

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 2663/MUM/2022
Assessment Year: 2013-14
&
ITA No. 2664/MUM/2022
Assessment Year: 2014-15**

M/s Manthan Inc,
Rani Bldg., V.P. Road,
Mumbai-400 004.

Vs.

ACIT Cir. 19(2),
Tardeo,
Mumbai.

**PAN No. AAKFM 6011 D
Appellant**

Respondent

Assessee by : Mr. Dilip Diwan, AR
Revenue by : Smt. Mahita Nair, DR

Date of Hearing : 12/01/2023
Date of pronouncement : 19/01/2023

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against two separate orders both dated 26.09.2022 passed by the Ld. National Faceless Appeal Centre (NFAC), Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14 and 2014-15 respectively. Being identical issue involved in both these appeals , same were heard together and



disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. The appeal for AY 2013-14 is being taken as lead case. The grounds raised by the assessee are reproduced as under:

1. *The Ld. CIT(A) has erred in confirming the addition of ₹30,00,000/- against the principle of natural justice.*
2. *The Ld. CIT(A) has not consider the order pass by Honorable ITAT dated 07.10.2021.*
3. *Your appellate there for prays your honor to delete the addition of ₹30,00,000/- confirm by the CIT(A).*

3. Briefly stated, facts of the case are that the assessee, a partnership firm, filed return of income for the year under consideration on 29.09.2013 declaring total income at ₹33,25,910/- . The assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed and income was assessed at ₹35,93,380/-. Subsequently, in view of reasons recorded that assessee claimed bogus deduction u/s 35AC(1) of the Act, the case of the assessee was reopened u/s 147 of the Act by way of issue of notice u/s 148 of the Act dated 14.01.2016. The assessment u/s 147 r.w.s. 143(3) of the Act has been completed on 02.12.2016 wherein the Assessing Officer disallowed the deduction for donation made by the assessee of ₹30 lakhs to M/s Navjeevan Charitable Trust.



4. On further appeal, the Ld. CIT(A) also upheld the disallowance following the order of the ITAT dated 27.08.2019 in ITA No. 2942/M/2018 for assessment year 2012-13.

5. Aggrieved, the assessee is in appeal before the ITAT (in short the Tribunal) by way of raising the grounds as reproduced above. The sole issue involved in the grounds raised is disallowance of deduction u/s 35AC of the Act.

6. The brief facts qua, the issue-in-dispute are that M/s Navjeevan Charitable Trust was notified u/s 35AC of the Act vide notification No. SO121(E) dated 12.01.2009, which was amended on 27.04.2011 for the project of vocational training programme, medical camps and goods & cloth distribution, for a cost of ₹68.65 crores, for a further period of FY 2011-12, 2012-13 & 2013-14. Further, by way of notification dated 11.08.2011, which was further amended on 27.12.2013 and notification dated 07.10.2013, other projects of the said trust were approved for the purpose of section 35AC of the Act by prescribed authority. For the year under consideration, the assessee made payment of Rs. 30,00,000/- to M/s Navjeevan Charitable Trust (six cheques of Rs. 5,00,000/- on different dates) as donation towards the projects of Navjeevan Charitable Trust notified under section 35AC of the Act and claimed deduction of the same in the return of income filed, which stood allowed by the AO in the assessment completed u/s 143(3) of the Act.



6.1 The Assessing Officer subsequently received information from the Investigation Wing of the Income-tax Department that M/s Navjeevan Charitable Trust was engaged in issuing bogus entry of donations u/s 35AC(1) of the Act to various parties. The information **interalia** contains that M/s Navjeevan Charitable Trust was used to received cheque payments of purported donation, which were then routed to certain bogus purchase parties for purchase of wheat, rice, pulses, cloth etc. and then bogus purchase parties used to transfer the money to some other bank account controlled by Mr. Ashok Bagaria, the trustee of Navjeevan Charitable Trust and then cash used to be withdrawn from those accounts and returned back to the donors. Another trustee Mr. Subhash Kadam in his statement dated 10.11.2014 described the entire process of receipt of cheque from donor, expenses of bogus purchase by the trust and then routing of the cash back to the donors. He stated of receipt of commission @ 3% in the process of giving donation receipt to the donors. The Ld. Assessing Officer in para 3.3, the order has reproduced the statement of the bogus purchase parties, which is reproduced as under:

3.3 Statements of these bogus purchase parties have also been recorded where they have stated that they only provided accommodation bills to Navjeevan and that the payments were returned to Shri. Ashok Bagaria either through cash or through payment into one of the bank accounts controlled by him.



- *For instance, Shri. Amit Sanghvi, proprietor of Amit Corporation, has stated that no business is carried out by this concern, and that he returns cash back to Navjeevan through one Mr. Amish Modi. Shri. Jitendra Thombre, proprietor of M/S J Fabrics, stated that the proprietorship was formed by his wife's employer, Shri. Babulal Doshi, in the name of Jitendra Thombre. There was no business carried out, and the proprietor would simply sign blank cheques and provide the same to Shri. BabulalDoshi.*
- *Shri. Rajesh Warde, proprietor of M/S Swastik Enterprises and M/S Mehul Synthetics, has stated that no business activity was carried out and the money deposited in the bank accounts would be transferred to bank accounts controlled by Shri. Ashok Bagaria. Bogus bills would be issued for wheat, rice, pulses, etc.*
- *Shri. RashmikantJhaveri, proprietor of M/S Krishna Trading Corporation, M/S Rahul Enterprises and M/S J.B. & Sons stated that there was no business in these concerns and that accommodation bills for stationery and food grains were provided to Navjeevan. He further stated that staff of Mr. Amish Modi used to come for collecting the accommodation bill along with delivery challan to make the transaction look genuine though no movement of goods ever took place. The money deposited in the bank would be transferred immediately to bank accounts controlled by Mr. Ashok Bagaria, on the instructions of Mr. Amish Modi. He also stated that M/S Mahi Enterprise, a proprietary concern of Ms.*



Seema Raichura, was controlled by him and would provide accommodation bills of soaps and condoms to Navjeevan.

- *Shri. Khozema Jaorawala, director of M/S Vaani Mercantile Pvt Ltd stat accommodation bills to Navjeevan Charitable Trust.*

6.1 In view of above observations, during reassessment proceedings the Ld. Assessing Officer issued notice u/s 133(6) of the Act calling for details from M/s Navjeevan Charitable Trust and also to afford an opportunity of cross-examination to the assessee. However, the notice sent u/s 133(6) of the Act were returned unserved. In the circumstances, the Assessing Officer asked the assessee to produce the trustee of said trust however no compliance was made on the part of the assessee. In the circumstances, the Assessing Officer disallowed the claim of donation of the assessee of ₹30 lakhs. The Ld. CIT(A) followed the finding of the Tribunal order dated 27.08.2019 wherein the Tribunal observed at under :

“7. Upon careful consideration I note that the recipient of the donation in this case has unequivocally admitted that the assessee has given bogus accommodation to him. In this view of the matter it was incumbent upon the assessee to rebut the same being cogent evidences. It is strange that assessee is asking the recipient whom the assessee has given donation and who is his witness to be produced by the assessing officer for cross-examination.



8. *I find this proposition totally unacceptable. It was incumbent upon the assessee to provide evidence against the statement by the recipient and the detailed investigation carried on. The detailed investigation carried out duly supports the case of the Revenue. The Ld. CIT(A) has passed correct order upholding the validity of reopening and merits of addition. The precedents relied by him are germane.*

9. *In the background of aforesaid discussion and precedent. I uphold the order of Ld. CIT(A).”*

7. Before us, the Ld. Counsel of the assessee submitted that order of the Tribunal relied upon by the Ld. CIT(A) has been recalled by the Tribunal and in the subsequent recalled order dated 07.10.2021 in ITA No. 2492/Mum/2018 for Assessment year 2012-13, the Tribunal in SMC bench has deleted the disallowance observing as under:

“5. I find that on identical set of facts, the Co-ordinate Bench in the case of Bhavita Chemicals Pvt. Ltd. Vs. ITO in ITA No. 3665/M/2019 for AY 2010-11 decided on 01.12.2020 held as under:

“4. Both sides heard, orders of authorities below perused. The assessee made donation of Rs.5,00,000/- to NCT in March, 2010 and claimed the benefit of deduction under section 35AC of the Act in its return of income for assessment year 2010-11. Subsequently, search action was carried out in the case of NCT and it



was found that the Trust was issuing bogus donation receipts. On the basis of search action, the assessee's claim of deduction in assessment year 2010-11 was disallowed in reassessment proceedings. The contention of the Revenue is that the donation amount paid by the assessee to NCT has flownback to the assessee. I find that no positive evidence is brought on record by the Revenue to show that on the date of donation made by the assessee, NCT was not holding valid registration certificate. On the contrary, the assessee has filed evidence to show that NCT was holding valid registration certificate from the Department on the date of donation and the same was subsequently renewed in 2011. This fact is evident from notification issued by Ministry of Finance dated 30/11/2010 at page 70 to 72 of the Paper Book. It is further observed that on the basis of statement/evidence collected at the back of assessee, the claim of deduction under section 35AC of the Act has been disallowed in proceedings under section 147 r.w.s. 148 of the Act. It is a well settled law that any evidence collected at the back of assessee if not put to the assessee for crossexamination would result in violation of principles of natural justice. In the instant case the assessee asked for cross-examination of the trustee, however, the same was rejected by the Assessing Officer. The Hon'ble Supreme Court of India in the case of Andman Timber Industries vs. CCE, 62 taxmann.com 3 has held that not providing opportunity to crossexamine the witness is a serious flaw which renders the order



nullity. The impugned order is liable to be quashed on this ground alone. It is further observed that no cogent evidence has been brought on record by the Revenue to substantiate that the donation made by assessee through banking channel has been received back by assessee in cash. The assessment order and the impugned order has been passed purely on assumptions and presumptions.

5. The Co-ordinate Bench in the case of Jadstone Trading Pvt. Ltd., (supra), deleted the addition made for similar reasons in respect of donation made to NCT, holding that in the absence of any evidence on record that the amount has been received back by the assessee from the Charitable Trust, the addition is solely based on surmises and conjectures and, hence, is unsustainable. I find merit in the submissions of the assessee, hence, same are accepted and the impugned order is quashed.”

7.1 He further submitted that the Co-ordinate Bench of the Tribunal Kolkata Bench in the case of **Raj Karan Dasani in ITA No. 2346/Kol/2019** has deleted the disallowance of identical donation of ₹ 30 lakhs on the basis that (i) regulation was in force (ii) valid documentation was there and (iii) no opportunity for cross-examination was provided to the assessee. The Ld. Counsel submitted that in the instant case M/s Navjeevan Charitable Trust was granted registration by Government of India which was in operation at the time of donation given by the assessee. He further



submitted that the assessee got valid receipt as well as certificates from donee and it was not within the control of the assessee that how the donee organization has utilized the money. He further submitted that no cross-examination was provided to the assessee and there was no proof that assessee had received back the money in question. The Ld. Counsel submitted that assessee has fulfilled all the conditions laid down u/s 35AC of the Act and therefore, following the finding of the Tribunal in the recalled order dated 07.10.2021, the order of the Ld. CIT(A) need to be reversed.

8. On contra, the Ld. Departmental Representative (DR) produced the copy of the Notification No. SO 3592(E) [No.67/2016(F.No.27015/5/2016-SO(NAT.Com))] dated 30-11-2016 whereby the prescribed authority on the basis of the inquiry conducted by the Income-tax Department and no response from the M/s Navjeevan Charitable Trust, withdrawn the approval granted u/s 35AC in relation to project of the scheme including the vocational training programme, for which the assessee gave donation. The relevant part of said notification (supra) is reproduced for ready reference as under:

“Whereas by notification of the Government of India , in the Ministry of Finance (Department of Revenue) issue under subsection (1) read with clause (b) of the Explanation to section 35AC of the Income-tax Act, 1961 (43 of 1961), the central Government had specified projects / scheme for exemption , in respect of the association and institution approved by the National Committee , mentioned in the Table below:



Sr. No.	Name & Address of the Institution	Project or Scheme	Maximum amount of cost recommended by the Committee under section 35AC
1.	Navjeevan Charitable Trust, 08, Jolly Bhavan No. 1,10 New Marine Lines, Mumbai-400020.	Shree Navjeevan, Vocational Training Programme, Medical camps and goods & cloth distribution. <ul style="list-style-type: none"> ◆ S.O. No. 121(E) dated 12.01.2009 at Sl. No. 20 for a period of three financial years till 2010-11 for ₹39.11 ◆ S.O. No. 852(E) dated 27.04.2011 for a period of three financial years till 2013-14 and amending the project cost to ₹68.65 crore and amending the address of the Trust from 602, Shastri Hall, 292, J. Dadji Road, Mumbai-400007 to 115, Jolly Bhavan No. 1, 10, New Marine Lines, Mumbai-400020. ◆ S.O. No. 1228(E) dated 30.05.2011 amending the address to 08, Jolly Bhavan No.1, 10, New Marine Lines, Mumbai-400020. 	₹68.65 crores
2.	Navjeevan Charitable Trust, 08, Jolly Bhavan No. 1, 10 New Marine Lines, Mumbai-400020.	A caring hand <ul style="list-style-type: none"> ◆ S.O. No. 1860(E) dated 11.08.2011 at Sl. No. 14 for a period of three financial years till 2013-14 for ₹15.34 crores. ◆ S.O. No. 3829(E) dated 27.12.2013 for a period of three financial years till 2016-17 and amending the project cost to ₹24.49 crores 	24.49 crores
3.	Navjeevan Charitable Trust, 08, Jolly Bhavan No. 1, 10 New Marine Lines, Mumbai-400020.	Sankalap <ul style="list-style-type: none"> ◆ S.O. No. 3022(E) dated 07.10.2013 at Sl. No. 9 for a period of three financial years till 2015-16 for ₹27.97 crores 	27.97 crores

8.1 According to Ld DR, in view of subsequent withdrawal of approval , which was granted to M/s Navjeevan Charitable Trust u/s 35AC of the Act, the assessee is no longer eligible for deduction for the donation paid under the scheme of section 35AC of the Act. Further, the Ld. DR submitted that in view of notice u/s 133(6) of the Act returned back unserved, onus was on the assessee to produce trustee of said M/s Navjeevan Charitable Trust. In such circumstances, the plea of no cross-examinations provided to the



assessee is not relevant because in view of return back of notice u/s 133(6), the onus shifted to the assessee to produce the said party which being witness of the assessee. According to the Ld. DR, the decisions relied upon the Ld. Counsel of the assessee non-providing the cross-examination does not apply to the facts of the instant case.

9. We have heard rival submission of the parties and issue-in-dispute and perused the relevant material on record including paper book filed by the assessee. The assessee has filed a copy of the Notification No. S.O. 1967 (E) dated 31.07.2014 to support that the Navjeevan Charitable Trust was notified u/s 35AC for project of vocational training programme, medical camps and goods & cloth distribution for a period of 3 years from financial year 2008-09 which was further extended for a period of 3 years vide amended dated 27.04.2011. The assessee has also produced a copy of notification dated 07.10.2013 in respect of project "Sankalp" of M/s Navjeevan Charitable Trust. The assessee has also filed copy of the relevant receipts and form No. 58A prescribed u/s 35AC of the Act issued by the donee, and bank statement through which the cheques were cleared. The contention of the Ld. Counsel of the assessee is that the assessee has given donation in view of notification issued by the Government of India and assessee was not aware how the said trust had utilized the donations paid by the assessee. The Ld DR has contended that Notification granting



approval of projects of M/s Navjeevan Charitable Trust has been subsequently withdrawn by the Competent authority, so no deduction should be allowed to the assessee.

9/1 As far as contention of the LD DR that deduction should be denied in view of subsequent withdrawal of notification in relation to section 35AC approval granted earlier is concerned, we find that the Explanation below provision of section 35AC(2) of the Act don't permit for withdrawal of deduction in the hands of donor in such circumstances. The relevant Explanation section 35AC is reproduced as under:

[Explanation. The deduction, to which the assessee is entitled in respect of any sum paid to a public sector company or a local authority or to an association or institution for carrying out the eligible project or scheme referred to in this section applies, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee,-

(a) the approval granted to such association or institution has been withdrawn; or

(b) the notification notifying the eligible project or scheme carried out by the public sector company or local authority or association or institution has been withdrawn.]

9.2 Therefore, we reject the contention of Ld. DR for confirming disallowance of donation on this ground.



9.2 According to Ld. Counsel of the assessee, no cross-examination has been provided to the assessee, therefore, the donation paid cannot be disallowed merely on the basis of statement of the trustee of Navjeevan Trust ignoring the notification issued by the Government of India. However, we reject the contention of the assessee of non-providing of cross examination due to the reasons that it is the assessee who is seeking deduction of the donation paid to M/s Navjeevan Charitable Trust and on the basis of address of Navjeevan Charitable Trust provided by the assessee, the Assessing Officer issued notice u/s 133(6), however same returned back unserved. Therefore, the onus shifted the assessee for producing the said party which the assessee has failed in producing so. The assessee also failed to provide current address of said Navjeevan Charitable Trust or their Trustees and without which, it was not possible for the AO to verify the truthfulness of claim of assessee, particularly the information of bogus donation. Therefore, the assessee cannot ask the Revenue to provide for cross-examination of said party. The decisions relied upon in this regard are accordingly distinguishable.

9.3 The decisions of the Tribunal 'SMC' Bench dated 07.10.2021 is also based on no cross-examination provided. Since, we have already held that in view of notice u/s 133(6) of the Act issued to Navjeevan Charitable Trust returned back unserved, onus was on the assessee to produce M/s Navjeevan Charitable Trust and



hence plea of cross-examination is not applicable and accordingly, ratio of the finding of the Tribunal 'SMC' Bench in assessment year 2012-13, can't be applied over facts of instant case.

9.4 The assessee under provision of section 35AC(2) was required to file a certificate in form No. 58A of Income-tax forms with particulars relating to progress in work relating to project in prescribed proforma. The relevant part of provision is reproduced as under:

(2) The deduction under sub section (1) shall not be allowed unless the assessee furnishes along with his return of income a certificate-

(a) where the payment is to a public sector company or a local authority or an association or institution referred to in sub-section (1), from such public sector company or local authority or, as the case may be, association or institution;

"(b) in any other case, from an accountant, as defined in the Explanation below sub-section (2) of section 288,

in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed.

9.5 The assessee has filed copy of receipts and forms No. 58A issued for the year under consideration and copy of bank



statement, which are available on page 1 to 18 of the Paperbook. We find in the year under consideration the assessee has produced six receipts of Rs. 5,00,000/- each issued on 3/08/2012 (PB-1); 3/08/12 (PB-4); 3/8/2012 (PB-7); 3/08/2012 (PB-10); 12/10/2012 (PB-13) and 12/10/2012 (PB-16). One such receipt dated 12/10/2012 (PB-16) and form No. 58A (PB-17) are scanned and extracted as under:



श्री NAVJEEVAN CHARITABLE TRUST

08, Jolly Bhavan No. 1, 10, New Marine Lines, Mumbai - 400 020.

No. NCT / OCT/12-13/0014.

Date 12/10/2012

Received with thanks from MANTHAN INC

the sum of Rupees FIVE LAKHS ONLY.

by ~~Cash~~ / Cheque / B.D.No. 008709

Dated 09.10.2012

Drawn on BANK OF INDIA (PRARTHANA SAMAJ)

on account of DONATION.

For **NAVJEEVAN CHARITABLE TRUST**

Rs. 5,00,000/-

Cheque / Demand Draft is Subject to realisation





NAVJEEVAN CHARITABLE TRUST

FORM NO. 58A
[See rule 11-0(1)]

Certificate of expenditure by way of payment in respect of eligible projects or schemes notified under section 35AC

1. Certified that MANTHAN INC
3, RANI BUILDING, 291, V.P. ROAD,
PRARTHANA SAMAJ, MUMBAI - 400004.
[Name and address of donor]

(P.A.No. AAKFM 6011 D) has paid a sum of Rs. 5,00,000/-
(Rupees FIVE LAKHS ONLY.)

~~In cash~~ by cheque No. / Demand Draft No. 008709 Dated 09.10.2012
in respect of "Shree Navjeevan" project /Scheme which has been notified under section 35AC vide Notification No. SO 121(E) dated 12.01.09 issued from File No. NC-274/17/2008 at an estimated cost of Rs. 39.11 crores for financial year(s) 2008-09, 2009-10, 2010-11. Vide Notification No. S.O.852(E) dated 27.04.2011 issued from File No. V-27015/1/2011-SO(NAT.COM). The estimated cost has been amended to Rs.68.65 crores and the period has been extended for further three financial year(s) commencing with 2011-12, i.e. for financial years 2011-12, 2012-13 & 2013-14.

2. It is further certified that the amount received from the donor is within the amount of the project / scheme approved by the National committee under section 35AC of the Income tax Act as may be seen from the following:

	Amount in Rs.
Amount received till date as donations from Others Prior to this donation.	<u>54,02,03,002/-</u>
Amount received from the donor named in paragraph 1.	<u>5,00,000/-</u>
Total amount received for the project/scheme Including the amount covered under this Certificate.	<u>54,07,03,002/-</u>
Total cost of the project / scheme approved by the National committee under section 35AC.	<u>68.65 crores</u>

3. An annual statement of donations received and the details of project will be sent to the National Committee and the donor by 30th June following the financial year in which the amounts are received.

Name: **Navjeevan Charitable Trust**
Address: **08, Jolly Bhavan No. 1,
10, New Marine Lines,
Mumbai-400020.**
P A N: **AAATN6332N**
of the donee organization.

Date 12/10/2012

Receipt No. NCT / OCT/12-13/0014.



ASB

**ASHOK BAGARIA
TRUSTEE**



9.6 The assessee has given donations of almost same amount consequently for three assessment years. In normal human conduct, it may not be possible, that the assessee will go on giving donation without verifying the activities of the Trust. It is against the human probability. Thus, circumstantial evidences also go against the assessee.

9.7 In view of above discussion, we uphold the order of the Ld. CIT(A) on the issue-in-dispute. The grounds of appeal of the assessee are accordingly dismissed.

10. The ground of appeal of the assessment year 2014-15 is reproduced as under:

1. *The Ld. CIT(A) has erred in confirming the addition of ₹20,00,000/- against the principle of natural justice.*
2. *The Ld. CIT(A) has not consider the order pass by Honorable ITAT dated 07.10.2021.*
3. *Your appellate there for prays your honor to delete the addition of ₹20,00,000/- confirm by the CIT(A).*

11. The facts and circumstances year under consideration are identical to assessment year 2013-14 and therefore following our finding above in assessment year 2013-14. The grounds raised in assessment year 2014-15 are accordingly dismissed.



12. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court/under Rule 34(4) of the ITAT Rules, 1963 on 19/01/2023.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 19/01/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai