

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3928/Mum./2023
(Assessment Year: 2014-15)

ITA no.3929/Mum./2023
(Assessment Year: 2016-17)

Mr. Homi R. Cooper
603, Divyalok 6th Floor,
L. D. Ruparel Road, Malabar Hill,
Mumbai-400006.
PAN – AJQPC7415E

..... Appellant

v/s

Asst. Commissioner of Income Tax
Cir. 19(2)
Mumbai.

..... Respondent

Assessee by : Shri Satish Mody
Revenue by : Shri P. D. Chougule

Date of Hearing – 15/04/2024

Date of Order –03/05/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 19.10.2023, passed u/s 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-56, Mumbai [*learned CIT(A)*], which in turn arose from the separate penalty orders passed u/s 271(1)(c) of the Act, for the assessment years 2014-15 and 2016-17.

2. Since in both appeals, the assessee is challenging the levy of penalty under section 271(1)(c) of the Act, which arises out of a similar factual matrix,

therefore these appeals were heard together and are being decided by way of this consolidated order.

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Assessee's appeal- A.Y. 2014-15

3. The only grievance of the assessee, in the present appeal, is against the levy of penalty under section 271(1)(c) of the Act.

4. The brief facts of the case as emanating from the record are: For the year under consideration, the assessee filed his return of income 26.07.2014 declaring a total income of Rs.21,90,750/- after claiming deduction u/s 80GGA of the Act. The return filed by the assessee was processed u/s 143(1) of the Act. Subsequently, on the basis of information received from the DCIT, Central Circle-2(1), Mumbai that Navjeevan Charitable Trust has accepted donations in cheque, which was later on returned in cash to the donor after deducting the commission and the assessee is one of the beneficiaries who has claimed deduction of the donation made to Navjeevan Charitable Trust, proceedings u/s 147 of the Act were initiated and notice u/s 148 of the Act was issued on 28.03.2019. In response to the aforesaid notice, the assessee filed a fresh return of income on 31.03.2019 declaring enhanced income of Rs.27,90,750/- without claiming any deduction u/s 80GGA of the Act as was claimed in the original return of income. Since the assessee had already offered to tax the donation of Rs.6 lakh made to Navjeevan Charitable Trust and also paid the necessary taxes thereon along with interest, the assessment was completed u/s 143(3) read with section 147 of the Act accepting the return filed by the assessee in response to the notice issued u/s 148 of the Act.

5. Meanwhile, penalty proceedings vide notice dated 17.02.2021 u/s 274 r/w section 271(1)(c) of the Act were initiated. The Assessing Officer ("AO") vide penalty order dated 21.03.2022 passed u/s 271(1)(c) of the Act, levied a penalty of Rs.1,85,400/- on the basis that the assessee while filing the original return of income claimed an incorrect deduction u/s 80GGA of the Act in order to reduce his taxable income. It was further held that it was only after an

investigation was carried out by the Department which revealed that Navjeevan Charitable Trust, to whom a donation of Rs.6 lakh was made by the assessee, was involved in providing bogus accommodation entries the assessee offered to not claim deduction u/s 80GGA of the Act while filing its return in response to the notice issued u/s 148 of the Act. The AO held that if notice u/s 148 of the Act had not been issued, the income would have escaped assessment to the extent of bogus donation paid, and thus it is clear that the assessee has concealed the true particulars of his income to reduce the tax liabilities.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty u/s 271(1)(c) of the Act. Being aggrieved, the assessee is an appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that before the issuance of notice u/s 148 of the Act, the assessee suo-moto offered the deduction of Rs.6 lakh claimed u/s 80GGA of the Act to tax and paid Rs.2,10,000/- towards the income-tax liability. The learned AR submitted that since the time period for filing the revised return of income had expired, the assessee could not revise his return and it is only pursuant to the issuance of notice u/s 148 of the Act that a fresh return of income was filed offering enhanced income, on which necessary taxes along with the interest were already paid by the assessee. Accordingly, the learned AR submitted that there was no concealment of income on the part of the assessee which could result in the levy of penalty u/s 271(1)(c) of the Act.

8. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. Admittedly, in the present case, the assessee donated Rs.6 lakh to Navjeevan Charitable Trust on 18.12.2013. In this regard, the assessee has placed on record the donation receipt and Form no. 58A issued by the Navjeevan Charitable Trust. Since the Navjeevan Charitable

Trust was an eligible trust u/s 35AC of the Act, at the time of donation, the assessee claimed deduction u/s 80GGA of the Act in respect of donation made while filing its original return of income for the year under consideration on 26.07.2014. As per the assessee, he suo-moto offered the sum of Rs.6 lakh claimed as deduction u/s 80GGA of the Act to tax and paid a sum of Rs.2,10,000/- towards the income-tax liability on 16.05.2015. In this regard, the assessee has furnished the income tax payment challan dated 16.05.2015 and Form 26AS with respect to the payment of income tax liability of Rs.2,10,000/-. The assessee has also placed on record his letter filed before the Income tax Officer, Ward-20(1)(5), Mumbai on 21.09.2016 withdrawing his claim of deduction u/s 80GGA of the Act and intimating the payment of income tax liability of Rs.2,10,000/-. From the perusal of the aforesaid letter, forming part of the paper book, we find that the assessee also requested to rectify the assessment and adjust the amount of Rs.2,10,000/- towards liability. We find that the approval granted to Navjeevan Charitable Trust u/s 35AC of the Act was withdrawn only after the aforesaid development, vide notification no. S.O.3592(E), dated 30.11.2016. Therefore, from the perusal of the aforesaid details filed by the assessee, it is sufficiently evident that much before the issuance of notice u/s 148 of the Act to the assessee on 28.03.2019, the assessee had withdrawn its claim of deduction in respect of the donation made to Navjeevan Charitable Trust and paid the necessary taxes on 16.05.2015.

10. In view of the aforesaid facts and circumstances, we find no basis in the findings of the lower authorities that it is only after the issuance of notice u/s 148 of the Act that a fresh return of income withdrawing the claim of deduction u/s 80GGA of the Act was filed and necessary taxes were paid. Accordingly, there is also no basis in the findings of the lower authorities that if notice u/s 148 of the Act had not been issued, the income would have escaped assessment in respect of deduction claimed u/s 80GGA of the Act. Since in the present case, the assessee voluntarily offered the deduction claimed u/s 80GGA of the Act to income tax much before the initiation of proceeding u/s 147 of the Act which resulted in the impugned penalty, we are of the

considered view that there is no concealment of income on the part of the assessee justifying levy of penalty u/s 271(1)(c) of the Act. Hence, we delete the penalty levied u/s 271(1)(c) of the Act. As a result, the grounds raised by the assessee are allowed.

11. In the result, the appeal by the assessee for the assessment year 2014-15 is allowed.

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Assessee's appeal- A.Y. 2016-17

12. In this appeal also the only dispute is against the levy of penalty u/s 271(1)(c) of the Act.

13. We have considered the submission of both sides and perused the material available on record. In this year, apart from the amount of donation and the entity to whom the donation was paid, there is no change in facts vis-à-vis the assessment year 2014-15. In the year under consideration also at the time of donation made by the assessee, Rural Development Society was holding valid approval and accordingly, weighted deduction u/s 35(1)(ii) of the Act was claimed by the assessee. From the perusal of documents placed on record by the assessee, we find that the assessee vide a letter filed on 29.03.2019 before the Income Tax Officer, Ward-20(1)(5), Mumbai withdrew the weighted deduction and intimated the payment of necessary taxes along with interest of Rs.4,12,050/-. In this regard, the assessee has also placed on record the income tax payment challan dated 25.03.2019 and Form 26AS. It is evident from the record that the notice u/s 148 of the Act was issued to the assessee on 28.03.2019 on the basis of the information that bogus donations were made to Rural Development Society by various donors to avail deduction in the income tax return and the assessee is one such beneficiary. Therefore, in the assessment year 2016-17 also before the issuance of notice u/s 148 of the Act, the assessee had withdrawn his claim of weighted deduction in respect of donations made to Rural Development Society and paid the necessary taxes along with interest on 25.03.2019. Thus, we do not find any basis in the

findings of the lower authorities that income chargeable to tax has escaped assessment and the assessee has concealed the income to reduce his tax liability. Accordingly, we find no basis in the levy of penalty u/s 271(1)(c) of the Act, and therefore, the same is deleted. As a result, the grounds raised by the assessee are allowed.

14. In the result, the appeal by the assessee for the assessment year 2016-17 is allowed.

15. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 03/05/2024

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/05/2024

Vijay Pal Singh, (Sr. PS)
Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai