

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Dr. Manish Borad, Accountant Member**

**I.T.A. Nos. 551 & 552/KOL/2022
Assessment Years: 2012-2013 & 2013-2014**

***Rajat Kumar Majumdar,.....Appellant
36B, Paddapukur Road,
P.O. Lala Lajpat Roy Sarani,
Kolkata-700020
[PAN: AEFPM6217E]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-31(4), Kolkata,
10B, Sir William Jones Sarani,
Middleton Row, Park Street Area,
Kolkata-700071***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Smt. Ranu Biswas, Addl. CIT, D.R., appeared on behalf of
the Revenue*

Date of concluding the hearing : February 06, 2023

Date of pronouncing the order : May 1st, 2023

ORDER

Per Shri Rajpal Yadav, Vice-President (KZ):-

The present two appeals are directed at the instance of assessee against the separate orders of ld. Commissioner of Income Tax (Appeals), National Faceless

Appeal Centre (NFAC), Delhi both dated 11th August, 2022 passed for assessment years 2012-13 and 2013-14.

2. The assessee has taken seventeen grounds of appeals in each assessment year. The grounds are verbatim same except variation of quantum. In brief, the grievances of the assessee revolved around two issues, namely –

(a) Id. CIT(Appeals) has erred in confirming the reopening of both these assessments by the Id. Assessing Officer under section 147 of the Income Tax Act;

(b) the Id. CIT(Appeals) has erred in confirming the disallowance of deduction claimed under section 35(1)(ii) of Rs.28,00,000/- and Rs.14,00,000/- in A.Y. 2012-13 and 2013-14 respectively.

3. Brief facts of the case are that the assessee has filed his return of income for A.Y. 2013-14 declaring total income of Rs.15,45,110/-. This return was processed under section 143(1) on 01.01.2014. The Id. Assessing Officer received information from the Office of Pr. DIT (Inv.), Kolkata that the assessee has claimed benefit of section 35(1)(ii) on donation of Rs.16,00,000/-. This donation was made to School of Human Genetics and

Population Health. On investigation, it was found that in F.Y. 2011-12, i.e. for A.Y. 2012-13 also, he has claimed similar deductions, though of a different amount. The assessments in both the years were reopened and thereafter the ld. Assessing Officer disallowed the claim of deductions.

4. Appeals to the ld. CIT(Appeals) did not bring any relief to the assessee.

5. We have consolidated the appeals of number of assesses, wherein similar deductions have been claimed and decided these appeals in ITA Nos. 261/KOL/2020 & others vide our order dated 7th March, 2023. Our finding in that order reads as under:-

“Finding:-

23. The Department has filed a paper book containing 268 pages in M/s. Tarasafe International Pvt. Limited. On second page of the paper book, order of the Settlement Commission dated 22.07.2016 passed under section 245D(4) of the Income Tax Act has been placed on record. In this order, Settlement Commission has noticed the facts of assessee before them, i.e. SHG&PH. Such facts have been noticed by them on the basis of statement of facts filed before them. We deem it appropriate to take note of the facts about the Institution, who has received such a huge donation. As emerging out from that order, the facts are that the Society SHG&PH was registered under West Bengal Society Registration Act, 1961 on 26.04.1993. It was founded by Professor D.P. Mukherjee, the Society was formed with the objective of service oriented researches in the field of Human Genetics and to address all the problems ailing the population i.e. epidemics, ethnicity and ethos of common man along with following welfare activities:-

- (i) to conduct seminars, lecture sessions, conferences awareness generation;*

(ii) to acquire, establish and run educational centre (science medicine, IT),

(iii) women empowerment through self-help group, women literacy & vocation;

(iv) to fight major population health issues, as Cancer Thalassaemia etc.

The Registered Office of the donee society is situated at 7, Nilamber Mukherjee Street, Kolkata-700004. The particulars of various registrations/approvals/legal status of the Applicant Society are as under:-

Particulars	Regn. No.	Date	Authority
Registration u/s 12A of the I.T. Act	DIT(E)/S-132/8E/23/04-05	27.10.2004	Director of Income Tax (Exemption), Kolkata
Registration u/s 80G(5)(vi) of the I.T. Act, 1961 (made perpetual)	DIT(E)/906/SE/23/04-05 DIT(E)/3248/SE/23/04-05	27.10.2004 12.12.2011	Director of Income Tax (Exemption), Kolkata
Registration u/s 10(23C) of the I.T. Act	Initial order no. 49 Renewal vide No. CCIT-III/10(23C)(iv)/11-12/245	27.02.2004 16.01.2014	CCIT-III, Kolkata
Recognition of Scientific and Industrial Research Organization	Renewal till 31.03.2016 vide Communication No. 14/473/2007-TU-V(for 01.04.10 to 31.03.13) For 01.04.08 to 31.03.10)	01.04.2013 01.04.2013 17.06.2010	Government of India, Ministry of Science and Technology
Gazette Notification u/s 35(1)(ii) of the I.T. Act, 1961	Notification No. 4/2010	28.01.2010	Government of India, Ministry of Finance (Department of Revenue) (Central Board of Direct Taxes)

24. The Governing Body members of the recipient are as under:

(a)	Dr. Madhumita Roychoudhury	President
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(b)	<i>Dr. Shyamal Kumar Nandy</i>	<i>Vice-President</i>
(c)	<i>Dr. Samadrita Mukherjee Sardar</i>	<i>Secretary</i>
(d)	<i>Ms. Basanti Rauth</i>	<i>Assistant Secretary</i>
(e)	<i>Mrs. Moumita Raghavan</i>	<i>Treasurer</i>
(f)	<i>Mr. Gautam Das</i>	<i>Executive Member</i>
(g)	<i>Dr. Debashis Mukherjee</i>	<i>Executive Member</i>

25. *The Society, carried scientific research in the field inherited genetic diseases, cancer genetics (leukemia) and Geriatric disorders in the research lab. The donee had pursued research in the community understand the population, i.e. monarchical age, nutrition status and reproductive health issues. It is stated that at the level of community welfare, the society had trained teachers and counselors to take care Attention Deficit Hyperactivity Disorder including Cystic Fibrosis Children workshops of Arts & Crafts, which had been published in various national & international journals. The society had ongoing community projects i.e. Kangaroo Project - exclusive breast feeding in urban and rural Ben; health situation assessment studies at Ruppur Birbhum, West Bengal and had acquired six acres of land at Ruppur, Birbhum, along with 3 building structures for care centre for elders and disabled senior citizens. Besides, the lab of applicant society is located in approx. 1000 sq. ft space at 6A, Malanga Lane, Kolkata-12, which has been taken on rent of Rs.28,000/- p.m. Various machines and equipments have been purchased for various research/testing etc. by the society at Rs.25 lakh. In addition, the donee has also incurred huge expenses on chemicals, Primars and other consumables for research work, salary and rent etc.*

26. *It was further, submitted that as the society had inadequate financial resources, it was made to understand by certain persons acting as mediators about a way of earning some income as commission through the route of giving accommodation entries for 'donations'. The Society was enticed into accepting cheques towards 'donations' and refunding almost similar amounts by debiting the payments under various heads in books of account after retaining a certain margin of 3% to 8% towards service charges for itself. Owing to lack of financial flows and for the need for meeting their financial requirements, the Secretary and Treasurer of the Society accepted such 'donations' during the F.Y. 2011-12, 2012-13 and 2013-14, which were accommodating entries for 'donations' through mediators. The refunds were made by debiting the payments, mainly under the head Research &*

Development Expenditures and some other heads i.e. SHG Advances etc. in the books of account and returned to the 'donors'.

27. *It was also submitted before Settlement Commission that a survey operation under section 133A of the Act was carried out at the premises of the donee Society at 6A, Malanga Lane, Kolkata-12 on 27.01.2015. During the course of survey following documents were found and impounded:-*

Name & Address	Items	Annexure	Documents found	Documents impounded
School of Human Genetics & Population Health, 6A, Malanga Lane, Kolkata-700012	Books of accounts	'A'	SHG/1 to SHG/8 and SHG/PD/1 (one Pen Drive)	SHG/1 to SHG/8 and SHG/PD/1 (one Pen Drive)
	Cash	'3'	Rs.82,400/-	NIL
	Bank A/c.	'2'	16 nos.	NIL
	Debit/Credit Card	'4'	4 nos.	NIL

28. *The main allegation and reason for the survey against the donee was that it had received huge amount of donations on which the applicant society earned service charges. During the survey operation, statements of the Secretary and the Treasurer of the Society were recorded in which they admitted the fact of accepting donations through certain mediators and refunding the same after keeping 3% - 8% as service charges for the society.*

29. *In 2019, one of us was posted ITAT, Ahmedabad Vice-President (Judicial Member), when first time such issue came up for consideration. Deduction of Rs.8,75,000/- was claimed by the assessee and we passed the order in ITA No. 1943/AHD/2017. This order was followed in ITA No. 2318 of 2017 since in the first appeal tax effect was less, therefore, it was not challenged by the Revenue before the Hon'ble High Court. However, the second order in the case of Principal CIT-3 -vs.- M/s. Thakkar Govindbhai Ganpatlal HUF was challenged before the Hon'ble High Court in Tax Appeal No. 881 of 2019. The Hon'ble Gujarat High Court has dismissed the appeal of Revenue and upheld the order of the ITAT. The Hon'ble High Court has reproduced the finding of the Tribunal recorded in paragraph no. 2, 4, 5 & 6 verbatim and thereafter held that no question of law is involved. This finding reads as under:-*

“6. *Learned Senior Advocate Mr. M.R. Bhatt for the appellant submitted that there no appeal is filed by the Revenue against the decision of the Tribunal in the case of S.G. Vat Care Private Limited (supra). It would therefore be germane to refer to the following findings, given by the Tribunal in the case of S.G. Vat Care Private Limited (supra):-*

“2. In the first ground of appeal, the grievance of the assessee is that the ld.CIT(A) has erred in confirming addition of Rs.8,75,000/- on account of alleged bogus donation to Herbicure Heathcare 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 Herbicure 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 donation from various sources, and after deducting certain amount of commission, these donations were refused 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 ld.CIT(A) did not bring any relief to the assessee.

4. Before us, the !d. Counsel for the assessee contended that donations were given on 25.03.2014. 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 6.9.2016. 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 representative 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 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”.

7. In the facts of the present case, the CIT(Appeals) has given the finding of the fact that the amount of donation was transferred to the Herbicure through Bank channel and there is no evidence that the same is returned back in cash.

8. It is also found that the Herbicure Foundation has confirmed that the amount has been utilized for scientific research vide confirmation dated 29.09.2016. Accordingly, the onus placed upon the assessee was discharged.

9. In view of the aforesaid findings of the fact given by both the authorities below, no interfere in the impugned order passed by the Tribunal is required to be made. No substantial question of law arises from the order of the Tribunal. Therefore, the appeal fails and is hereby dismissed.

Sd/- Sd/-
(J.B. Pardiwala, J) (BHARGAV D. KARIA, J) PALAK

30. *The same line of reasoning has been developed everywhere including ITAT, Kolkata. The order of the ITAT, Kolkata got the approval of the Hon'ble High Court, a reference can be made to the decision of the Hon'ble Calcutta High Court in the case of Pr. CIT -vs.- Mackaw Corporation (2022) 8 TMI 1750, ITA 42 of 2020, G.A. No. 2 of 2019, Old G.A. No. 1477 of 2019.*

31. *The Id. Counsels have emphasized that under identical circumstances, deductions have been allowed by the ITAT and the order of ITAT has been upheld by the Hon'ble High Courts. Therefore, these appeals are to be allowed and deductions be granted to the appellants.*

32. *With respect to all the case laws including our own order, which has been upheld by the Hon'ble Gujarat High Court, we are of the view that all the decisions are based on the set of facts in those cases. In these cases, the Department did not file paper book, did not bring it to the notice of the ITAT about the nature and quantum of the material discovered during the course of survey exhibiting as to how a modus operandi in an organized manner was adopted by the recipients with the help of brokers to fraud the nation. There was no question of law involved in the factual finding given by the Tribunal in all the cases. Thus on facts the orders of the Tribunal were upheld.*

33. *Let us take note of the material placed before us persuading us to record a finding of fact being a last authority on this aspect. There is no dispute that a survey under section 133A was carried out at the premises of M/s. SHG&PH as well as M/s. Herbicure Healthcare Bio-Herbal Research Foundation (in short 'HHBRF') because Abhilasha Tradecom Pvt. Limited obtained the accommodation entry from this Institution and issue is involved in ITA No. 132/KOL/2021. In this survey, statement of the Secretary of M/s. SHG&PH was recorded. The Secretary has admitted that the Trust has not used such amount in any research activity, rather it has received the donation in a connived manner on the alliance of certain brokers. They have pleaded specifically in their statement of facts before the Settlement Commission that certain brokers have approached them for augmentation of their revenue in this fraudulent manner and without realising the seriousness of its impact upon the economy in general and Income Tax Department in particular. They involved in this activity.*

34. *The Department thereafter recorded the statements of the brokers, who have arranged these claim of bogus deduction for the assessee across the country. It has been brought to our notice that in one assessment year total donations of around Rs.387 crores were received by this Institution and the donors have availed benefit of deduction of more than Rs.650 crores. This is the magnitude of revenue swindled by the donors with the connivance of brokers and SHG&PH. These details have come up in the Settlement order.*

35. *We would like to refer the statement of one of the brokers Shri Vijay Kumar Agarwal, son of Late Mohan Lal Agarwal, aged about 65 years. His statement was recorded under section 131 of the Income Tax Act, 1961 on Oath on 23.02.2015, which was in continuation of his statement recorded dated 13.02.2015 i.e. subsequent to the survey conducted upon SHG&PH. Copy of this statement along with the statements of other brokers have been placed by the Revenue and copy of the statement of Shri Vijay Kumar Agarwal is available on pages 82 to 90 of the paper book. Certain questions and their answers are very important in order to demonstrate the modus operandi adopted by them:-*

Q. 6. What is your source of income?

Ans. My main source of income is from brokerage by raising bogus bills for various beneficiaries/parties.

Q.13. How do you know the Trust called "School of Human Genetics & Population Health (SHGPH)?"

Ans.: Initially, I came with the contact of Smt. Moumita Raghavan, President and Smt. Samadrita Mukherjee Sardar, Secretary of School of Human Genetics & Population Health through a market broker named Shri Sailesh Gupta, residing at howrah who approached me for bogus billing. After that, I have direct contact with Smt. Moumita Raghavan & Smt. Samadrita Mukherjee Sardar of SHGPH regularly and raise bogus bills for SHGPH over the years as per their directions. I shall furnish the details of bogus billing on 10.03.2015.

Q. 6: Please explain the nature of business done by you in detail.

Ans.: I am an accommodation entry operator and I am engaged in the business of providing accommodation entries in the form of bogus share capital/unsecured loans/bogus bills etc. to various beneficiaries/parties through various 'jama-kharchi'/paper companies/proprietorship concerns controlled by me in lieu commission.

Q.7. Kindly go through the Annexure-A which is submitted by you in the case of SHG&PH. Kindly provide the bank account along with the bank name and branch addresses of 21 concerns mentioned in the Annexure-A.

Ans.: I will submit all the required details by 27.03.2015.

Q.8. Kindly furnish the names, postal addresses and phone numbers of the directors /proprietors of the 21 concerns mentioned in the Annexure-A.

Ans.: I will submit all the required details by 27.03.2015.

Q.9. Please go through the Annexure-A in which total billing is shown as Rs.1118848138/-. Please state where this amount has been transferred after bogus billing and how.

Ans.: This amount has been transferred to the donors through 'Hawala Opeators'. First I transferred this amount to various parties, who was raised bogus bill on my concerns by bank channel through layering. Then from these parties, I have go cash in return which is transferred to the donors in cash through 'Angarias/howala'. The details of bogus bills raised by my concerns will be provided by 27.03.2015.

Q.10. Kindly explain the modus operandi of your business in the case of SHG&PH.

Ans.: The donor will deposit cheque/RTGS in the account of SHG&PH. The SHG&PH will transfer the amount to my concerns which is mentioned in Annexure-A. Sometimes they used to transfer the amount after deducting their commission @ 8% and we used to settle our accounts periodically for settling commission. After that, my concerns will pay to the parties who have raised bogus bills to my concerns cheque/RTGS. In lieu of the same, I will get the amount in cash. Thereafter, I will get the phone calls from the donors who will give me distinctive

number of Indian currency of any denomination. They I will give the cash to Angarias with the details of note number. The Angaria's commission was given by the donors and Angaria's commission was not the part of my job. This is how the whole system was run.

Q.11. Kindly provide the list of donors with amount for whom you have worked.

Ans.: I will submit all the required details by 27.03.2015.

36. In identical manner, other brokers have deposed and thereafter provided the details of the donors, which are also compiled with and certain details are available on pages 63 to 81 of the paper book filed by the Revenue. The ld. Assessing Officer armed with the above materials, confronted all these assesses during the assessment proceedings itself, the Officer brought to the notice of the assessee about the outcome of the survey and how these donations are to be treated as bogus.

37. The stand of all these appellants right from the ld. Assessing Officer upto the Tribunal is that since Institution was approved by the Competent Authority to receive donation. This approval was intact when they have made the donation. Therefore, under bonafide belief, they have given the donations and on the basis of post donation, material collected by the Revenue should not be used against them for doubting the genuineness of the donation. The scheme of the Income Tax Act provides that a claim made by an assessee has to be proved by the assessee. Thus the first onus is upon the assessee about the claim made by him. This onus was discharged by the assessee by pointing out that Institution to whom donations were given. They are approved by the Income Tax Authority and, therefore, their claim is to be allowed. However, if the first onus discharged by the assessee was dispelled by the ld. Assessing Officer by confronting them with the material recovered during the survey and post survey enquiries, then the questions posed before us is, whether this belief harped by all the appellants was such a bonafide that could not be questioned in any circumstances. To our mind, it is a misplaced argument at the end of the appellants. It is to be appreciated that recipient came into existence in 1993, it might have been working on charitable objects and got approval for the purpose of recognition of Scientific and Industrial

Research Organisation first time on 17.06.2010. There might be a good intention at the end of the recipient but it has detracted its objectives and indulged in fraudulent activities. The fraud of this magnitude cannot be done without an organised planning where involvements of alleged brokers have come. Thus operative force in the minds of all decision-maker in donors organisation/individual was acting with a fraudulent intent in giving donation through broker in this manner. The ld. CIT(Appels) in the case of Tarasafe International Pvt. Limited has posed the following questions to the assessee:-

- (a) What was the purpose of this donation?*
- (b) Whether such donation has been given to the School in the past or in the future?*
- (c) How the assessee came to know about the activities of the Trust?*
- (d) What influence the assessee to give this donation to this Institution other than deduction under section 35(1)(ii).*
- (e) The appellants are not in this line of business and, therefore, it is difficult to understand the very purpose of this transaction undertaken by them. They have failed to explain how the cheques in their case were given to the Society, whether it was given by post or directly to the Office bearer or through some agents.*
- (f) If it was handed over to the office bearer, then name of such office bearer.*

38. These are certain questions, which point a figure to the circumstances, which are to be explained by each appellant. Their first onus discharged by them has been dispelled by the ld. Assessing Officer with credible material. If the appellants are of such a spirited Corporate House, who wants to build the research organisation of the nation, then they have to demonstrate how such donations were given in the past or in the subsequent period. We have confronted them specifically, but none of the assesses except M/s. H.K. Dutta & Company could submit anything in this regard. In the case of this Company, ld. Counsel for the assessee has submitted that small amount of donation has been given to a different organisation in the next year. Therefore, if we weigh the

simple plea of the appellants about their bonafide belief for giving such donations, vis-a-vis huge materials collected by the Revenue demonstrating the fact how such a belief is misplaced, then, the scale would tilt in favour of the revenue. It is to be appreciated that roughly 720 entities including individuals available in a part-list on pages no. 72 to 81 of the paper book compiled by the Revenue would have not formed a bonafide belief about giving donation to one entity across India in Kolkata. This material speaks in itself that under a criminal conspiracy, these donations have been arranged by the brokers across India for defrauding the nation. We do not find any credence in the belief of bonafide raised by the appellants.

39. We are aware of the facts that a large number of orders have been passed in favour of the assessee by ITAT and some of those were upheld by Hon'ble High Courts also. We have extracted one of the orders from Hon'ble Gujarat High Court. The Hon'ble Supreme Court in the case of CIT -vs.- Batanagar Education & Research Trust reported in 129 taxmann.com 30, whose copy has been placed on the record by the ld. CIT(DR), has considered the identical material, which has been placed before us also. In the case of Batanagar Education & Research Trust, the facts are that during the course of survey at the premises of SHG&PH, and in post survey inquiry statement of Shri Ramendra Lahiri, Managing Trustee of the assessee, i.e. Batanagar Society was recorded. The Secretary, Smt. Samadrita Mukherjee Sardar and Treasurer Smt. Moumita Raghavan of SHG&PH have categorically deposed in their statements that source of income of SHG&PH was the money received in the form of donations from Corporate Bodies as well as from individuals. The assessee Batanagar Society was selected by the brokers, who have arranged the donations to SHG&PH as a conduit for receiving the donations from SHG&PH. This donation was to be returned back to those Corporate Houses and individuals in cash after layering the transaction and the Batanagar Education & Research Trust would also retain commission income for such an activity. On the basis of that, its registration was cancelled by the ld. Commissioner (Exemption) by exercising the powers under section 12AA(3). This order was upheld by the ITAT. However, on further appeal, Hon'ble High Court has reversed this order but Hon'ble Supreme Court restored this order, in other words upheld the cancellation of the registration to Batanagar Education

& Research Trust. In this judgment, Hon'ble Supreme Court has made reference to the outcome of the survey at SHG&PH coupled with the post survey enquiry conducted upon Batanagar Society and satisfied that it was an organized fraud to misuse the status of a charitable entity. This judgment has been pronounced on 02.08.2021. After this judgment, a judgment of the Hon'ble Calcutta High Court in the case of Mackaw Corporation has been passed, which has been relied upon by the ld. Counsel, but in this decision, Hon'ble High Court has not considered the judgment of the Hon'ble Supreme Court, because the judgment of the Hon'ble Supreme Court in the case of Batanagar Education & Research Trust was not cited by both the parties.

40. The ld. Counsel for the assessee, Shri Soumitra Chowdhury, during the course of argument submitted that in the decision rendered on 26.04.2022 in the case of Commissioner of Income Tax (Exemption), Kolkata -vs.- Sanskriti Sagar, this judgment of the Hon'ble Supreme Court was considered.

41. We find that in this case, the assessee was recipient of a small donation of Rs.85,000/- from Herbicare and on the basis of receipt of this donation, its registration was sought to be cancelled. The Hon'ble High Court has propounded that the decision in the case of Batanagar Education & Research Trust is not applicable on the facts of that case because Sanskriti Sagar has neither given any donation to this Trust and claimed deduction under section 35(1)(ii) nor it has returned the money in cash out of a small donation received by it from Herbicare, a similar Trust to SHG&PH. Hon'ble High Court has held that Tribunal has rightly set aside the order passed by the ld. Commissioner vide which registration was cancelled. In our opinion, it is purely a fact-based decision without laying down any particular proposition of law, rather an inference could be drawn from it that if there is no element of fraud committed by an assessee, then such an assessee does not deserve to be punished. This case cannot buttress any of the contentions of the appellants before us.

42. It is also pertinent to note that it is not a simple case of claiming deduction on fulfilment of conditions under section 35(1)(ii) of the Income Tax Act, rather it is a case where Revenue has disproved this claim and proved that, with a criminal mind all such donors have layered their

transaction in such a manner which apparently appears to be genuine, but in reality not genuine. They took such a step to commit fraud, an economic offence against the economy of the country.

43. The bonafide of the assesseees can be appreciated if they have demonstrated that they have given the donations in the past or subsequent periods to some Institution of national importance, such as Tata Research Centre, certain Hospitals, etc. but none of them has given such a donation except a small amount of few thousand in the case of Abhilasha Tradecom Pvt. Limited. The moment Assessing Officers have dispelled onus discharged by the assessee, then it was their duty to prove the genuineness of their claim with circumstantial evidence as pointed out by the ld. Commissioner in the case of Tarasafe International Pvt. Limited, i.e. what was the purpose of the donation; whether such donation has been given to the School in the past or in the future; whether the Corporate Houses have discussed in the meeting and the Management Committee passed the Resolution for giving the donations; what influenced the assessee to give this donation to the Institution other than deduction under section 35(1)(ii) etc.

44. It is also pertinent to observe that recently Hon'ble Jurisdictional High Court has examined the issue of bogus capital gain claim made by a large number of assesseees in Kolkata. This issue has been examined in the case of Swati Bajaj & Others (2022) 139 taxmann.com 352(Cal.) pronounced on 14.06.2022. A large number of assesseees have claimed long-term capital gain/loss. The Income Tax Department has carried out search/survey upon different entities, which unearthed that certain companies and professionals were providing such claim in the shape of accommodation by manipulating the stocks of certain shell companies. The Hon'ble Court has made a detailed analysis of the material found during the course of search and survey on the premises of third entities and set aside the orders of the ITAT in a group of appeals by holding that such claim by the assesseees for long-term capital gain was a bogus claim. The Hon'ble Court has considered the material collected by the Investigating Wing of the Department on the premises of certain companies, who were manipulating the stocks or indulging any accommodation entry business. If we apply the ratio of this judgment upon these cases, then it would reveal that the benefit of claim under section 35(1)(ii) is outcome of an

organized fraud with the help of certain manipulators. Therefore, we do not find any material in the first-fold of arguments raised by the ld. Counsels for the assessee. The appellants are not entitled for deduction under section 35(1)(ii) of the Income Tax Act. This finding is subject to our finding on other preliminary issues in the case of Abhilasha Tradecom Pvt. Limited i.e. ITA Nos. 132 & 133/KOL/2021. In ITA Nos. 132 & 133/KOL/2021, assessee has challenged the reopening of the assessment. We will be deciding this issue in the following part of the judgment. Similarly in the case of Tarasafe International Pvt. Limited, i.e. ITA No. 261/KOL/2020, the assessee has taken an additional ground of appeal, which we are taking up separately in the following part.

6. There was concrete information with the ld. Assessing Officer that assessee has claimed bogus donation, therefore, he has rightly reopened the assessments. The issue on merit is covered by our judgment extracted supra, therefore, both the appeals are dismissed.

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

Order pronounced in the open Court on May 1st, 2023.

Sd/-
(Manish Borad)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President(KZ)

Kolkata, the 1st day of May, 2023

Copies to : ***(1) Rajat Kumar Majumdar,***
36B, Paddapukur Road,
P.O. Lala Lajpat Roy Sarani,
Kolkata-700020

- (2) ***Income Tax Officer,
Ward-31(4), Kolkata,
10B, Sir William Jones Sarani,
Middleton Row, Park Street Area,
Kolkata-700071***
- (3) *Commissioner of Income Tax (Appeals),
Income Tax Department, National Faceless
Appeal Centre (NFAC), Delhi*
- (4) *Commissioner of Income Tax ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.