

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.88/Ahd/2022
Assessment Year :2016-17

Iolite Cube Inframaterial Ltd. 1, Chandramani Nagar Vidhya Vihar Subhanpura, Vadodara 390 020. PAN : AACCI 5944 A	Vs	DCIT, Cent.Cir.3 Vadodara.
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(Applicant)		(Responent)
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Assessee by :	None
Revenue by :	Ms.Saumya Pandey Jain, Sr.DR

सुनवाई की तारीख / **Date of Hearing** : 12/12/2023
घोषणा की तारीख / **Date of Pronouncement**: 06/03/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the assessee against order passed by the Ld.Commissioner of Income-Tax(Appeal)-12, Ahmedabad (hereinafter referred to as "ld.CIT(A)" dated 18.2.2022 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2016-17.

2. None appeared on behalf of the assessee at the time of hearing, and it is noticed by us that the assessee has remained unrepresented throughout the proceedings before the Tribunal. It is pertinent to note the sequence of events.

3. The appeal, presented before the Tribunal by the assessee on 11.4.2022, was listed for hearing on 20-03-23 when none appeared for the assessee and the case was adjourned. It came up next for hearing on 10.5.2023 and following a request for adjournment by the assessee, the case was rescheduled for 13.6.2023, 28.6.2023, 03-08-23 & 30.8.2023 when the Bench did not function. Subsequently, on 4.10.2023 when the matter came up for hearing none appeared for the assessee. On 6.11.2023, when the matter was once again slated for hearing, the assessee's counsel sought an adjournment through an application. Despite the adjournment being granted and the matter being rescheduled for 12.12.2023, no representation from the assessee was forthcoming.

The consistent and unexplained absence of the assessee or its representative throughout these proceedings leaves the Tribunal with no alternative but to proceed *ex parte* against the assessee. Consequently, the Tribunal is compelled to dispose of the appeal based on the submissions of the learned Departmental Representative (DR) and the evidences and other materials available on record.

4. The grounds appeal raised by the assessee read as under:

1) The learned assessing has disallowed Rs.1,25,00,000/- as donation to scientific research institute and weighted education u/s 35(l)(ii) by this act amounting to Rs.93,75,000/- gross amounting to Rs. 2,18,75,000.

Without prejudice to above we would like to state that any disallowance made by AO cannot change income as per section 115JB, because income as per section 115JB is to be taken as per profit and loss as per companies act. If your honour need to made addition u/s 115JB then addition to extent of Rs.1,25,00,000/- is made because the assessee has debited Rs. 1,25,00,000/- to profit and loss account."

5. As is evident from the above, solitary issue in the present appeal relates to denial of weighted deduction to the assessee on donation made to a scientific research institute in terms of section 35(1)(ii) of the Act. The amount of donation being Rs.1,25,00,000/- and

weighted deduction allowable and claimed on the same amounting to Rs.93,75,000/-. Thus, resulting in total deduction claimed by the assessee, which was denied concurrently both by the AO and the Id.CIT(A), amounting to Rs.2,18,75,000/-. The assessee has also raised the issue of the denial of this deduction of donation of Rs. 1.25 Crs while computing its Books Profits for the purposes of paying taxes thereon in accordance with the provisions of section 115JB of the Act, thus increasing its Book Profits to the said extent.

6. We have gone through the orders of the authorities below with the assistance of the Id.DR and we have noted that the impugned claim of the assessee to the weighted deduction under section 35(1)(ii) of the Act was denied on the donation of Rs.1,25,00,000/- made by the assessee to Shri Arvindo Institute of Applied Scientific Research Trust during the impugned year. The reason for the same was that the AO found that the said institute no longer had the approval necessary for raising donation for undertaking scientific research, as required by the provisions of the said section. The order of the Id.CIT(A) reveals that the AO had carried out necessary inquiries to verify the authenticity of the claim of the assessee by issuing notice under section 133(6) of the Act to the above Trust, but the same were returned back with the remark "left". The AO also wrote to the Under Secretary, ITA-II(Income-tax), New Delhi, who replied by stating that **the approval of the Shri Arvindo Institute of Applied Scientific Research Trust had expired on 31.3.2006**, and thereafter the said Research Trust was not allowable to raise donations for undertaking scientific research. The letter, further, added that **"the Trust has raised substantial donations over the last six years on the basis of a forged certificate while the donors have irregularly claimed weighted deduction under section 35(1)(ii) of the Act on donations made to the Trust."** Based on this fact, the AO held the

assessee's claim to deduction under section 35(1)(ii) of the Act to be bogus and fraudulently claimed and denied the same to the assessee.

7. The Id.CIT(A) upheld the order of the AO, finding no facts brought out by the assessee before it, to contradict what was pointed out by the CBDT regarding fraudulent manner in which the donations were collected by the Research Trust, claiming to be approved under section 35(1)(ii) of the Act. The Id.CIT(A) also noted that identical issue had come up for consideration before the ITAT, Chennai Bench in the case of DCIT Vs. Sudhakar Natarajan in ITA No.2205/Chny/2015 wherein denial of weighted deduction under section 35(1)(ii) of the Act on identical donation made to the same institute, Shri Arvindo Institute of Applied Scientific Research Trust after the approval had expired, was upheld by the Tribunal vide order dated 24.5.2019.

8. Before us, there was nothing to contradict the adverse findings of the Revenue authorities pertaining to the impugned donation being fraudulently taken in the absence of a valid approval for the same from the prescribed authority.

In the light of the same, we see no reason to interfere in the order of the Id.CIT(A) upholding the denial of weighted deduction to the assessee u/s 35(1)(ii) of the Act on the donations made to Shri Arvindo Institute of Applied Scientific Research Trust amounting in all to Rs. 2,18,75,000/-.

9. As for other contention raised by the assessee, in the grounds of appeal, that its book profits need not to be adjusted with amount of donations, debited to its Profit & Loss account, made to the concerned party i.e. Shri Arvindo Institute of Applied Scientific Research Trust, we are not in agreement with the same. The

concurrent findings of the Revenue authorities, as noted by us above is that the said donation was a bogus donation, fraudulently made .In the light of the same that there is no scope for allowing bogus claims as deductions for determining the book profits of the assessee under section 115JB of the Act. Book Profits in any case refer to the profits as reflected in the Books of the assessee, for paying taxes thereon u/s 115JB of the Act. By no stretch of logic can a patently bogus and fraudulent claim be considered for arriving at the Book Profits.

10. In view of the same, the other contention of the assessee is also found to be devoid of any merits, and thus stands dismissed.

The grounds of appeal of the assessee are rejected.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 6th March, 2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad,dated 06/03/2024