

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.672/Kol/2022
Assessment Year: 2013-14**

Deputy Commissioner of Income Tax, Central Circle-1(3), Kolkata.	Vs.	A. R. Stanchem (P) Ltd., 9, HemantaBasu Sarani, 2 nd floor, Kolkata-700001. (PAN: AACCA5986E)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri S. K.Tulsiyan, Advocate
Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 03.05.2023
Date of Pronouncement : 13.07.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A), Kolkata-20 vide Order No. ITBA/APL/S/250/2022-23/1046304997(1) dated 14.10.2022 passed against the assessment order by DCIT, Central Circle-1(3), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 07.12.2015 for AY 2013-14.

2. Grounds raised by the revenue are reproduced as under:

“1. Whether on the facts and circumstances of the case, the CIT(A) erred in law in deleting the addition of Rs.1,75,00,000/- made as bogus donation as expenditure claimed u/s. 35(1)(ii) of the I. T. Act, 1961.

2. Whether CIT(A) erred in law by ignoring the facts that CBDT vide notification dated 15.09.2016 and 06.09.2016 withdrew the recognition given to M/s. School of Human Genetic and Population Health, Kolkata of Human Genetic and Population Health, Kolkata and Matrivani Institute of Experimental Research & Education, Kolkata to grant approval u/s. 35(1)(ii) of

the Income Tax Act, 1961 as such the alleged donation is a fake one as the Donee has no authority to receive donation.

3. Whether on the facts and circumstances of the case, the CIT(a) erred in law in deleting the addition of bogus donation Rs.1,75,00,000/- completely ignoring the decision of the jurisdictional High Court in the case of Swati Bajaj 139 taxmann.com 362 (Cal) which upheld the additions on the basis of the inquiry/findings of Investigation Wing.

4. Whether on the facts and circumstances of the case, the CIT(A) erred in law in restricting the addition by Rs.26,610/- from Rs.96,383/- u/s. 14A of the I. T. Act, 1961 ignoring the facts that the AO has made the addition under the provision of Rule 8D of the Income Tax Rules, 1962.”

3. Facts stated in the Statement of Facts as placed in the records are that assessee has filed its return of income, reporting total income at Rs. 7,22,23,070/- on 30.11.2013. Return was processed u/s. 143(1) of the Act. Case was selected for scrutiny as per Action Plan GuideLine as well as through CASS. A survey operation u/s. 133A was carried out on 20.12.2012 during the search and seizure operation conducted in the Fogla Group of cases. Requisite notices u/s. 143(2) and 142(1) were issued which were complied with. However, Ld. AO being not satisfied, disallowed the following expenses :-

- i) Expenditure on Scientific Research - Rs.1,00,00,000/-
- ii) Expenses u/s. 14A - Rs. 96,383/-

3.1. During the course of assessment proceedings, Ld. AO found that assessee had made donation to the tune of Rs.50,00,000/- each to School of Human Genetics & Population Health (SHGPH) and Matrivani Institute of Experimental Research & Education (MIERE) and claimed the first Rs. 50 lacs paid to SHGPH as deduction u/s. 35(1)(ii) and the second Rs. 50 lacs paid to MIERE u/s. 80G of the Act.

3.2. During the course of assessment proceedings, assessee took note of its mistake in claiming deduction in respect of donation of Rs. 50 lacs made to MIERE u/s. 80G instead of u/s. 35(1)(ii) of the Act. The mistake was rectified by submitting a revised computation of total

income which was of Rs. 6,59,73,070/-. Ld. AO did not give cognizance to the rectification as claimed by the assessee.

3.3. It is noted from the order of the Ld. AO that survey was conducted at the premises of both the donees mentioned above and found that neither of the institutions had performed any scientific research work and they had also no infrastructure of performing such research works rather they were engaged in connivance with donors, brokers and accommodation entry providers who had indulged in a devious scheme of tax evasion, defrauding revenue. In view of the above fact, Ld. AO called for explanation as to why the deduction u/s. 35(1)(ii) and u/s. 80G claimed against donations made for an amount of Rs. 50 lacs each to the abovenamed concerns should not be disallowed. In reply, assessee submitted that it had made the donation to the above named two institutions with bonafide belief that they were engaged in the scientific research works as provided in section 35(1)(ii) read with Rules 5C and 5D of the Income Tax Rules, 1962 (hereinafter referred to as the "Rules") and due registration and approval regarding the above had also been verified before making donations to the said institutions. Under the circumstances, assessee requested not to disallow the claim of deduction made by it. Ld. AO did not pay heed to the request and disallowed the deduction as claimed by the assessee.

3.4. Also, in the return of income filed by the assessee, it had *suo moto* disallowed a sum of Rs. 175/- under section 14A of the Act, in computing the total income. However, Ld. AO calculated the disallowance at an amount of Rs. 96,383/-.

3.5. Aggrieved, assessee preferred an appeal before the Ld. CIT(A).

4. In the first appeal, Ld. CIT(A), observed that in assessee's case, a survey operation was carried out on 20.12.2012 along with search and

seizure action in Fogla Group of cases, to which the assessee belonged. Information was received from Investigation Wings in respect of these two institutions. Report from the Investigation wings revealed that survey was conducted by Investigation Wings at the premises of the said two institutions. Investigation report revealed that these institutions were engaged in accepting bogus donation through various brokers, in lieu of commission. Bogus donations were taken through cheques/RTGS and the amount was returned back to the donors in cash. During the survey, statement of key persons like secretary/treasurer and other executives were recorded by the Investigation Wing, who confirmed the modus operandi, as mentioned above. These institutions had booked bogus expenses with the help of shell companies and paper concerns. No original research was carried out by these institutions. Rather, they were showing published materials of other institutions as their research work. Most of the persons working in these institutions did not have educational qualification or experience to be a researcher. In view of these facts, assessee was asked to furnish explanation regarding genuineness of donation given.

4.1. In reply, assessee submitted that before giving donations, assessee had checked the antecedent of these institutions and it was found that they had met all the criteria as given in the Act for accepting donation u/s.35(1)(ii). Even approval granted to these institutions was renewed by the Department in the year 2010. It was further submitted that as per section 35(1)(ii), deduction would not be denied merely on the ground that subsequent to the payment of such sum by the assessee, approval granted to the Association, University, College or other institutions has been withdrawn. Ld. A.O. was not satisfied with the reply of the assessee. Huge donations were being

given to said institutions and these huge donations would not have been given without verifying the activities of the said institutions. Survey report had severely indicted these institutions and brought out the nexus between brokers and these institutions. Survey report had clearly revealed that these institutions did not 'perform any scientific research work and their only function was that of routing cheque donation amount to the donor in cash.

4.2. Assessee further submitted that both the institutions were approved institution u/s.35(1)(ii) which was notified in the Official Gazette and the assessee has given donation to these institutions under the bonafide belief that these organizations are engaged in carrying out scientific research activities. Donation was given in the current year when both these institutions were approved institutions u/s.35(1)(ii) of the Act. Payment was made through normal banking channels and these donations were duly acknowledged by the institutions. Both these institutions were granted registration u/s.12A of the Act and these are also registered under Society Registration Act, 1961. Besides, both these institutions had been approved by the Central Govt. for the purpose of section 35(1)(ii) as a Scientific Industrial Research Organisation (SIRO) by Ministry of Science & Technology, Govt. of India. Assessee also stated that Explanation to section 35(1)(ii) makes it clear that if at the time of giving the donation to any research institute it had a valid approval granted under the Act, subsequent withdrawal of such approval would not be a reason to deny deduction claimed by the donor. In the case of assessee, both the conditions are fulfilled. Donation was made by the assessee when both these institutions were duly approved by the Central Govt. vide notification in Official Gazette. Assessee had given the donation under

bonafide belief that these institutions are carrying out scientific research activities.

4.3. Ld. CIT(A) thereafter gave his finding by giving relief to the assessee on the basis of decision of Hon'ble Calcutta High Court in the case of *Maco Corporation (India) (P) Ltd.* [2022] 144 taxmann.com 39 (Cal) dated 12.08.2022. Relevant extract of Ld. CIT(A)'s findings are as under:

"I have carefully considered the facts of the case and submission of the appellant. I have also gone through the case laws. It is a fact that the year in which donations were given to M/s. School of Human Genetics & Population Health and M/s. Matrivani Institute of Experimental Research & Education, these Institutions had valid Registration under the I.T. Act the Society Registration Act and they also had valid approval as Scientific Industrial Research Organization. Approval granted u/s. 12A of the I.T. Act, 1961 was withdrawn vide order dated 25-04-2016 w.e.f. 01-04-2011. Thus, the order of withdrawal had a retrospective effect. Similarly, the approval granted by the Ministry of Science & Technology was valid till 31-03-2016 and assessee had requested for renewal which was not accepted and its status as SIRO was withdrawn vide letter dated 14-03-2017. Appellant has cited a number of case laws where it has been held that subsequent withdrawal of approval would not have any adverse impact on the claim of deduction u/s. 35(1)(ii). Jurisdictional ITAT, Kolkata in the case of DCIT, Circle-12(1) vs. M/s. Maco Corporation (India) (P) Ltd. (supra) in its order dated 14-03-2018 has considered this issue and in that case also donations were given to the two institutions, they are i) M/s. School of Human Genetics & Population Health and ii) M/s. Herbicare Healthcare Bio-Herbal Research Foundation. Facts in M/s. Maco Corporation (India) (P) Ltd. (supra) are the same as in assessee's case and A.O. had disallowed the claim of the assessee based on information contained in survey report of the Investigation wings. After considering all the facts, the Hon'ble Kolkata ITAT in their superior wisdom have decided that subsequent withdrawal of registration/approval would not adversely affect assessee's claim for deduction u/s.35(1)(ii) of the I.T. Act, 1961. The decision of the Hon'ble ITAT has been upheld by the Hon'ble Calcutta High Court in order No. ITA/42/2020, IA No.GA/2/2019.

As the issue involved in appeal is covered by the decision of the Hon'ble Calcutta High Court and Hon'ble Kolkata ITAT in the case of M/s. Maco Corporation (India) (P) Ltd. (supra), respectfully following the same, it is held that assessee is entitled for deduction u/s. 35(1)(ii) in respect of donations given.

[emphasis supplied by us by bold and underline]

4.4. Further, Ld. CIT(A) accepted the revised computation of the assessee wherein it had rectified the mistake of claiming the deduction

u/s. 80G for the payment made to MIERE. He directed the Ld. AO to allow the deduction u/s. 35(1)(ii) in respect of payment made to MIERE also.

4.5. In respect of disallowance u/s. 14A, Ld. CIT(A) restricted it to Rs.26,610/- after considering the facts that assessee had sufficient own funds and that only those investments should be considered on which exempt income is earned in the year as also taking into account the *suo moto* disallowance of Rs.175/- by the assessee.

4.6. Aggrieved, Department is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee has heavily relied on the decision of Hon'ble Supreme Court in the case of *Chotatingrai Tea [2002] 258 ITR 529 (SC)* dated 29.10.2002 and asserted that once the assessee fulfils all conditions laid-down u/s. 35CCA for claiming deduction of amount donated, there is no obligation on the part of the assessee to see that amount is actually utilised for the purpose for which it was donated.

5.1. The observations and findings arrived at by the Hon'ble Supreme Court in this decision are reproduced for ready reference:

"These appeals have been preferred from the decision of the Gauhati High Court in the case of Chotatingrai Tea Estate (P.) Ltd. v. CIT [1999] 236 ITR 644 in which the High Court has set aside the order passed by the Income-tax Appellate Tribunal, Gauhati ('the Tribunal'), remanding the matter back to the Assessing Officer for the purpose of determining whether the assessee who had, admittedly, fulfilled the conditions for claiming deduction under section 35CCA of the Income-tax Act ('the Act'), could subsequently become disentitled to the said deduction by reason of subsequent events.

Section 35CCA provides :

"Expenditure by way of payment to associations and institutions for carrying out rural development programmes.— (1) Where an assessee incurs any expenditure by way of payment of any sum—

(a) 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 by the prescribed authority ; or

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the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.

(2) The deduction under clause (a) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution referred to in the said clause unless the assessee furnishes a certificate from such association or institution to the effect that—

- (a) the programme of rural development had been approved by the prescribed authority before the 1st day of March, 1983; and*
- (b) where such payment is made after the 28th day of February, 1983, such programme involves work by way of construction of any building or other structure (whether for use as a dispensary, school, training or welfare centre, workshop or for any other purpose) or the laying of any road or the construction or boring of a well or tube-well or the installation of any plant or machinery, and such work has commenced before the 1st day of March, 1983.*

(2A) The deduction under clause (b) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution unless the assessee furnishes a certificate from such association or institution to the effect that—

- (a) the prescribed authority had approved the association or institution before the 1st day of March, 1983; and*
- (b) the training of persons for implementing any programme of rural development had been started by the association or institution before the 1st day of March, 1983.*

(2B) No certificate of the nature referred to in sub-section (2) or sub-section (2A) shall be issued by any association or institution unless such association or institution has obtained from the prescribed authority authorisation in writing to issue certificates of such nature.

Explanation.—For the purposes of this section, 'programme of rural development' shall have the meaning assigned to it in the Explanation to sub-section (1) of section 35CC."

It is not in dispute that the assessees had made donations to the Society for Integral Development, Calcutta, which had as its object the undertaking to carry out approved programmes of rural development. The society had granted a certificate to the assessee which had also been approved by the prescribed authority.

According to the Revenue authorities the assessees were not entitled to deduction as claimed despite the aforesaid because subsequently the approval granted by the prescribed authority was withdrawn with retrospective effect. It was also alleged that the assessees had received back the donation which had been made by them to the society. When the matter came up before the Tribunal at the instance of the assessees, the Tribunal found, as a matter of fact that

*the assessee had fulfilled all the conditions under section 35CCA of the Act for grant of deduction thereunder. The Tribunal also found that the assessee's position could not be affected by any subsequent withdrawal of the certificate granted by the prescribed authority under section 35CCA but found that there was no evidence in support of the Revenue's case that the assessee had received back the amount donated by them to the society. **However, the matter was remanded back to the Assessing Officer for fresh disposal for the purpose of determining whether the money had in fact been utilised of an approved programme.** Pursuant to the directions of the High Court the following questions were referred under section 256(2) of the Act :*

- "1. *Whether, on the facts and in the circumstances of the case, the Tribunal having held that the assessee has fulfilled all the conditions laid down in section 35CCA of the Income-tax Act, 1961, read with rule 6AAA of the Income-tax Rules for deduction of the amount donated to the approved society, which had not come back to the assessee soon after or later on in some form or the other, that the Tribunal was justified in law in restoring the matter to the Assessing Officer on the reasons and grounds given in the order passed on appeal ?*

2. *Whether, on the facts and in the circumstances of the case, and in view of the findings of facts recorded by the Tribunal on questions of facts arising for decision, the Tribunal was justified in law in holding that the entitlement of the assessee for claiming deduction of the amount donated to the approved society would depend upon the utilisation of such fund by the approved society in the approved programme before the date specified in the section and on this basis only restoring the matter to the Assessing Officer ?" (p. 645)*

*The High Court followed the reasoning of the Calcutta High Court in CIT v. Bhartiya Cutler Hammer Co. [1998] 232 ITR 785, and came to the conclusion that once it was found that the assessee had fulfilled all the conditions which had been laid down under section 35CCA of the Act for claiming deduction of the amount donated by it, **there was no obligation on the part of the assessee to see that the amount was utilised for the purpose for which it was donated. Furthermore, the deduction was allowed on the certificate furnished and it was not for the assessee to show whether the institution to which the money had been donated was carrying on the rural development work,** as envisaged under section 35CCA of the Act.*

In our view, the reasoning of the High Court while answering the question referred to it in favour of the assessee is sound and calls for no interference. The final submission of learned counsel appearing on behalf of the appellant is that the High Court's final observation that the order of the Tribunal remanding the matter back for decision would stand quashed and that the assessee was entitled to claim deduction was beyond the jurisdiction of the High Court. Learned counsel for the appellant may be technically correct but what has been observed by the High Court was as a necessary corollary to the answer on the referred question which was merely spelt out by the High Court.

We, accordingly, dismiss the appeals without any order as to costs."

(Emphasis supplied by us by bold and underline)

6. Per contra, Ld. CIT, DR placed reliance on the finding given by the Ld. AO in the impugned assessment order.

7. We have heard the rival contentions and perused the material available on record and gone through the judicial precedents referred before us. The issue before us has been dealt by the Coordinate Bench of ITAT, Kolkata recently in a bunch of cases namely, *Tarasafe International Pvt. Ltd. and Others in ITA No. 261/Kol/2020 &Ors.* for which the order was pronounced on 07.03.2023.

7.1. The question in dispute before the Coordinate Bench in the bunch of appeals, the arguments put-forth on behalf of the assessee by various counsels and the finding arrived at by the Coordinate Bench after considering the facts and circumstances as well as various judicial precedents are reproduced as under:

“ *Question in dispute*
13. *With the assistance of ld. Representative, we have gone through the record carefully. The solitary issue involved in all these appeals relates to –*
“whether the appellants are entitled to weighted deduction @ 175% of the donations given by them to allege Research Institute namely SHG&PH under section 35(1)(ii) of the Act.

14. *It is imperative upon us to take note of this provision, the relevant part reads as under:-*

“Expenditure on scientific research

35. (1) *In respect of expenditure on scientific research, the following deductions shall be allowed-*

(i).....

(ii) *[an amount equal to [one and three-fourth] times of any sum paid] to a [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 other institution for the purposes of this clause-

(A) Is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) Such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government;]

x xxxxxxxxxxxxxxxx

15. A bare perusal of the above provision would indicate that if an assessee, which is not engaged in carrying out research work on their own and rather contribute to some other scientific research organisation having its main object of undertaking scientific research or to a University, College or other Institution to be used for scientific research, then this Section provides that such Institution, University, College has to be 'approved' for such purposes by prescribed authority. Therefore, if a research institute is approved and notified by the prescribed authorities under the Rules of Income Tax Rules, 1962 and the provision of this Act, then the donors will be entitled for a deduction equivalent to 175% of donation given by them. Therefore, as far as scope of this Section or meaning/instruction of the language employed in this section is concerned, there is no dispute between the parties. In other words, interpretation of the meaning of section is not involved, which requires reference to any judgment from the authoritative pronouncements of Hon'ble High Courts as well as Hon'ble Supreme Court.

16. The dispute relates to the factum of giving donations to a genuine institution for claiming deduction under section 35(1)(ii) of the Income Tax Act.

Arguments:

17. Shri S.M. Surana, ld. Sr. Advocate has led the arguments on behalf of the assessee. He could not dispute to the proposition that as far as interpretation and scope of section 35(1)(ii) is concerned, there is no dispute. He submitted that neither the ld. Assessing Officer nor the ld. CIT(Appeals) have denied the fact that payments of donation by all these appellants were made to the Institution, who was enjoying the benefit of registration with the Department. In other words, the section contemplates approval of prescribed authority for carrying out research work. If such approval is available, then donations given by the donor is allowed to be deduction given in the provision. While elaborating this contention, he submitted that authorities whenever required to approve any Institute engaged in research work, they carry out necessary inquiries/ investigation to ensure the genuineness of such Institution and after analysis all the objects, activities, personnel, who will be managing such organisation, they approve such an organisation to receive donation. Thus a person/entity, who wishes to avail the benefit of section 35(1)(ii) by contributing a specified sum, is not supposed to and in fact is not equipped

with so much tools to verify genuineness of the activities of such Institution. It is a bonafide belief that once approval is granted by CBDT, contribution made to such Institution will qualify exemption, more particularly when such Institution is not related at all to the assessee and the assessee has no control whatsoever over the activities of such Institution in any manner. Ld. Counsel for the assesseees drew our attention towards Notification vide which approval was granted. This fact is not disputed by the Revenue also about the grant of approval when these assesseees have given the donations.

18. *The ld. Counsel for the assesseees further contended that approval granted to the SHGPH was rescinded by the competent authority. Such approval was rescinded on 15.09.2016 with a retrospective effect from 01.04.2007. Thus he emphasized that after four years from the date of payment of contribution, how the assesseees could be branded that such a donation was bogus one. This retrospective effect cannot be given on the bonafide belief and for this purpose, he relied upon the judgment of the Hon'ble Supreme Court in the case of CIT -vs.- Vatika Township Pvt. Limited reported in 367 ITR 466. He also made reference to the judgment of Hon'ble Supreme Court in the case of Hitendra Vishnu Thakur -vs.- State of Maharashtra [AIR 1994 S.C. 2623]. On the strength of these two decisions, he submitted that a procedural statute should not generally be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions are not accomplished. The ld. Counsel for the assesseees thereafter made reference to a series of decisions, where ITAT has allowed such a deduction to the assesseees. He pointed out that some of the decisions in Kolkata have been upheld upto the Hon'ble High Court also. He pointed out that across India, such deductions have been allowed to the assesseees.*

19. *All the ld. Counsels have been by and large took the same line of argument. They only placed on record different ITAT orders in their paper book, wherein identical issues were involved.*

20. *Originally Shri Amal Kamat, ld. CIT(DR) appeared in the case of Tarasafe International Private Limited assisted with Smt. Ranu Biswas, Addl. CIT, Sr. D.R. Thereafter Shri Arup Chatterjee, ld. Sr. D.R. represented the Revenue. In the case of Tarasafe International Pvt. Limited, a paper book has been filed by the Revenue running into 268 pages. In this paper book, the Revenue has placed on record the papers recovered during the course of survey conducted at the premises of the recipient of the donations. It has also placed on record the copy of the Settlement Order passed in the case of the recipient. Such order is available on pages no. 52 to 62. On pages no. 63 to 81, a list of the alleged bogus donors has been placed by the Revenue. Such list has been prepared on the basis of alleged brokers, who have arranged the donations to the Institution and a total revenue received through*

by means of such donation is Rs,159,36,11,602/-. In other words, it is Rs.159.36 crores. Similarly one more list has been placed on pages no. 136 to 159, where the Revenue has complied with PAN, Data, who has availed weighted deduction on this bogus donation. On the strength of all these details, it was submitted by the Revenue that during the course of assessment proceedings in all these appeals, the ld. Assessing Officer has confronted the assesseees with the material discovered during the course of survey on the premises of the recipient. None of the assesseees has justified their claim. They are only harping upon bonafide. He pointed out that originally the Institute might have prepared the documents and submitted for carrying out the research activities. The motive might be genuine but ultimately it detracted from its motive and indulged in fraudulent activities with the help of brokers. The ld. CIT(DR) thereafter made reference to the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax , Kolkata -vs.- Batanagar Education & Research Trust. The Batanagar Education & Research Trust was enjoying registration under section 12AA of the Income Tax Act. During the course of survey carried out on SHGPH, it came to the notice of the Revenue that Batanagar Society was receiving bogus donations and giving the money in cash. Its registration was cancelled by the ld. Commissioner of Income Tax under section 12AA(3)of the Act. The appeal of the assessee was dismissed by the Tribunal bearing ITA No. 756 & 912/KOL/2016.

21. Dissatisfied with this order, assessee carried the matter in appeal before the Hon'ble High Court. The Hon'ble High Court has reversed the decision of the Tribunal. However, Department took it to the Hon'ble Supreme Court, which reversed the decision of the Hon'ble Calcutta High Court and upheld the rejection of the registration under section 12A(3). He emphasized that in this decision, the Hon'ble Supreme Court has taken note of the discussion made by the ld. CIT (Exemption), who cancelled the registration as well as the finding recorded by the Tribunal. Both these findings are based upon the material discovered during the survey upon SHG&PH and, therefore, in view of this latest decision of the Hon'ble Supreme Court, he emphasized all other orders of the ITAT and the decisions of the Hon'ble High Court are not to be followed.

22. Since this decision was supplied by the Revenue after conclusion of the arguments, therefore, we re-fixed the hearing and confronted the assessee with this latest position of law. However, Shri Soumitra Chowdhury, ld. Counsel for the assessee has placed on record the judgment of the Hon'ble Calcutta High Court in the case of Commissioner of Income Tax (Exemption), Kolkata -vs.- Sanskriti Sagar. In this decision, the Hon'ble High Court has considered the judgment of the Hon'ble Supreme Court in the case of Batanagar Education & Research Trust and dismissed the appeal of the Revenue. In this case also,

registration under section 12AA was cancelled by the ld. Commissioner by exercising the powers under section 12AA(3) of the Act. This cancellation was set aside by the Tribunal and Revenue carried the matter before the Hon'ble High Court, who upheld the order of the ITAT by dismissing the appeal of the Revenue. On the strength of this decision, ld. Counsel for the assessee submitted that Hon'ble High Court has explained the ratio laid down in *Batanagar Education & Research Trust and*, therefore, this subsequent decision is to be followed.

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)	DIT(E)/906/SE/23	27.10.2004	Director of Income Tax

of the I.T. Act, 1961 (made perpetual)	/04-05 DIT(E)/3248/SE/23/04-05	12.12.2011	(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.MadhumitaRoychoudhury	President
(b)	Dr.Shyamal Kumar Nandy	Vice-President
(c)	Dr.Samadrita Mukherjee Sardar	Secretary
(d)	Ms. BasantiRauth	Assistant Secretary
(e)	Mrs. Moumita Raghavan	Treasurer
(f)	Mr. Gautam Das	Executive Member
(g)	Dr.Debashis Mukherjee	Executive Member

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 GovindbhaiGanpatlal 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 HerbicareHealthcare 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 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 ld. 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)

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 ld. 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. Herbicare Healthcare Bio-Herbal Research Foundation (in short 'HHBRF') because AbhilashaTradecomPvt. 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 assessees 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 Id. 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(Appeals) 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 Soci-*

ety, 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 RamendraLahiri, 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 AbhilashaTradecomPvt. 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 Id. 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 Id. Counsels for the assesseees. **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 AbhilashaTradecomPvt. 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.” [emphasis supplied by us by bold and underline]

8. Relief given by the Ld. CIT(A) in the present case before us is solely based on the decision of Hon’ble jurisdictional High Court of Calcutta in the case of Maco Corporation (India) Pvt. Ltd. (supra). From the perusal of the said judgment, it is observed that the decision is solely based on placing reliance on the judgment of Hon’ble Supreme Court in the case of CIT Vs. Chotatingrai Tea (supra), as is evident from the finding recorded in para 7 which is reproduced as under:

“7. In the light of the above decision, we find the reasoning given by the tribunal to be just and proper and cannot be held to be perverse. In the result, the appeal filed by the revenue (ITA/42/2020) is dismissed and the substantial question of law is answered against the revenue.”

8.1. This leads us to delve into the judgment of Chotatingrai Tea (supra) for a better appreciation of the facts and finding dealt therein. At the outset, it is a judgment passed in October 2002. Before the matter travelling to the Hon’ble Apex court, despite holding in favour of the assessee, Tribunal had remanded the matter back to the Assessing Officer for fresh disposal for the purpose of determining whether the money had in fact been utilised for an approved programme. Thus, there were apprehensions even in this case about the utilisation of money for the approved programme at the end of the donees. The reasoning arrived at by the Hon’ble Court is on the premise of documentary compliance fulfilled by the donors to allow the deduction. Though the deduction claimed by the donors was allowed

on the strength of fulfilment of conditions laid down in the relevant section, the apprehension on the factual aspect of utilization of money by the recipient donees for the approved programme was not set at rest.

8.2. The apprehension stated above was addressed in the Hon'ble Apex Court judgment subsequent to the above judgment of Chotagtingrai Tea (supra), wherein issue relating to status of SGHPH as a trust for retaining its registration under section 12AA and 80G of the Act came before it in the case of *CIT(E) Vs. Batanagar Education and Research Trust [2021] 129 taxmann.com 30(SC)* dated 02.08.2021.

Important fact noted in this case in para 3 reads as under:

“3. In a survey conducted on an entity named School of Human Genetics and Population Health, Kolkata under section 133A of the Act, it was prima facie observed that the Trust was not carrying out its activities in accordance with the objects of the Trust. A show cause notice was, therefore, issued by the CIT on 04.12.2015.”

8.3. By invoking section 12AA(3), registration of the said trust was cancelled including the approval granted u/s. 80G. Appeal filed by the trust before the Tribunal was dismissed by recording fact-based finding that from the evidence on record, it is clear that activities of the trust were not genuine and hence their registration is liable to be cancelled. Aforesaid conclusion of the Tribunal arrived at after considering the entire material on record is as under:

*“13. We have given a very careful consideration to the rival submissions. **It is clear from the statements of Secretary and Treasurer of SHG and PH that they were accepting cash and giving bogus donations.** In the statement recorded in the survey conducted in the case of SHG and PH on 27-1-2015, it was explained that SHG& PH's source of income was the money received in the form of donations from corporate bodies as well as from individuals. In the said statement it was explained that there were about nine brokers who used to bring donations in the*

form of cheque/RTGS to SHG and PH. The Donations received would be returned by issue of cheque/RTGS in the name of companies or organization specified by the nine brokers. SHG and PH would receive 7 or 8% of the donations amount. It was also stated in such statement since the assessee was entitled to exemption u/s 80G and u/s 35 of the Act their organization was chosen by the brokers for giving donations to SHG and PH as well as for giving donations by SHG and PH. Till now the Assessee's name did not figure in the statement recorded on 27-1-2015. However, pursuant to the Survey in the case of SHG& PH proceedings for cancellation of registration u/s 12A of the Act granted to them were initiated. In such proceedings, Smt. Samadrita Mukherjee Sardar (in a letter dated 24-8-2015) had given a list of donations which were given by them after getting cash of equivalent amount. It is not disputed that the name of the assessee figures in the said list and the fact that SHG& PH to the Assessee were against cash received from them in Financial Year 2012-13 of a sum of Rs.1,23,87,550/-. Even at this stage all admissions were by third parties and the same were not binding on the Assessee. **However, in a survey conducted in the case of the Assessee on 24-8-2015, the Managing Trustee of the Assessee admitted that it gave cash and got back donations. We have already extracted the statement given by the Managing Trustee. Even in the proceedings for cancellation of registration, the Assessee has not taken any stand on all the evidence against the Assessee. In such circumstances, we are of the view that the conclusions drawn by the CIT(E) in the impugned order which we have extracted in the earlier part of the order are correct and calls for no interference. It is clear from the evidence on record that the activities of the Assessee were not genuine and hence their registration is liable to be cancelled u/s. 12AA(3) of the Act, and was rightly cancelled by the CIT(E). We therefore, uphold his orders and dismiss both the appeals by the assessee.**

[emphasis supplied by us by bold and underline]

8.4. Matter travelled before the Hon'ble Apex Court who gave its factual finding that the donations were bogus, out of which substantial money was ploughed back or returned to the donors in cash. According to the Hon'ble Court, registration conferred upon it under section 12AA and 80G of the Act was completely being misused by the Trust. Thus, cancellation of registration is justified. Hon'ble Supreme

Court in conclusion, further noted that High Court erred in not dealing with the conclusion drawn by the CIT and the Tribunal. Relevant extracts of the conclusion arrived at by the Hon'ble Supreme Court in para 11 and 12 are as under:

“11. The answers given to the questionnaire by the Managing Trustee of the Trust show the extent of misuse of the status enjoyed by the Trust by virtue of registration under section 12AA of the Act.

These answers also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under sections 12AA and 80G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under sections 12AA and 80G of the Act.

*12. The High court completely erred in entertaining the appeal under section 260A of the Act. **It did not even attempt to deal with the answers to the questions as aforesaid and whether the conclusions drawn by the CIT and the Tribunal were in any way incorrect or invalid.***

In our view, this appeal, therefore, deserves to be allowed.”

[emphasis supplied by us by bold and underline]

8.5. From the above judgment of Batanagar Education and Research Trust (supra), the apprehension on the factual aspect of utilization of money by the recipient donee trusts for the approved programme which remained open, is set to rest by the fact-based conclusion arrived at, as quoted above. Hon'ble Court has made reference to the outcome of the survey at SHGPH and the post survey enquiry conducted upon Batanagar Educaiton and Research Trust to conclude about the organized fraud.

8.6. This very judgment of Batanagar Education and Research Trust (supra) was relied upon and analysed in the

decision of Tarasafe International Pvt.Ltd. &Ors. (supra) by the Coordinate Bench of ITAT, Kolkata in para 39 which is reproduced for ease of reference:

*“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 RamendraLahiri, Managing Trustee of the assessee, i.e.Batanagar Society was recorded. The Secretary, Smt. Samadrta 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.”***

[emphasis supplied by us by bold and underline]

8.7. Coordinate Bench in the case of Tarasafe International Pvt.Ltd. (supra) has recorded finding of facts, based on the material placed before it by the Revenue in voluminous paper books gathered in the course of survey conducted u/s. 133A in the case of the donee trusts as well as post survey enquiries. In the present case before us, the donee trusts are the same whose facts and credible material were brought on record by the Revenue and considered by the Coordinate Bench. Claim of deductions by the donors have already been disproved by the Revenue by dispelling the claim of first onus discharged by the donors, on the strength of credible material. These fact findings are substantive and cannot be overlooked in the present case wherein the donee trusts are the same. There is nothing brought on record by the Ld. Counsel of the assessee to rebut these factual findings except for relying on the judgment of Hon'ble Supreme Court in the case of Chotatingrai Tea (supra) which is distinguished in the light of recent judgment of Batanagar Education and Research Trust (supra) as discussed above.

8.8. Respectfully taking into account the fact-based finding in the judgment of Hon'ble Supreme Court in the case of Batanagar Education and Research Trust (supra) and which has been elaborately dealt with by the Coordinate Bench in Tarasafe International Pvt. Ltd. &Ors, we hold that assessee is not entitled for the deduction claimed u/s. 35(1)(ii) of the Act in respect of payments made to both SHGHP and MIERE(the done trusts). Relief granted by ld. CIT(A) on this issue is set aside. Grounds taken by the Revenue are allowed.

9. On the grounds taken in respect of disallowance u/s. 14A for restricting it to Rs.26,610/-, we have perused the observations and finding of the Ld. CIT(A) and do not find any reason to interfere with the same which have been discussed in paragraph 4.5 above. Accordingly, grounds taken by the revenue are dismissed.

10. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open court on 13th July, 2023.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 13th July, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-20, Kolkata
 4. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata