

ITA No. 546/KOL/2023
Assessment Year: 2012-2013
&
C.O. No. 13/KOL/2023 (in ITA No. 546/KOL/2023)
Shalimar Hatcheries Ltd.

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 546/KOL/2023)
Assessment Year: 2012-2013
Assistant Commissioner of Income Tax,....Appellant
Central Circle-2(1), Kolkata,
Aayakar Bhawan Poorva, 3rd Floor,
110, Shanti Pally, Kolkata-700107
-Vs.-**

**Shalimar Hatcheries Ltd.,.....Respondent
46C, Chowringhee Road, Park Street,
17th Floor, EVEREST HOUSE,
Kolkata-700071
[PAN: AADCS6537J]**

**- A N D -
C.O. No. 13/KOL/2023
(in I.T.A. No. 546/KOL/2023)
Assessment Year: 2012-2013**

**Shalimar Hatcheries Ltd.,.....Cross Objector
46C, Chowringhee Road, Park Street,
Kolkata-700071
[PAN: AADCS6537J]
-Vs.-**

**Assistant Commissioner of Income Tax,....Respondent
Central Circle-2(1), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107**

Appearances by:

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

Shri A.K. Tulsyan, A.R., appeared on behalf of the assessee

Date of concluding the hearing : January 18, 2024
Date of pronouncing the order : January 24, 2024

O R D E R

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

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-20 dated 27.03.2023 passed for A.Y. 2012-13.

2. On receipt of notice in the Revenue's appeal, assessee has filed Cross Objection bearing No. 13/KOL/2023. The Revenue has raised five grounds of appeal. However, its grievance revolves around a single issue, namely whether assessee is entitled for deduction of Rs.1,75,00,000/- under section 35(1)(ii) of the Income Tax Act, 1961. This donation has been made to M/s. School of Human Genetic and Population Health, Kolkata. As far as this issue is concerned, the decision over it is covered in favour of the Revenue and against the assessee by the ITAT, Kolkata in the case of Tarasafe International Pvt. Limited -vs.- DCIT in ITA No. 261/KOL/2020 dated 7th March, 2023. However, before taking up the issue on merit, we deem it appropriate to consider the jurisdictional aspect pleaded by the assessee in the Cross Objection. Therefore, we first take the Cross Objection filed by the assessee.

3. **C.O. No. 13/KOL/2023**

The assessee has raised four grounds in the Cross Objection. As far as Ground No. 4 is concerned, it is a general ground, which does not call for recording of any finding. Hence, it is rejected.

4. Grounds No. 2 & 3 are in support of the Id. CIT(Appeals)'s finding. They are connected with the issue agitated by the Revenue in its appeal. Therefore, we will take up these issues along with the grounds of appeal raised by the Revenue.

5. The only preliminary issue, which has been agitated by the assessee in its Cross Objection, is pleaded in Ground No. 1. The assessee has pleaded that Id. CIT(Appeals) has erred in not allowing the assessee's objection under section 147 of the Income Tax Act. The Id. CIT(Appeals) has erred in upholding the reopening of the assessment.

6. Brief facts of the case are that the assessee is a Private Company and derived its income from Poultry Breeding and Hatching. It has filed its return of income under section 139 on 21.09.2012 declaring total income of Rs.11,49,31,703/-. A search under section 132 of the Income Tax Act, 1961 was conducted in the business premises of the assessee and residence of the Directors on 13.12.2012. Since time limit to issue notice under section 143(2) on the original return was not

expired, therefore, this assessment has been taken as a regular assessment and income of the assessee was assessed under section 143(3) read with section 153A on 27.03.2015.

7. The Id. Assessing Officer thereafter received an information from DDIT, Kolkata exhibiting the fact that the assessee had given donation of Rs.1,00,00,000/- to M/s. School of Human Genetic and Population Health, Kolkata. The assessee has claimed weighted deduction under section 35(1)(ii) for donating to an assessee, which is engaged in the research activity. However, Investigation Wing of the Income Tax Department found that M/s. School of Human Genetic and Population Health was engaged in providing accommodation entries to the assessee. The Id. Assessing Officer has recorded the reasons and thereafter issued notice under section 148 of the Income Tax Act on 16.03.2016. This notice was duly served upon the assessee and in response to the notice the assessee submitted a letter dated 23.04.2016, which was received by the Id. Assessing Officer on 24.04.2016. Vide this letter the assessee has requested the Id. Assessing Officer that original return file be treated as return filed in response to the notice under section 148 of the Income Tax Act.

8. The Id. Counsel for the assessee while impugning the order has raised two-fold of submissions. In his first fold of submission, he emphasized that the assessee has filed objections

against reopening of the assessment and those objections have not been decided by the ld. Assessing Officer before taking the assessment proceeding. Therefore, the reassessment order is not sustainable. For buttressing this contention, he relied upon a large number of decisions, namely-

(i) Jayanthi Natarajan -vs.- ACIT 100 taxmann.com511(Madras High Court- Order dated 14.09.2017;

(ii) SAK Industries Pvt. Ltd. -vs.- DCIT 19 taxmann.com 237 (Delhi)- order dated 16.02.2012;

(iii) Bayer Material Science Pvt. Limited -vs.- DCIT - 66 taxmann.com 335 (Bombay)- Order dated 27.01.2016;

(iv) Swadesh Trading Co. -vs.- DCIT 111 taxmann.com 446 (Karnataka)- Order dated 03.09.2019;

(v) Torrent Power SEC Ltd. -vs.-ACIT - 45 taxmann.com 443 (Gujarat)- Order dated 12.03.2014;

(vi) Nimitaya Hotel & Resorts Ltd. -vs.- ACIT - 109 taxmann.com 185 (delhi)- Order daed 01.04.2019;

(vii) Arvind Sahdeo Gupta -vs.- ITO - 153 taxmann.com 244 (Bombay) - Order dated 08.08.2023;

(viii) Ferrous Infra Pvt. Ltd. -vs.- DCIT- 63 taxmann.com 201 (Delhi)- Order dated 21.05.2015.

Sr. 1 to 8 (index)

The copies of these decisions have been filed before us as discernable from the above Index.

9. We have duly considered the rival contentions and gone through the record carefully. A perusal of the assessment order would reveal that notices under sections 143(2) and 142(1) were issued on 30.05.2016 fixing the case for hearing on 06.06.2016. It means that reassessment machinery was put in motion. The assessee has allegedly filed the objections vide letter dated 29.08.2016, whose copy is being filed by the ld. Counsel for the assessee in a supplementary paper book, though without any certificate. The ld. Assessing Officer has nowhere taken cognizance of this letter in the impugned assessment order, straightway proceed to take note of the reply submitted by the Tax Consultant of the assessee vide letter dated 08.06.2016 assuming that this letter was filed by the assessee and we take cognizance of this. We assume that these objections were filed and not disposed of by the ld. Assessing Officer whether that step at the end of the ld. Assessing Officer would vitiate the assessment order and it is to be held that the proceeding initiated under section 148 of the Income Tax Act would be culminated to an end.

10. We have perused the judgments of Hon'ble Courts. The first judgment put into service by the ld. Counsel for the assessee is of

Hon'ble Madras High Court in the case of Jayanthi Natarajan – vs.- ACIT [100 taxmann.com 511 (Madras)]. In this judgment, Hon'ble Madras High Court accepted the contention of the assessee that if Assessing Officer failed to decide the objections filed by the assessee, then, assessment order is to be quashed. However, this view did not meet the approval of a Division Bench of Hon'ble Madras High Court. Immediately after this decision, the Division Bench of Hon'ble Madras High Court has considered this issue in the case of Home Finders Housing Limited –vs.- ITO in Writ Appeal No. 463 of 2017 delivered on 25.04.2018. The Hon'ble Madras High Court did not concur with its earlier decision of the Hon'ble Single Bench. In the Writ Appeal, Hon'ble Madras High Court has held that non-disposal of objections filed by an assessee against the reopening is a procedural irregularity, which would not culminate the proceeding itself to an end.

11. Similarly Hon'ble Delhi High Court in the case of SAK Industries Pvt. Limited –vs.- DCIT (supra) has set aside the issue to the file of ld. Assessing Officer for disposing of the objections in a time bound period and thereafter framing the assessment. Thus Hon'ble Delhi High Court was also of the view that non-disposal of the objection of an assessee against reopening would not be construed fatal to a proceeding. It was a procedural irregularity, which is to be cured and assessment proceeding is to be undertaken again after removal of the procedural irregularity.

The finding of the Hon'ble High Court in paragraph no. 14 of this decision is worth to note, which reads as under:-

We are informed that the Assessing Officer, i.e. respondent No.1, has now changed. The Assessing-Officer will now pass a fresh order on the objections raised by the petitioner in terms of direction issued by the Supreme Court in GKN Driveshafts (India) Ltd. (supra). The petitioner will appear before the Assessing Officer on 5th March, 2012, when a date of hearing will be fixed and an order disposing of the objections will be passed on or before 16th March, 2012. In case of an adverse order, the Assessing Officer shall give 15 days time to the petitioner to take further steps, in accordance with law, and fix the next date of hearing accordingly. The learned counsel for the petitioner submits that they will not raise any objection with regard to the limitation period and a time period may be fixed for passing the re-assessment order. Keeping in view of the aforesaid facts, it is directed that it will be open to the Assessing Officer to thereafter proceed with the assessment and pass a re-assessment order on or before 15th May, 2012. The assessee must fully cooperate in the proceedings. The concerned Commissioner will examine the reassessment file in the present case and is at liberty to take appropriate action, if warranted”.

12. In the subsequent decision in the case of Home Finders Housing Limited –vs.- ITO, Hon'ble Madras High Court has also remitted the matter back to Id. Assessing Officer for disposal of the objection. Both these decisions are on the Writ Petition. The subsequent decision of the Hon'ble Madras High Court is on a Writ Appeal.

13. The proposition in other decisions namely Hon'ble Karnataka High Court, Hon'ble Gujarat High Court are on the same line. The directions of the Hon'ble Gujarat High Court in

the case of Torrent Power SEC Ltd. contained in paragraph no. 23 read as under:-

“23. Respondent is directed to consider the objections raised by the petitioner against the impugned notice of reopening and dispose of the same within eight weeks of receipt of this order in the light of the settled law and the decision of the appellate authority in the very case of the petitioner. The order if is adverse, period of eight weeks shall be made available to the petitioner for him to approach this Court on judicial side. Respondent shall pay the cost to the petitioner and bear his own cost. Disposed of accordingly. Rule is made absolute to the above extent”.

Therefore, Hon'ble High Courts are unanimous in their approach that in case objections filed by the assessee against the proposition, reopening of assessment are not disposed of, then such an action of the Id. Assessing Officer would not be fatal to the proceeding, rather it is to be construed as a procedural irregularity, which can be cured. All these decisions are rendered on the Writ Petition filed by the assessee during the pendency of assessment proceedings itself.

14. It is pertinent to observe that an appeal before the Tribunal as second Appellate Authority is continuation of original assessment proceeding. The assessee in those judgments have approached the Hon'ble High Court to safeguard themselves from undergoing an assessment proceeding, which would otherwise put cost on their resources for defending such a proceeding. But in the present case, assessee has already undergone that proceeding and raised objections. Therefore, we invited the Id. Counsel for the assessee to explain as to how the acceptance of

those objections would render the assessment proceeding in nullity and if that be so, we will drop the proceeding by quashing the reassessment order. Therefore being a Second Appellate Authority assume our powers as of an Assessing Officer for examining those objections on merit because error committed by the Id. Assessing Officer is a curable error, which is procedural one and, therefore, we can consider those objections filed by the assessee before the Id. Assessing Officer.

15. We have perused the letter dated 29.08.2016. The objections are running into 10 pages. However, they are narration of various judgments, which started from page no. 3 of the objections. Apart from those judgments, the only pleading taken in the objection reads as under:-

“1. We would like to submit here that the Income for the Asst. Year 2012-13 was correctly returned u/s139 and there has been no escapement of any income.

2. Further, the filing of the Return in response to the notice u/s148 is not acceptance to the proceedings initiated u/s147 of the Act. We had our reservations on the validity of your notice u/s148 and we have not legally accepted the said Notice u/s148. However, the Return of Income , in response to your Notice u/s148, was filed in accordance to the pronouncement by the Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd Vs ITO & Others (2003)179 C54 (SC).

3. From the reasons provided as stated above it is apparent that the proceedings has been initiated only on the basis of information from the DDIT(Inv),Kol and on the satisfaction (if any), of DIT (Inv), Kolkata only, that income of the assessee company has escaped assessment.

4. From the above it is clear that you have formed your belief solely on the basis of survey report of DDIT(lnv). The report says that The School of Human Genetic and Population Health is not doing any scientific research and engaged in providing bogus donation u/s 35(i)(ii) of the I.T. Act in lieu of commission. However, from the said show cause notice it is not clear whether the treasurer or secretary has named the assessee that they have received donation in lieu of commission and returned back cash. You have blindly relied on the survey report and formed your belief.

5. Thus, from above, it is clear that the proceedings u/s147 in this case, has been initiated against the provisions of the Income Tax Act and is initiated without proper "reason to believe" that the income has escaped assessment.

It is also clear from the above that the reason [i.e information from the DDI(lnv)] given by you for issuance of Notice u/s148, can, at the most, be a 'reason to suspect' and is not a "reason to believe".

It is also clear from the above that the proceedings have been initiated on the basis of information from the DIT (Inv), Kolkata and on the satisfaction (if any), of DIT(Inv), Kol only, that income of the assessee company has escaped assessment.

6. As per provisions of Sec 147 of the I. T. Act, proceedings u/s 147 can be initiated only if there is 'reasons' to form 'belief that income of an assessee has escaped assessment.

As it has been held in various judicial pronouncements, the proceedings u/s147, cannot be initiated on the basis of 'reasons to suspect' only, whatever strong the suspicion may be. Mere suspicion of escapement income does not empower to make assessment / reassessment u/s147.

Similarly, it has also been held in various judicial pronouncements that the reasons recorded for initiating the proceedings u/s147, have to speak for themselves. The reasons must provide a live link to the formation of the belief that income had escaped assessment. The reasons cannot keep the assessee guessing for the reasons for initiating the proceedings u/s147. These reasons cannot be supplied

subsequent to the recording of such reasons either in the form of an order rejecting the objections or an affidavit filed by the Revenue.

Further, it is also well established law that the satisfaction with respect to escapement of assessment of income must be of the A.O. himself and not a borrowed satisfaction. If the proceedings u/s147 is initiated on the satisfaction recorded by some other authority, like Sales Tax, Excise or Director of Investigation without recording own satisfaction by the AO, the initiation of proceeding u/s 147 of the Act have been held as bad in law.

16. Apart from the above, we have gone into rest of the judgments filed by the ld. Counsel for the assessee during the course of hearing while challenging the reopening of assessment. He submitted in the second-fold, that the assessee has filed its original return, which was duly gone into an assessment under section 143(3) read with section 153A, the search upon the donee took place before completion of assessment order in the case of assessee. The assessment order was completed on 27.03.2015 whereas search upon the donee was conducted somewhere in the month of January. Therefore, all the information regarding the alleged claim of deduction under section 35(1)(ii) was already in the knowledge of the Department. The ld. Assessing Officer could have taken remedial actions. In its objection, similar thing has been pleaded by the assessee emphasizing the point that its claim was examined in a scrutiny assessment, which was allowed. It is not ascertainable whether Secretary of the Donee Trust has named the assessee or not. In support of this proposition, assessee has filed one more paper book containing 16 judgments.

17. We have duly considered all these contentions and the proposition raised in those judgments without specifically dealing each one of them, because it is just a step at the end of the assessee to persuade the Tribunal to undertake an academic exercise. The simple question of fact is, whether search/survey carried out on the donee 2-3 months prior to the finalisation of the scrutiny assessment of the assessee would be construed as if material was transmitted to the knowledge of the ld. Assessing Officer or not. In this regard, we are of the view that immediately after the search and survey upon a donee, the material will not be amplified and distributed amongst all the ld. Assessing Officers throughout the country. It was a fraud in an organized manner spreading over throughout the country in which the assessee is also a beneficiary. So it is not humanly possible for the ld. Assessing Officer to lay his hands on that material before finalisation of the assessment order. It is totally new information given to the ld. Assessing Officer by the DDIT, Kolkata.

18. In the next fold of contention, it has been pleaded by the ld. Counsel for the assessee that the ld. Assessing Officer has used borrowed opinion for harbouring the belief that income has escaped assessment. Copy of the reasons for reopening has been placed by the ld. Counsel for the assessee in the second supplementary paper book, which is available on page 2. The ld. Assessing Officer has formed an opinion that on the basis of

information received from DDIT, it is found that assessee has taken a bogus donation. How it can be termed as a borrowed opinion. The DDIT has transmitted the details exhibiting the fact that donee was engaged in providing accommodation entries to alleged such donors. Therefore, we do not deem it necessary to recite six case laws referred by the ld. Counsel for the assessee on this point because it is a question of fact and not any proposition. We agree if there is no specific information to the ld. Assessing Officer, and he has blindly followed some dictum, then reopening is not justified but here the DDIT has remitted the information and on that basis he formed his opinion.

19. The ld. Counsel for the assessee further contended that ld. CIT(Appeals) has erred in rejecting its ground of reopening by following the case law where original assessment was processed under section 143(1) of the Income Tax Act. We are of the view that ld. Assessing Officer reopened the assessment on the basis of information transmitted to it by the DDIT (Investigation). Therefore, that investigation revealed that more than 1500 donors have taken accommodation entries. The ld. Assessing Officer has gone through these materials and thereafter *prima facie* formed an opinion. Therefore, by making reference to a case law where original assessment was under section 143(1) would not make much change in the opinion formed by the ld. 1st Appellate Authority. The question is assessment has been reopened within four years from the end of the assessment year.

There was a specific information, which has duly been perused by the Id. Assessing Officer before forming the opinion that income has an escaped assessment. Therefore, after considering all the case laws relied upon by the assessee, which are running into more than 300 pages, we do not find any merit in the Cross Objection raised by the assessee. Accordingly 1st ground of the Cross Objection is rejected.

20. Now we take solitary grievance of the Revenue, that Id. CIT(Appeals) has erred in deleting the disallowance of deduction claimed under section 35(1)(ii) alongwith this filed a grievance. We take rest of the grounds of Cross Objection, which are in support of the Id. CIT(Appeals)'s order.

21. In the past, ITAT has consolidated a number of appeals involving this issue in the case of M/s. Tarasafe International Pvt. Limited -vs.- DCIT in ITA No. 261/KOL/2020 and others. The Tribunal vide its Order dated 7th March, 2023 has decided those appeals. The relevant part of the order reads as under:-

"It is a Bunch of 13 appeals and one of the major issues involved in all these appeals is common, therefore, we heard them together and deem it appropriate to dispose of them by this common order. In order to appreciate the facts in a simplified manner, we deem it appropriate to take note of the facts in a seriatim from each appeal.

2. ***ITA No. 261/KOL/2020***
(Tarasafe International Pvt. Limited)

The assessee is impugning the order of Id. Commissioner of Income Tax (Appeals) dated 29.11.2019 passed in A.Y. 2013-14, which has arisen against the assessment order

dated 30.03.2016 passed under section 143(3) of the Income Tax Act. The assessee has taken eleven grounds of appeal. However, on perusal of the grounds, it revealed to us that basically three-folds of grievance are being raised by the assessee, namely-

- (a) in Grounds No. 2 to 6, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the action of the ld. Assessing Officer for not allowing the deduction of Rs.87,50,000/- claimed under section 35(1)(ii) of the Income Tax Act, 1961;*
- (b) In Grounds No. 7 & 8, the assessee has submitted that ld. CIT(Appeals) has erred in confirming the action of the ld. Assessing Officer for considering disallowance of Rs.87,50,000/- under normal provisions for computing book profit and thereby erred in calculating the book profit at Rs.4,17,01,736/- as against returned book profit of Rs.3,29,51,736/-.*
- (c) The ld. Assessing Officer has erred in charging interest under section 234C of the Income Tax Act.*

2.1. In rest of the grounds, i.e. Grounds No. 1 & 11, it has not raised any specific grievance. Similarly Grounds No. 3 to 6 are supporting arguments with Ground No. 2.

2.2. Brief facts of the case are that the assessee-company has filed its return of income electronically on 29.09.2013 disclosing total income at Rs.2,41,07,380/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued on 04.09.2014, which was duly served upon the assessee. The ld. Assessing Officer thereafter issued a questionnaire by way of a notice under section 142(1). During the course of assessment proceeding, it revealed to the ld. Assessing Officer that assessee has claimed weighted deduction of Rs.87,50,000/- under section 35(1)(ii) of the Income Tax Act. The ld. Assessing Officer has observed that a donation of Rs.50,00,000/- has been paid by the assessee to the School of Human Genetics and Population Health (in short 'SHG&PH') and in lieu of such donation, it has claimed deduction @ 175% of the donation. The ld.

Assessing Officer has disallowed such claim of the deduction on the ground that SHG&PH undertakes the transaction of bogus donation through false billing and by providing accommodation entries in this matter. The ld. Assessing Officer has made reference to the investigation carried out in the case of recipient as to how the recipient has gone in Settlement Commission admitting that in lieu of service charges, it has provided accommodation entries of the donation to the donors. Armed with this information, ld. Assessing Officer has confronted the assessee to show its bonafide belief as to how such donation was made. According to the ld. Assessing Officer, nothing was submitted by the assessee except that donation was given to a duly recognized Institution for receiving such donation. In this way, ld. Assessing Officer has made the addition. As far as computation of book profit under section 115JB is concerned, ld. Assessing Officer did not make much discussion. He carried out such adjustment only in the computation.

2.3. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee. The ld. CIT(Appeals) has allowed partly on other small disallowances, but the issues agitated before the Tribunal, ld. CIT(Appeals) has concurred with the ld. Assessing Officer.

**3. ITA Nos. 107/KOL/2020 & 108/KOL/2020
(REACHASIA)**

The present two appeals are directed at the instance of assessee against the separate orders of ld. CIT(Appeals) dated 02.12.2019 passed on the appeals of the assessee for A.Y. 2013-14 and 2014-15.

3.1. The assessee has taken two grounds of appeal in A.Y. 2013-14 and three grounds of appeal in A.Y. 2014-15.

3.2. Ground No. 1 in A.Y. 2013-14 is similar with Ground No. 1 in A.Y. 2014-15. In this ground of appeal, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the disallowances of deduction amounting to Rs.35,00,000/- and Rs.17,50,000/-, which were claimed by the assessee under section 35(1)(ii) for grant of donation to SHG&PH i.e. School of Human Genetics and Population Health.

3.3. Ground No. 2 is common with Ground No. 3 of A.Y. 2014-15. In this ground, the assessee has not raised any specific grievance. In A.Y. 2014-15, it has raised one more ground of appeal whereby it has challenged the disallowance of Rs.13,12,500/-, which was claimed deduction @ 175% in respect of donation of Rs.7,50,000/- to Maitribani Institute of Experimental Research & Foundation.

3.4. Brief facts of the case are that the assessee has filed its return of income on 30.09.2013 and 29.11.2014 declaring total income of Rs.61,76,369/- and Rs.62,00,581/- respectively in A.Y. 2013-14 and 2014-15. The returns of both the years were selected for scrutiny assessment and notices under section 143(2) were issued and served upon the assessee. The ld. Assessing Officer found that the assessee has given donation to SHG&PH, similarly to Maitribani Institute of the Experimental Research & Foundation, Kolkata. He observed that both the Trusts were involved in providing accommodation entries in lieu of such donations. SHG&PH has admitted this fact before the Settlement Commissioner and offered its commission income for providing such an accommodation to the assessee. The ld. Assessing Officer accordingly disallowed the claim of the assessee in both the years and appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

4. **ITA No. 136/KOL/2020**
(P.S. Magnum)

The present appeal is directed at the instance of assessee against the order of ld. CIT(Appeals) dated 02.12.2019 passed for A.Y. 2013-14.

4.1. The appeal before the ld. CIT(Appeals) was filed against an assessment order dated 10.06.2016 passed under section 143(3) of the Income Tax Act. The assessee has taken five grounds of appeal, but its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the disallowance of claim under section 35(1)(ii) of the Income Tax Act amounting to Rs.3,50,00,000/-.

4.2. Brief facts of the case are that the assessee-firm had filed its return of income on 26.11.2013 declaring its total income of Rs.5,42,42,510/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld.

Assessing Officer thereafter issued a questionnaire under section 142 of the Income Tax Act. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that assessee has claimed deduction of Rs.3,50,00,000/- under section 35(1)(ii) of the Income Tax Act. The assessee has shown an expenditure of Rs.2,00,00,000/- under the head "Administrative Expenses". This has been debited under Sub-Head "Donation for Scientific Research". In the return under Schedule (e), it claimed a deduction of Rs.3,50,00,000/-. The ld. Assessing Officer has disallowed this deduction. He has made a similar discussion as made in the earlier two appeals of the Group. He has made reference to the statements, for appreciating the affairs of SHG&PH, recorded during post-survey enquiry in their cases. He has made reference as to how the donors went to the Settlement Commission and admitted the fact that they have provided only accommodation entries on commission based. All these materials were confronted to the assessee.

5. ***ITA No. 23/KOL/2020***
M/s. Coalsale Co.

The present appeal is directed at the instance of assessee against the order of ld. CIT(Appels) dated 24.12.2019 passed for A.Y. 2015-16.

5.1. The assessee has raised five grounds of appeal, but its grievances revolve around a single issue, namely ld. CIT(Appels) has erred in confirming the disallowance of deduction claimed under section 35(1)(ii) amounting to Rs.17,50,000/-.

5.2. Brief facts of the case are that the assessee has filed its return of income electronically on 27.09.2015 declaring total income of Rs.1,43,82,590/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee has paid a donation of Rs.10,00,000/- to M/s. SHG&PH. It has claimed deduction under section 35(1)(ii) of the Income Tax Act @ 175% of the donation given by it. In this way, a deduction of Rs.17,50,000/- was claimed. The ld. Assessing Officer has made reference towards the evidence collected by Investigation team on the recipient of the donation, i.e. on the SHG&PH. The ld. Assessing Officer has confronted the

assessee as to how such recipient was involved in providing accommodation entry under the garb of receipt of donation and as to how the recipient has admitted this fact on oath before the Settlement Commission. Contrary to this confrontation, nothing was submitted by the assessee and accordingly ld. Assessing Officer has disallowed the deduction claimed by the assessee.

5.3. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee. Hence the assessee is in appeal before the Tribunal.

**6. ITA No. 132/KOL/2021
(Abhilasha Tradecom Pvt. Limited)**

The assessee is in appeal before the Tribunal against the order of ld. CIT(Appeals) dated 31.03.2021 passed for A.Y. 2011-12.

6.1. The assessee has raised five grounds of appeal, but its grievances revolve around two issues, namely –

(a) ld. CIT(Appeals) has erred in upholding the reopening of assessment under section 147 of the Income Tax Act;

(b) ld. CIT(Appeals) has erred in confirming the addition of Rs.5,25,000/-, which was added by the ld. Assessing Officer by disallowing the claim of the assessee made under section 35(1)(ii) of the Income Tax Act.

6.2. Brief facts of the case are that the assessee has filed its return of income on 26.09.2011 declaring total income of Rs.1,21,426/-. This return of the assessee was processed under section 143(1). The assessment was reopened by issuance of a notice under section 148 of the Income Tax Act on 05.11.2015, which was duly served upon the assessee. The ld. Assessing Officer has issued the notice on the ground that an information was received from the Director (Investigation), Kolkata vide letter No. 75/2015 dated 05.10.2015, in which it has been pointed out that assessee is a beneficiary of bogus donation. The ld. Assessing Officer found that assessee has given a donation of Rs.3,00,000/- to M/s. Horticulture Harbal Healthcare Bio-Harbal Research Foundation (in short 'HHRF') and it claimed weighted deduction of Rs.5,25,000/-. The ld. Assessing Officer has

confronted the assessee with regard to the material unearthed during the course of search by the Investigation Wing in the case of recipient of the donation, but the assessee failed to give any plausible reply to rebut such donation except by submitting that it has given donation under a bonafide belief. Accordingly ld. Assessing Officer has disallowed the claim of the assessee vide assessment order dated 25.10.2016 passed under section 143(3) read with section 147 of the Income Tax Act. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

7. ITA No. 133/KOL/2021

The assessee is in appeal before the Tribunal against the order of ld. CIT(Appeals) dated 31.03.2021 passed for A.Y. 2012-13.

7.1. In the grounds of appeal, the assessee has raised six grounds of appeal, however, its grievances revolve around two issues, namely-

(a) ld. CIT(Appeals) has erred in upholding the reopening of assessment;

(b) ld. CIT(Appeals) has erred in confirming the addition of Rs.12,25,000/-, which was claimed as a deduction under section 35(1)(ii) of the Income Tax Act.

In rest of the grounds, the assessee has raised supporting arguments qua these two issues.

7.2. Brief facts of the case are that the assessee has filed its return of income on 29.09.2012 declaring total income of Rs.4,26,540/-. This return was processed under section 143(1). The assessment of the assessee was reopened by issuance of a notice under section 148 on 05.11.2015. The ld. Assessing Office has reopened the assessment on the strength of information received from the Director (Investigation), Kolkata exhibiting the fact that assessee is a beneficiary of alleged bogus donation given by it. On scrutiny of the accounts, it revealed to the assessee that it has given a donation of Rs.7,00,000/- to M/s. Horticulture Harbal Healthcare Bio-Harbal Research Foundation and claimed weighted deduction @175% of the donation amounting to Rs.12,25,000/-. The ld. Assessing Officer has disallowed this claim as was disallowed in A.Y. 2011-12. The reasonings in both the years are identical and the ld.

CIT(Appeals) has confirmed the addition, hence appeal before the Tribunal.

8. **ITA No. 2247/KOL/2017**
(Orient Industrial Corporation)

The assessee is in appeal before the Tribunal against the order of ld. CIT(Appeals) dated 24.09.2017 passed for A.Y. 2013-14.

8.1. *The assessee has raised five grounds of appeal, but its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the addition of Rs.26,25,000/-, which was claimed by the assessee as a deduction under section 35(1)(ii) of the Income Tax Act.*

8.2. *Brief facts of the case are that the assessee has filed its return of income on 06.09.2013 declaring total income of Rs.37,79,520/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee has donated the amount of Rs.15,00,000/- to School of Human Genetics and Population Health. It has given deduction @175% of the donation under section 35(1)(ii). The ld. Assessing Officer has confronted the assessee with the Investigation Report pointing out as to how affairs of the recipient were found to be bogus and as to how the recipient has approached the Settlement Commission admitting the fact that it was involved in bogus donation. Contrary to this claim, the assessee was unable to submit any evidence except pleading bonafide donation. The ld. Assessing Officer disallowed the claim of the assessee by passing an assessment order on 02.03.2016 under section 143(3) of the Income Tax Act. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.*

9. **ITA Nos. 2316 & 2317/KOL/2019**

The present two appeals are directed at the instance of assessee against separate orders of ld. CIT(Appeals) dated 28.08.2019 passed in A.Y. 2013-14 and 2014-15.

9.1. *The grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the disallowance of Rs.5,25,000/- in A.Y. 2013-14 and Rs.5,25,000/- in A.Y. 2014-15.*

9.2. Brief facts of the case are that the assessee has filed its return of income on 20.12.2013 and 28.03.2015 declaring total income of Rs.13,08,950/- and Rs.13,74,490/- respectively in A.Ys. 2013-14 and 2014-15. All the returns of the assessee involved in both the years were for scrutiny assessment. It was found that the assessee has given bogus donation to School of Human Genetics and Population Health in both the years and such claim of the assessee has been disallowed. The facts of the present appeals are common with ITA No. 2448 & 2449/KOL/2019 discussed in immediate preceding paragraph in the case of assessee M/s. Hiralal Bhandari as represented the legal heir of Late Champalal Bhandari. The earlier appeals are of Late Shri Champalal Bhandari, Kolkata, which are being represented by the assessee. The facts on all vital points are common in all these four appeals.

10. **ITA No. 2385/KOL/2019**

The assessee is in appeal before the Tribunal against the order of ld. CIT(Appeals) dated 30.08.2019 passed for A.Y. 2014-15.

10.1. In the solitary substantial ground of appeal, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the disallowance of Rs.26,25,000/-, which was claimed as a deduction under section 35(1)(ii) of the Income Tax Act.

10.2. Brief facts of the case are that the assessee has filed its return of income on 25.09.2014. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that assessee has claimed weighted deduction @ 175% on donation of Rs.15,00,000/- to School of Human Genetics and Population Health. The ld. Assessing Officer has disallowed this claim of deduction calculated at Rs.26,25,000/-. The ld. Assessing Officer confronted the assessee to the investigation report on the recipient of donation and pointed out that such recipient has admitted before the Settlement Commissioner that it was engaged in providing accommodation entries. On the strength of such material, ld. Assessing Officer disallowed the claim of the

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

11. ***ITA No. 2448/KOL/2019***
(M/s. Hiralal Bhandari)

The assessee is in appeal before the Tribunal against the order of ld. CIT(Appeals) dated 28.08.2019 passed for A.Y. 2013-14.

11.1. The assessee has taken three grounds of appeal, but its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the disallowance of Rs.35,00,000/- claimed by the assessee under section 35(1)(ii) of the Income Tax Act.

11.2. Brief facts of the case are that the assessee has filed its return of income electronically on 29.09.2013. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee had claimed a deduction of Rs.35,00,000/- under section 35(1)(ii) on a donation of Rs.20,00,000/- to School of Human Genetics and Population Health. The ld. Assessing Officer confronted the assessee with regard to the material unearthed during the course of search/survey in the case of recipient of the donations. He confronted the assessee as to how this recipient has admitted before the Settlement Commission that it has provided accommodation entries after receipt of commissions. The assessee was unable to submit any evidence in support of its claim except pleading bonafide belief of its donation. It was submitted by the assessee that since recipient was enjoying the status of a Research Institute when it has made donation. If any subsequent enquiry was made, it unearthed that such recipient was receiving bogus donation beyond the control of the assessee, the ld. Assessing Officer was not satisfied with the explanation of the assessee. He disallowed the claim of the assessee and made the addition of Rs.35,00,000/- by way of an assessment order dated 29.11.2016 passed under section 143(3) of the Income Tax Act. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

12. ***ITA No. 2449/KOL/2019***
(M/s. Hiralal Bhandari)

The assessee is in appeal before the Tribunal against the order of ld. CIT(Appeals) dated 28.08.2019 passed for A.Y. 2014-15.

12.1. The grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the disallowance of Rs.61,25,000/-, which was claimed under section 35(1)(ii) of the Income Tax Act..

12.2. The facts in the present year are almost verbatim except variation of the amounts as available in A.Y. 2013-14 discussed in ITA No. 2448/KOL/2019.

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 x x x x x x x x x x x x x

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(Appels) 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 assessee 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) of the I.T. Act, 1961 (made	DIT(E)/ 906/SE/23/04-05 DIT(E)/ 3248/SE/23/04-05	27.10.2004 12.12.2011	Director of Income Tax (Exemption), Kolkata

ITA No. 546/KOL/2023
Assessment Year: 2012-2013
&
C.O. No. 13/KOL/2023 (in ITA No. 546/KOL/2023)
Shalimar Hatcheries Ltd.

<i>perpetual)</i>			
<i>Registration u/s 10(23C) of the I.T. Act</i>	<i>Initial order no. 49 Renewal vide No. CCIT-III/10(23C)(iv)/11-12/245</i>	<i>27.02.2004 16.01.2014</i>	<i>CCIT-III, Kolkata</i>
<i>Recognition of Scientific and Industrial Research Organization</i>	<i>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)</i>	<i>01.04.2013 01.04.2013 17.06.2010</i>	<i>Government of India, Ministry of Science and Technology</i>
<i>Gazette Notification u/s 35(1)(ii) of the I.T. Act, 1961</i>	<i>Notification No. 4/2010</i>	<i>28.01.2010</i>	<i>Government of India, Ministry of Finance (Department of Revenue) (Central Board of Direct Taxes)</i>

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

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

25. *The Society, carried scientific research in the field inherited genetic diseases, cancer genetics (leukemia) and Geriatric disorders in the research lab. The donee had pursued research in the community understand the population, i.e. monarchical age, nutrition status and reproductive health issues. It is stated that at the level of community welfare, the society had trained teachers and counselors to take care Attention Deficit Hyperactivity Disorder including Cystic Fibrosis Children workshops of Arts & Crafts, which had been published in various national & international journals. The society had ongoing community projects i.e. Kangaroo Project - exclusive breast feeding in urban and rural Ben; health situation assessment studies at*

Ruppur Birbhum, West Bengal and had acquired six acres of land at Ruppur, Birbhum, along with 3 building structures for care centre for elders and disabled senior citizens. Besides, the lab of applicant society is located in approx. 1000 sq. ft space at 6A, Malanga Lane, Kolkata-12, which has been taken on rent of Rs.28,000/- p.m. Various machines and equipments have been purchased for various research/testing etc. by the society at Rs.25 lakh. In addition, the donee has also incurred huge expenses on chemicals, Primars and other consumables for research work, salary and rent etc.

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

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

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

28. *The main allegation and reason for the survey against the donee was that it had received huge amount of donations on which the applicant society earned service charges. During the survey operation, statements of the*

Secretary and the Treasurer of the Society were recorded in which they admitted the fact of accepting donations through certain mediators and refunding the same after keeping 3% - 8% as service charges for the society.

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

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

“2. In the first ground of appeal, the grievance of the assessee is that the ld.CIT(A) has erred in confirming addition of Rs.8,75,000/- on account of alleged bogus donation to Herbicure Heathcare Bio-Herbal Research Foundation.

3. Brief facts of the case are that the assessee has filed return of income on 20.11.2014 declaring total income at Rs.4,47,910/-. On scrutiny of the accounts, it revealed that the assessee-company has given donation to Herbicure Healthcare Bio-Herbal Research Foundation, Calcutta. A survey action was carried out at the premises of the donee wherein it revealed to the Revenue that this concern was misusing the benefit of notification issued by the Income Tax Department. It has been getting donation from various sources, and after deducting certain amount of commission, these donations were refused in cash. On the basis of that survey report registration granted to its favour was cancelled. On the basis of the outcome of that

survey report, the Id.AO construed the donation given by the assessee as bogus. Appeal to the 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 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

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 Abhilasha Tradecom Pvt. Limited obtained the accommodation entry from this Institution and issue is involved in ITA No. 132/KOL/2021. In this survey, statement of the Secretary of M/s. SHG&PH was recorded. The Secretary has admitted that the Trust has not used such amount in any research activity, rather it has received the donation in a connived manner on the alliance of certain brokers. They have pleaded specifically in their statement of facts before the Settlement Commission that certain brokers have approached them for augmentation of their revenue in this fraudulent manner and without realising the seriousness of its impact upon the economy in general and Income Tax Department in particular. They involved in this activity.

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

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

Q. 6. What is your source of income?

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

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

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

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

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

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

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

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

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

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

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

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

Ans.: The donor will deposit cheque/RTGS in the account of SHG&PH. The SHG&PH will transfer the amount to my concerns which is mentioned in Annexure-A. Sometimes they used to transfer the amount after deducting their commission @ 8% and we used to settle our accounts periodically for settling commission. After that, my concerns will pay to the parties who have raised bogus bills to my concerns cheque/RTGS. In lieu of the same, I will get the amount in cash. Thereafter, I will get the phone calls from the donors who will give me distinctive number of Indian currency of any denomination. They I will give the cash to Angarias with the details of note number. The Angaria's commission was given by the donors and Angaria's commission was not the part of my job. This is how the whole system was run.

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

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

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

37. The stand of all these appellants right from the ld. Assessing Officer upto the Tribunal is that since Institution was approved by the Competent Authority to receive donation. This approval was

intact when they have made the donation. Therefore, under bonafide belief, they have given the donations and on the basis of post donation, material collected by the Revenue should not be used against them for doubting the genuineness of the donation. The scheme of the Income Tax Act provides that a claim made by an assessee has to be proved by the assessee. Thus the first onus is upon the assessee about the claim made by him. This onus was discharged by the assessee by pointing out that Institution to whom donations were given. They are approved by the Income Tax Authority and, therefore, their claim is to be allowed. However, if the first onus discharged by the assessee was dispelled by the Id. 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 Id. CIT(Appels) in the case of Tarasafe International Pvt. Limited has posed the following questions to the assessee:-

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

(f) If it was handed over to the office bearer, then name of such office bearer.

38. These are certain questions, which point a figure to the circumstances, which are to be explained by each appellant. Their first onus discharged by them has been dispelled by the ld. Assessing Officer with credible material. If the appellants are of such a spirited Corporate House, who wants to build the research organisation of the nation, then they have to demonstrate how such donations were given in the past or in the subsequent period. We have confronted them specifically, but none of the assesses except M/s. H.K. Dutta & Company could submit anything in this regard. In the case of this Company, ld. Counsel for the assessee has submitted that small amount of donation has been given to a different organisation in the next year. Therefore, if we weigh the simple plea of the appellants about their bonafide belief for giving such donations, vis-a-vis huge materials collected by the Revenue demonstrating the fact how such a belief is misplaced, then, the scale would tilt in favour of the revenue. It is to be appreciated that roughly 720 entities including individuals available in a part-list on pages no. 72 to 81 of the paper book compiled by the Revenue would have not formed a bonafide belief about giving donation to one entity across India in Kolkata. This material speaks in itself that under a criminal conspiracy, these donations have been arranged by the brokers across India for defrauding the nation. We do not find any credence in the belief of bonafide raised by the appellants.

39. We are aware of the facts that a large number of orders have been passed in favour of the assessee by ITAT and some of those were upheld by Hon'ble High Courts also. We have extracted one of the orders from Hon'ble Gujarat High Court. The Hon'ble Supreme Court in the case of CIT -vs.- Batanagar Education & Research Trust reported in 129 taxmann.com 30, whose copy has been placed on the record by the ld. CIT(DR), has considered the identical material, which has been placed before us also. In the case of Batanagar Education & Research Trust, the facts are that during the course of survey at the premises of SHG&PH, and in post survey inquiry statement of Shri Ramendra Lahiri, Managing Trustee of the assessee, i.e. Batanagar Society was recorded. The Secretary, Smt. Samadrita Mukherjee Sardar and Treasurer Smt. Moumita Raghavan of SHG&PH have categorically deposed in their statements that source of income of SHG&PH was the money received in the form of donations from Corporate Bodies as well as from individuals. The assessee Batanagar Society was selected by

the brokers, who have arranged the donations to SHG&PH as a conduit for receiving the donations from SHG&PH. This donation was to be returned back to those Corporate Houses and individuals in cash after layering the transaction and the Batanagar Education & Research Trust would also retain commission income for such an activity. On the basis of that, its registration was cancelled by the ld. Commissioner (Exemption) by exercising the powers under section 12AA(3). This order was upheld by the ITAT. However, on further appeal, Hon'ble High Court has reversed this order but Hon'ble Supreme Court restored this order, in other words upheld the cancellation of the registration to Batanagar Education & Research Trust. In this judgment, Hon'ble Supreme Court has made reference to the outcome of the survey at SHG&PH coupled with the post survey enquiry conducted upon Batanagar Society and satisfied that it was an organized fraud to misuse the status of a charitable entity. This judgment has been pronounced on 02.08.2021. After this judgment, a judgment of the Hon'ble Calcutta High Court in the case of Mackaw Corporation has been passed, which has been relied upon by the ld. Counsel, but in this decision, Hon'ble High Court has not considered the judgment of the Hon'ble Supreme Court, because the judgment of the Hon'ble Supreme Court in the case of Batanagar Education & Research Trust was not cited by both the parties.

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

41. We find that in this case, the assessee was recipient of a small donation of Rs.85,000/- from Herbicure 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 Herbicure, a similar Trust to SHG&PH. Hon'ble High Court has held that Tribunal has rightly set aside the order passed by the ld. Commissioner vide which registration was cancelled. In our opinion, it is purely a fact-based decision without laying down any particular proposition of law, rather an inference could be drawn from it that if there is no element of fraud committed by an

assessee, then such an assessee does not deserve to be punished. This case cannot buttress any of the contentions of the appellants before us.

42. It is also pertinent to note that it is not a simple case of claiming deduction on fulfilment of conditions under section 35(1)(ii) of the Income Tax Act, rather it is a case where Revenue has disproved this claim and proved that, with a criminal mind all such donors have layered their transaction in such a manner which apparently appears to be genuine, but in reality not genuine. They took such a step to commit fraud, an economic offence against the economy of the country.

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

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

the Department on the premises of certain companies ,who were manipulating the stocks or indulging any accommodation entry business. If we apply the ratio of this judgment upon these cases, then it would reveal that the benefit of claim under section 35(1)(ii) is outcome of an organized fraud with the help of certain manipulators. Therefore, we do not find any material in the first-fold of arguments raised by the ld. Counsels for the assessees. The appellants are not entitled for deduction under section 35(1)(ii) of the Income Tax Act. This finding is subject to our finding on other preliminary issues in the case of Abhilasha Tradecom Pvt. Limited i.e. ITA Nos. 132 & 133/KOL/2021. In ITA Nos. 132 & 133/KOL/2021, assessee has challenged the reopening of the assessment. We will be deciding this issue in the following part of the judgment.

22. We find that the Tribunal has gone into all these aspects including the case law relied upon by the assessee before us. We do not see any reason to deviate ourselves from the conclusions drawn by the earlier Coordinate Bench and respectfully following the above, we allow the appeal of the Revenue, set aside the finding of the ld. CIT(Appeals) and restore that of ld. Assessing Officer that assessee is not entitled for deduction under section 35(1)(ii) of the Income Tax Act. Similarly Cross Objection filed by the assessee is rejected.

23. In the result, the appeal of the Revenue is allowed and the Cross Objection filed by the assessee is dismissed.

Order pronounced in the open Court on 24/01/2024.

Sd/-

**(Girish Agrawal)
Accountant Member**

Sd/-

**(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 24th day of January, 2024

*Copies to :(1) Assistant Commissioner of Income Tax,
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110, Shanti Pally, Kolkata-700107*

*(2) Shalimar Hatcheries Ltd.,
46C, Chowringhee Road, Park Street,
17th Floor, EVEREST HOUSE,
Kolkata-700071*

*(3) Commissioner of Income Tax (Appeals),
Kolkata-20;*

(4) CIT- , Kolkata;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.