IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपील सं./**ITA No.294/SRT/2023**

(निर्धारणवर्ष / **Assessment Year: (2014-15)**

(Virtual Court Hearing)

Mahendra Kanjibhai Bhanushal Hariom, Opp- Odhav Raw House, Nr. Pragna Society, Valsad,-396001	**Vs.**	Assistant Commissioner of Income-tax, Circle-Valsad, Income Tax Office, palak Arcade, Pali Hill, Santi Nagar, Tithal Road, Valsad-396001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ACFPB 8732 M**		
(अपीलार्थी /**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

निर्धारिती की ओर से /Assessee by : Shri Surji D Chheda, CA

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाईकीतारीख/ **Date of Hearing : 21/08/2023**

घोषणाकीतारीख/**Date of Pronouncement : 16/10/2023**

आदेश / **O R D E R**

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income-tax (Appeals)-11, Ahmedabad, ['Ld.CIT(A)' for short] dated 22.02.2023, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act'), dated 29.12.2016.

2. The grounds of appeal raised by the assessee are as follows:

*"**A. Addition of Rs.9,47,948/- on the basis of Reduction in G.P. Margin***

1) The learned CIT(A) has erred in law and in facts to reject the audited books of accounts without finding any specific defects which leads to suppression of profit or inflation of expenses.

2) The learned CIT(A) has erred in law and in facts in not giving any finding of the fact that AO has wrongly observed that no stock register is maintained and completely ignored the facts stated in letter dated28.12.2016 which was filed against show cause for rejection of books of accounts.

3) The learned CIT(A) has erred in law and in facts to reject the audited books of accounts on the ground of low Gross profit margin as compared to previous year when the quantity records are maintained and all direct expenses details have been provided and nothing has been found against the appellant.

4) The learned CIT(A) has erred in law and in facts add Rs.9,47,948/- on the basis of reduction in gross profit margin in period subsequent to survey.

5) The learned CIT(A) has erred in law and facts to estimate the G.P subsequent to survey as all the discrepancies have been already covered in the disclosure made.

***B. Disallowance of claim u/s 35(i)(ii) of Rs.26,25,000/-**:*

6) The learned CIT(A) has erred in law and in facts to disallow the claim u/s 35(i)(ii) of Rs.26,25,000/.

***C. Addition of agricultural expenses of Rs.19,281/-**:*

7) The learned CIT(A) has erred in law and facts to add Rs.19,281/- being agricultural expenses as in from undisclosed sources.

***D. No addition on other head when there is G.P. Addition**:*

8) The learned CIT(A) has erred in law and facts to make addition under ground no 6 & 7 when the addition has been made on estimation basis on the basis of G.P.

***E. General Ground**:*

9) Your appellant leaves the right to amend and, add, or alter the grounds at the time of regular hearing & all the grounds are without prejudice to each other."

3. At the outset, Learned Counsel for the assessee, informed the Bench that assessee does not wish to press Ground No.7, therefore, we dismiss the Ground No.7 raised by the assessee "as not pressed".

4. Now we take Ground No.1 to 5 and ground No.8 raised by the assessee, as these grounds are interconnected and mix therefore, we shall adjudicate them together.

These grounds relate to rejection of books of accounts and estimation of gross profit by assessing officer at Rs.46,38,990/- and on appeal by assessee, the ld CIT(A) restricted the gross profit at Rs.9,47,948/-.

5. The facts of the case may be briefly stated. The assessee before us is a partnership firm and engaged in business activities of stone crushing and selling of crushed stones. During the assessment proceedings, the Assessing Officer noted that the difference in cash found during the course of survey, denotes that there is some unaccounted purchases/ sales /misappropriation of expenditure etc. Therefore, assessing officer observed that in such situation, the book results could not be considered as correct and complete in all respects. To further decide the authenticity of books of accounts, the bills and vouchers of cash payment were verified by the assessing officer. On verification of the vouchers, the following defects were found:

(i) The vouchers are not serially numbered.

(ii) One of the vouchers is not signed by the person receiving the payment.

(iii) The complete names and address of the persons receiving the payment are not mentioned, so as to verify by the AO.

(iv) The voucher books are of different colours. This means that the assessee has no regular system of preparing vouchers of payments made by him.

(v) Apart from this, the assessing officer observed that the assessee is doing so many transactions outside its regular books of accounts, such as receipt of unaccounted commission, purchase and sale of property outside books and

> purchase of machinery in cash outside books of account. The clear point that assessee is in habit of doing its business outside its books of accounts. Therefore, the books of accounts maintained by assessee are not at all reliable and deserve to be rejected.

In view of the above, the difference in cash found during the survey and other business done by assessee out of which disclosure is made (as they are not part of books of account), it cannot be considered that the books of assessee are complete and correct in nature. The books result is required to be rejected as they do not show the correct picture of assessee's business in view of the fact that in the audit report, the assessee has not given quantitative details of principal item of goods traded as per column No.35(a) & (b) wherein it is written as "NIL". This clearly means that assessee is not maintaining day-to-day stock register, inward and outward register. Hence, in view of these grave discrepancies, the books of accounts were proposed to be rejected u/s 145(3) of the Act by the assessing officer and for that the assessing officer issued a show cause notice to the assessee.

6. In response to the notice of the Assessing Officer, the assessee has submitted his reply before the Assessing Officer, on 28.12.2016. However, the Assessing Officer rejected the reply of the assessee and observed that assessee has not produced any documentary evidences in support of its claim. While verification of books of account several objections were found which were brought to the knowledge of the assessee. Further assessee is indulging in unaccounted transactions which are not reflected in his books of accounts. In view of grave discrepancies as mentioned above, the book results of the assessee cannot be accepted. The fact that there has been a fall of 6.03% (36.74 -30.71) in the gross

profit ratio, as compared to the preceding year and no specific reasons have been given nor any evidence produced to substantive and justify the fall in gross profit percentage. Thus, the trading result of the assessee's business does not reflect the true picture of its business affairs. Therefore, the book result cannot be considered as reliable. In absence of complete details, the book results were rejected by the Assessing Officer u/s 145(3) of the Act and an addition of Rs.46,38,990/- on account of fall in gross profit was made to the total income of assessee.

7. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A), who has partly deleted the addition observing as follows:

> *"6.5 Further, it is observed that apparently the survey team has not found any discrepancies in the book results of trading account of the appellant during the course of survey proceedings, but only found some other discrepancies like unaccounted cash, unaccounted commission income, unaccounted purchase of machinery in cash & unaccounted profit on sale of land, which was disclosed by the appellant and shown in the return of income as other income. It is also important to mention here that the appellant's claim have some force that even if there is an addition for GP for pre survey period, the appellant has declared more income than whole year GP shortfall and thus there is nothing left for GP addition. Thus, it can be concluded that the action of the AO in making addition on account of GP for the pre survey period i.e. from 01.04.2013 to 21.01.2014 is not justified.*
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> *6.6 Further, on perusal of the trading account of the appellant for the period of pre survey (from 01.04.2013 to 21.01.2014) and post survey (form 22.01.2014 to 31.03.2014), it is observed that there is short fall in GP of 44.43% during the post survey period in comparison to pre survey period. It is significant to mention here that the appellant has given general explanation regarding increase in purchase value of material for processing & reselling. However, the appellant has not explained the reason for the said discrepancies in the shortfall of the said GP in the post survey period in comparison to pre survey period, with supporting bills vouchers etc. Thus, keeping in view of the facts mentioned above, the GP is estimated @ 31.94% (GP shown in the pre survey period) for the post survey period of GP shown @ 27.51%. Thus, the G.P addition for the post survey period comes to Rs.9,47,948/- (4.43% of Rs.2,13,98,372/-)*
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> *6.7 In view of the above, the AO is directed to consider the confirmed addition of Rs.9,47,948/- in place of addition made of Rs.46,37,990/-. Thus, remaining*

addition of Rs.36,90,042/- is deleted. Thus, the grounds of appeal no. 1 to 5 are partly allowed."

8. Aggrieved by the order of Ld. CIT(A) the assessee is in appeal before us.

9. The Learned Counsel for the assessee submitted that Assessing Officer has rejected the books of account without any valid reason. The ld Counsel stated that there were some discrepancies in the hand-made vouchers, on account of conveyance expenses, where bills are not available than in that case, books of accounts should not be rejected, as these defects were minor in nature. A few money was found in survey, which was not recorded in the books of account, cannot be a reason to reject the books of accounts. Therefore, ld Counsel contended that books of accounts, of assessee should not be rejected.

10. On the other hand, Ld. Sr.DR for the Revenue defended the order passed by the Assessing Officer and stated that during the course of survey proceedings, the assessee has admitted the undisclosed amount, which were not recorded in its books of account. Therefore, books of accounts, even if they are audited should not be relied, as the assessee made transactions outside the books of accounts. The Assessing Officer has also pointed out several defects in the books of accounts, which were mentioned in para-5.4 at page 9 of assessment order. Therefore, ld DR contended that the books of accounts were rightly rejected by the Assessing Officer and hence ld DR prays the Bench that addition made by the assessing officer may be upheld.

11. We have heard both the parties and perused the materials available on record. We note that vouchers submitted by the assessee were not serially numbered and assessing officer noticed that some vouchers were

not signed by the person receiving the payment. The complete names and address of the persons receiving the payment are not mentioned, so Assessing Officer could not verify the claim of the assessee. Apart from this, the assessee was doing so many transactions outside its regular books of accounts, such as receipt of unaccounted commission, purchase and sale of property outside books and purchase of machinery in cash outside books of account. Therefore, the books of accounts maintained by assessee are not at all reliable and therefore Assessing Officer has rightly rejected the books of accounts of the assessee. In view of the above facts, we upheld the rejection of books of accounts u/s 145(3) of the Act. Hence, we do not find any merit in the submission made by Ld. Counsel for the assessee. Therefore, we dismiss the grounds Nos. 1 to 5 and ground No.8 raised by assessee.

12. In the result, grounds Nos. 1 to 5 and ground No.8 raised by the assessee are dismissed.

13. Now coming to ground No.6, which relates to disallowance of deduction claimed u/s 35(i)(ii) of the Act, to the tune of Rs.26,25,000/-.

14. At the outset, Ld. Counsel for the assessee, argued that this issue is squarely covered by several judgments, in favour of assessee. The assessee made the donation to the Human Genetic and Population Health, Kolkata during the period when the notification in favour of Human Genetic and Population Health was in force. Therefore, subsequent withdrawal of the notification by the Government, would not make disentitle to the assessee to claim deduction u/s 35(i)(ii) of the Act.

15. On the other hand, Ld. Sr-DR for the Revenue submitted that the license of Human Genetic and Population Health was cancelled by the

Central Government, subsequently by issuing notification and said notification was omitted by the Central Government right from the beginning, as if no notification was issued to that effect. In other words, ld DR stated that the notification issued by the Central Government, in respect of Human Genetic and Population Health, was declared *ab initio* void, as if, no licence was granted to this organization, therefore any donation made to Human Genetic and Population Health should be disallowed in the hands of the person who gave the donation.

16. We have heard both the parties and perused the materials available on record. We note that the issue under consideration is squarely covered by the judgment of Hon'ble Bombay High Court in the case of The National Leather Cloth vs. Indian Council of Agricultural (1999) 241 ITR 482 (Bom), *wherein* it was held as follows:

> *"3.The only question that arises for consideration is whether the assessee who donated a sum of Rs.2,00,000/- to the scientific research association on the basis of the approval granted by the prescribed authority to it for the purposes of Clause (ii) of sub-section (1) of section 35 of the Act by notification in the Official Gazette at the material time can be adversely affected by the withdrawal of the approval subsequently with retrospective effect by the prescribed authority. We have already decided identical controversy in the context of deduction under section 35-CCA of the Act in Writ Petition No.957 of 1990. Law is now well-settled that the assessee is entitled to rely upon the certificate granted by the prescribed authority under section 35(1)(ii) of the Act to the institution or association to which it had donated any sum of money for claiming deduction under that section if it was subsisting and valid at the time the donation was made. Tehe retrospective withdrawal and/or cancellation of the certificate will have no effect upon the as who has acted upon it when it was valid and operative."*

17. We also note that the issue is also covered in favour of assessee by the judgment of Hon'ble jurisdictional High Court in the case of Principal Commissioner of Income Tax-3 vs. M/s Thakkar Govindbhai Ganpatlal HUF Tax Appeal No.881 of 2019 dated 20.01.2020, *wherein* the Hon'ble jurisdictional High Court held as follows:

> *"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 done. He has not brought on record a specific evidence wherein done 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 done, the donation made by the assessee cannot be doubted. Neither representatives of the done 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 done, on which the assessee no mechanism to check the veraci, 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."*

18. We also note that the said issue is also covered by the order of ITAT Ahmedabad Benches in the case of ACIT vs. Chloritech Industries in ITA No.s 67-68/AHD/2022 dated 21.04.2023, *wherein* it was held as follows:

> *8. We have heard the rival contentions and perused the material on record. We observe that the ld. CIT(A) has placed reliance on the decision of Hon'ble Gujarat High Court in the case of PCIT vs. M/s. Thakkar Govindbhai Ganpatlal HUF supra in which on similar set of facts the claim of deduction u/s. 35(1)(ii) of the Act in respect of donations made to HHBRF was allowed to the assessee. It would be useful to reproduce the relevant extract of the judgment for ready reference:-*
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> > *"3. The assessee filed its return of income for the year under consideration on 09.09.2014 declaring total income at Rs.31,23,870/-. A notice was issued under Section 143(2) of the Act by the Assessing Officer, calling upon the assesses to explain as to why the deduction of Rs.96,25,000/-, claimed under Section 35(1) (ii) being donation for scientific research of the I.T. Act, 1961, should not be disallowed. According to the Assessing Officer, the donation given to one M/s. Herbicure Healthcare Bio-Herbal Research Foundation (for short 'the Herbicure'), was not a genuine research foundation. The Assessing Officer, relied upon the survey under taken under Section 133A of the Act, conducted by the DDIT (Investigation, Kolkata) at Herbicure and during the course of the survey it was found that the donor/beneficiaries in connivance with Herbicure with the active help of brokers, entry operators/bogus billers were engaged in bogus donation syndicate and the donations were returned back to the donors in lieu of commission. Therefore, the amount claimed under Section 35(1)(ii) was disallowed by the Assessing Officer.*

4. Assessee, therefore, being aggrieved and dissatisfied by the assessment order, preferred an Appeal before the CIT (Appeals). The CIT (Appeals) deleted addition, holding as under:

> *"In view of above facts and case law(supra), I agree with the appellant that the amount of donation has been transferred to the foundation through banking channel and there is no evidence that the same has been returned in cash. Moreover, the trust has confirmed that such amount has been utilized for scientific research vide confirmation dated 29.05.2015. The receiver foundation shall not be confirming the same unless the amount has been utilized for scientific research. The onus has been discharged by the appellant. In the circumstances, it cannot be concluded that the foundation was involved in 100% bogus activity in A.Y.2014-15 which was much before the cancellation notification issued by CBDT u/s. 35(1) (ii). The grounds of appeal are* ***allowed****."*

5. The Revenue carried the matter before the Tribunal. After considering the facts and findings given by the CIT (Appeals), relying upon the decision in the case of S.G.Vat Care Private Limited in ITA No.1943/Ahd/2017, Tribunal confirmed the deletion made by the CIT (Appeals) on the ground that the there was no disparity of facts in the present case and in the case of S.G.Vat Care Private Limited (Supra) .
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 assesses is that the Id.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.*
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> *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 donation 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 Id.CIT(A) did not bring any relief to the assessee.*

4. Before us, the Id. 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 ld. 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 assesses to the donee, on which the assessee no mechanism to check the veraci, 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 arise from the order of the Tribunal. Therefore, the appeal fails and is hereby, ***dismissed****."*

8.1 In the light of the observations made by the Hon'ble Gujarat High Court and the detailed order passed by the ld. CIT(A) on the issue by placing reliance on the aforesaid order passed by the Hon'ble Gujarat High Court, we are of the considered view that there is no infirmity in the order of ld. CIT(A) so as to call for any interference. In the result, the appeal of the Department is dismissed."

19. Therefore, we note that the issue raised by assessee is squarely covered in his favour, by the judgments of Hon'ble Bombay High Court in the case of The National Leather Cloth (supra) and Hon'ble jurisdictional High Court in the case of M/s Thakkar Govindbhai Ganpatlal HUF (supra) and co-ordinate Bench of ITAT Ahmedabad in the case of Chloritech Industries (supra). Therefore, respectfully following the binding precedents, we allow ground No.6 raised by assessee.

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

Order is pronounced on 16/10/2023 by placing the result on the Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat/दिनांक/ Date: 16/10/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat