

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1812/Mum/2022

(A.Y: 2016-17)

M/s. Lupin Investments Pvt Ltd (Successor to novamed Investments Pvt Ltd.) 159, CST Road, Kalina, Santacruz (E), Mumbai - 400098.	Vs.	ACIT, Circle - 14(1)(1) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL1070G		
Appellant	..	Respondent

Appellant by :	Shri Rajan Vora & Shri Hemen Chandaria.AR
Respondent by :	Shri Manoj Sinha.DR

Date of Hearing	10.10.2022
Date of Pronouncement	30.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 250 of the Act. The assessee has raised following grounds of appeal:

Validity of the Order passed by learned NFAC

1. *The order passed by the learned Commissioner of Income-tax (Appeals), NFAC is invalid, bad in law and against the principles of natural justice.*

2. *The notices issued by the learned Commissioner of Income-tax (Appeals), NFAC in the name of Novamed Investments Private Limited (i.e. amalgamating/ non-existent) company are invalid and non est.*

3. *The learned Commissioner of Income-tax (Appeals), NFAC ought to have appreciated the fact that the facility to respond to the notices issued in the name of amalgamating company was not available in the e-proceedings facility of the amalgamated company in the new e-filing website launched in June 2021.*

4. *The order passed in the name of Novamed Investments Private Limited (i.e. amalgamating/ non-existent) company is invalid and non est.*

Appeal not adjudicated

5. *The learned Commissioner of Income-tax (Appeals), NFAC erred in not adjudicating the appeal filed against the intimation under section 143(1).*

Adjustment in respect of deduction under section 80GGA

6. *The learned Commissioner of Income-tax (Appeals), NFAC ought to have directed the learned Assessing Officer to delete the prima facie adjustments made in respect of deduction claimed under section 80GGA of the ITA of Rs. 56,07,955.*

7. *The learned Commissioner of Income-tax (Appeals), NFAC erred in not appreciating the fact that the prima facie adjustments made in respect of deduction claimed under*

section 80GGA of the ITA is without jurisdiction and beyond the scope of section 143(1)(a) of the ITA.

8. The learned Commissioner of Income-tax (Appeals), NFAC erred in not appreciating that the adjustment made under section 143(1)(a) without providing the appellant an opportunity of being heard is bad in law.

9. Without prejudice, the learned Commissioner of Income-tax (Appeals), NFAC ought to have allowed the deduction in respect of donation made under section 35AC of ITA.

Demand

10. The learned Assessing Officer ought to be directed to delete the demand of Rs. 18,72,550.

Interest under section 234B

11. The learned Assessing Officer ought to be directed to delete the interest of Rs. 1,47,762 levied under section 234B of the ITA.

Interest under section 234C

12. The learned Assessing Officer ought to be directed to delete the interest of Rs. 82,911 levied under section 234C of the ITA.

General

13. Each one of the above grounds of appeal are independent and without prejudice to each other.

14. The appellant craves leave to add, amend, alter, delete or modify all or any of the above grounds of appeal.

2. The brief facts of the case that the assessee company is engaged in the business of investments in shares and mutual funds. The assessee has filed the return of income for the A.Y 2016-17 on 12.10.2016 disclosing a total income of Rs. Nil under normal provisions of Act after claiming deduction u/s 80GGA of the Act donation of Rs.56,50,000/- which was restricted to gross total income comprising of income from other sources. The donation was made by the assessee to Desh Bandhu and Manju Gupta Foundation Trust having approval u/s 35AC of the Act. Whereas the assessee has received the intimation u/s 143(1) of the Act from DCIT (CPC) dated 27-12-2016 wherein deduction u/s 80GGA of the Act was not allowed and raised the demand of Rs.18,72,550/-.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The assessee has challenged that the deduction u/s chapter-VIA was not allowed by the CPC. Further, the contentions raised by the assessee that there was no opportunity was served or provided before disallowance of claim of deduction u/s 80GGA of the Act nor defect notice was issued. Further the assessee has filed the rectification request

online u/s 154 of the Act and was rejected. The assessee has made the submissions before the appellate authority that the assessee does not have income under head profits and gains from business or profession and the assessee's claim for deduction has to be allowed u/s 80GGA of the Act as the income was disclosed under income from other sources, But the CIT(A) has dismissed the appeal of the assessee by observing at Para 5.1 to 5.2 as under:

5.1 On verification of the record, it is observed that in the appellant case for the same assessment year, an assessment u/s 143(3) of the Act has been completed by the Jurisdictional Assessing Officer in which the subject matter of the instant appeal is included. Further, it is also observed that the appellant has also preferred the appeal against the assessment order passed by the Jurisdictional AO u/s. 143(3) of the Act, in appeal No. CIT(A) 22, Mumbai/10293/2018-19 filed on 21.01.2019 which is under adjudication with the undersigned.

5.2 The subject matter on the issue involved in ground is already considered by the Jurisdictional AO while passing the assessment order u/s. 143(3) of the Act, and against which the Appellant has preferred separate appeal which is under consideration of the undersigned. In the intimation u/s. 143(1), the AO has disallowed the claim u/s. 80GGA of the Act. Further, in order u/s. 143(3), the same deduction has been disallowed by the AO. From the perusal of Grounds of Appeal of both the appeals filed it is evident that the grounds of appeal raised in the impugned

appeal is also raised in the appeal filed against the order u/s 143(30 of the Act. As the issue involved regarding the same disallowance has been considered in order u/s. 143(3), which is under adjudication before the undersigned, it will be pertinent to avoid the repetition and adjudicate the matter during the disposal of appeal against the order u/s. 143(3) of the Act. As far as the ground in the instant appeal is concerned, the same is dismissed for statistical purpose.

4. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in not considering the facts that the deduction u/s 80GGA of the Act was not allowed though the assessee has not offered any income from business or profession. Whereas the assessee has made submissions before the CIT(A) and also explained the details. The CIT(A) has overlooked the facts and the written submissions filed with the supporting computation of income, audited financial statements, donations receipts, registration certificate of recipient and the approval of Desh Bandhu and Manju Gupta Foundation Trust. The Ld.AR submitted that the provisions of submitting the details from A.Y 2015-16 to 2016-17 is not applicable and there is no

requirement of submission of material information for claiming in the return of income. The Ld. AR also substantiated the submissions with the judicial decisions, paper book and prayed for allowing the appeal. Per Contra, the Ld. DR supported the order of the CIT(A) and Ld. DR has also filed letter dated 26.09.2022 in respect of applicability provisions of Sec. 143(1) of the Act for A.Y 2016-17 mentioning that no opportunity will be given as per the CPC, Bengaluru prior to making the adjustment.

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue as envisaged by the Ld.AR that the CPC was not provided opportunity of hearing of calling for information before making disallowance u/s 80GGA of the Act in the 143(1) of the Act. The contentions of the Ld.AR that the provision does not specify for the details as necessary to be incorporated in the return of income up to A.Y 2016-17 and there is no clause incorporated for the details in the return of income filed. The Ld. AR submitted that the assessee has disclosed the income under other sources and is eligible for claim of deduction u/s 80GGA of the Act.

For this purpose, we consider it appropriate to refer to the provisions of Sec. 80GGA of the Act as under:

Insertion of new section 80GGA.

11. In Chapter VIA of the Income-tax Act, under the heading "B.—Deductions in respect of certain payments", after section 80GG, the following section shall be inserted with effect from the 1st day of April, 1980, namely ;—

80GGA. Deduction in respect of certain donations for scientific research or rural development.—(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) any sum paid by the assessee in the previous year to a scientific research association which has as its object the undertaking of scientific research or to a University, college or other institution to be used for scientific research :

Provided that such association, University, college or institution is for the time being approved for the purposes of clause (ii) of sub-section (1) of section 35 ;

(b) any sum paid by the assessee in the previous year—

(i) to an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved for the purposes of section 35CCA;
or

(ii) to an association or institution which has as its object the training of persons for implementing programmes of rural development:

Provided that the association or institution is for the time being approved for the purposes of sub-section (2) of section 35CCA.

(3) Notwithstanding anything contained in sub-section (1), no deduction under this section shall be allowed in the case of an assessee whose gross total income includes income which is chargeable under the head " Profits and gains of business or profession ".

(4) Where a deduction under this section is claimed and allowed for any assessment year in respect of any payments of the nature specified in sub-section (2), deduction shall not be allowed in respect of such payments under any other provision of this Act for the same or any other assessment year.'

7. Further, the provisions of Sec. 143(1) of the Act up to A.Y 2016-17 are as under:

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:

(a) the total income or loss shall be computed after making the following adjustments, namely:

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any

tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 of section GOA, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, (d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause

(c), and (e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made

Explanation-For the purposes of this sub-section

(a) "an incorrect claim apparent from any information in the return shall mean a claim, on the basis of an entry, in the return,

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished, or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a). Only from AY 2017-18. following clauses have been inserted in section 143(1) of IT Act

Amendment to provisions of section 143 applicable for A.Y.2017-18

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub section (1) of section 139,

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; (V) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80 IB, 80-IC, 80-ID or section 80-1E, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode: Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where response is received within thirty days of the issue of such intimation, such adjustments shall be made;

4 Further, as per amendment of Sec. 143 of the At 68. In section 143 of the Income-tax Act,

(a) with effect from the 1st day of April, 2017, in sub-section (1), in clause (a).

(A) in sub-clause (i), the word "or" appearing at the end shall be omitted;

(B) after sub-clause shall be inserted namely;-

(iii), the following sub-clauses shall be inserted, namely: disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-1A, 80-IAB, 80-1B, 80-IC, 80-ID or section 80 IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

(II) for sub-section (1D), the following sub-section shall be substituted, namely:

where a notice has been issued to the assessee under sub section (2):

Provided that such return shall be processed before the issuance of an order under sub-section (3)

b. for sub-section (2), the following sub-section shall be substituted with effect from the 1st day of June, 2016, namely: "(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."

8. The Ld. AR focused on the facts that the assessee has disclosed the income under income from other sources and eligible for deduction u/s 80GGA of the Act as discussed in the above paragraphs. The Ld. AR demonstrated the return of income filed in the factual book at page 1 to 35 of the paper book in particular the claim made in schedule VIA of the return of income where it is very clear that the assessee only has to give the details of claim u/s 80GGA of the Act. Further the Ld. AR filed the Audited financial statements to support that the assessee has disclosed the income from other sources and also to substantiate the genuineness of the transaction of donation receipt, and Form.no 58A received from the Desh Bandu and Manju Gupta Foundation at page 52-53, registration certificate of Desh Bandu and Manju Gupta foundation u/s 12A and 80G of the Act at page 54 to 55 and approval of Desh Bandhu and Manju Gupta Foundation u/s 35AC of the Act at page 56 to 58 of the paper book. We considering the overall facts and submissions are of the opinion that the return of income filed by the assessee for the A.Y 2016-17 and facts demonstrated before us in the return of income,

it is very clear that there is no information is filed in the return of income supporting the claim. Further it amply clear that the assessee has disclosed the income under the income from other sources and therefore eligible for claim of deduction u/s 80GGA of the Act, and the contentions of the Ld. AR considered and the Ld. AR also relied on the judicial decisions:

1. *Khatau Junkar Ltd Vs. K.S Pathania [1992] 61 taxman 157 (Bombay).*
2. *Rajesh Kumar Vs. DCIT, [2006] 157 taxman 168 (sc).*
3. *Kvaverner John Brown Engg. Vs. ACIT, [2008] 170 taxman 304 (SC).*
4. *Bajaj Auto Fin Vs. CIT, Pune, [2018] 93 taxman.com 63 (Bombay).*
5. *CIT Vs. Alom Extrusions Ltd., [2009], 185 taxman 416 (SC).*

9. We considering the overall facts, circumstances, evidences and provisions of the Act are of the opinion that for this particular assessment year the assessee has discharged its onus by submitting the details and the A.O/CPC though in 143(1) has accepted income from other sources but has made a disallowance of 80GGA of the Act. Further the assessee has filed the

details before the CIT(A) and Honble Tribunal to substantiate the genuineness of the transactions and the AO has not doubted the genuineness of the claim but only due to the factual information that there is no details were submitted and the claim was denied. Accordingly we set aside the order of the CIT(A) and direct the Assessing officer to allow the claim of deduction and allow the grounds of appeal in favour of the assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30.11.2022

Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 30.11.2022
KRK, PS

Copy of the Order forwarded to :

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