyabhai Jhaveri & Sons Vs. ACIT, ITA No. 3453/Mum/2018 & 1584/Mum/2019; (iv) Urmish Jewellers Vs. ACIT, 177 ITD 364.

On the other hand, the ld. D.R has supported the order of the A.O. and ld. CIT(A).

5. Heard both the sides and perused the material on record. During the course of assessment on the basis of information received from DDIT(Investigation), Kolkata, the A.O has disallowed the claim of deduction u/s 35(1)(ii) of the Act to the amount of Rs.19,25,000/- as

donation provided to School of Human Genetics & Population Health (SHG& PH) on the ground that said concern was engaged in providing accommodation entries of donations. During the course of appellate proceedings before us the ld. Counsel filed paper book comprising copies of various document filed before the lower authorities i.e donation receipt, copy of registration certificate issue du/s 12A, copy of notification of approval issued u/s 35(1)(ii) of the Act by the CBDT in the name of School of Human Genetics & Population Health (SHG& PH) etc. During the year under consideration the assessee has claimed deduction u/s 35(1)(ii) amounting to Rs.19,25,000/- on account of donation of Rs.11 lac made to School of Human Genetics & Population Health (SHG& PH) in F.Y. 2013-14. It is further noticed that CBDT vide its notification no. 82/2016 F. No. 2003/64/2009/ITA-II has withdrawn notification for granting approval u/s 35(1)(ii) on 15.09.2016 which showed that notification was valid at the time the donation was made. In this regard we have perused the decision of Hon'ble Jurisdictional High Court in the case of National Leather Cloth Manufacturing Company Vs. Indian Council Agricultural Research & Others, 241 ITR 482 (Bom) wherein held that the assessee was entitled to relief on the certificate granted by the prescribed authority u/s 35(1)(ii) of the Act to the institution to which it donated the sum of money for claiming deduction under that section if it was subsisting and valid at the time the donation was made. The retrospective withdrawal or cancellation of the certificate would have no effect upon the assessee who had acted upon it when it was valid and operative. On similar facts and identical issue the coordinate bench of the ITAT, Mumbai in the case of Motilal Dahyabhai Jhaveri & Sons Vs. ACIT vide ITA No. 3453/Mum/2018 and 1584/Mum/2019 dated 24.04.2019 held that donor cannot be affected due to subsequent

withdrawal of recognition with retrospective effect. Similarly, the ITAT, Mumbai in the case Unish Jewellers Vs. ACIT (2019) 107 taxman.com 19 (Mumbai Tribunal) held that where approval granted u/s 35(1)(ii) to Scientific Search Society was cancelled subsequently with retrospective effect, weighted deduction claimed by the assessee donor u/s 35(1)(ii) could not be denied, if there was valid and subsisting approval when donation was given. It is undisputed fact that at the time of making donation to School of Human Genetics & Population Health (SHG& PH) that concern was having valid approval granted under the act by the CBDT, therefore, subsequent cancellation of such approval retrospectively vide CBDT order dated 15.12.2016 cannot invalidate the assessee's claim of deduction u/s 35(1)(ii) of the Act. Following the decision of the Hon'ble jurisdictional High Court and the decisions of coordinate benches of the ITAT Mumbai as supra we direct the A.O to allow the claim of deduction u/s 35(1)(ii) of the Act to the assessee. Accordingly, ground of appeal no. 2 of the assessee is allowed.

6. Ground No. 1 of appeal pertaining to validity of notice u/s 148 of the Act was not discussed during the course of appellate proceedings before us by the ld. Counsel, therefore, the same stand dismissed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 15.09.2022

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 15.09.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai