

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' NEW DELHI)**

BEFORESH. M. BALAGANESH, ACCOUNTNT MEMBER

AND

MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1660/Del/2023A.Y. 2014-15

Dal Trust B-60/61, C/o Bajaj Auto Limited, Naraina Industrial Area, Phase- II, New Delhi-110028 PAN No.AAATD0310Q	Vs	ITO Ward- 50 (1) New Delhi
Appellant		Respondent

Assessee by	Ms. Vasanti Patel, Advocate Sh. Mahendra Gohal, CA
Revenue by	Sh. Vivek Kumar Upadhyay, Sr.DR

Date of Hearing	22/04/2024
Date of Pronouncement	08/05/2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed at the behest of the assessee is directed against the order dated 28.04.2023 passed by the National

Faceless Appeal Centre, Delhi, arising out of the order dated 14.01.2016 passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to "the Act") whereby and whereunder the denial of deduction claimed by the appellant for a sum of Rs.24,00,000/- under Chapter VI-A of the Act i.e. Section 80-G/80GGA read with Section 35AC of the Act by the AO, CPC has been upheld.

2. The brief fact leading to the case is this that the appellant, a Public Charitable Trust, formed on 12.11.1987, engaged in carrying on charitable activities since its inception, filed the return for the year under consideration on 29.07.2014 in the status of Association of Persons (AOP) declaring total income at Rs. Nil.

3. The assessee received shares of Bajaj Auto Limited towards its corpus in the year 1987-88. Subsequently, by and under the order dated 18.12.2007, passed by the Hon'ble Bombay High Court, in terms of the scheme of arrangement of demerger between Bajaj Auto Limited, Bajaj Holdings and Investment Limited and Bajaj Finserv Limited, the erstwhile share holders of Bajaj Auto Limited

were allotted shares in the above referred three companies. As the assessee did not disinvest these shares within the prescribed period of one year from the receipt of these shares, the same led to contravention of the provision of Section 11 (5) of the Act r.w.s. 13(1)(d) of the Act. In that view of the matter, the assessee did not claim benefit under Section 11 and 12 of the Act on and from Assessment Year 1993-94. In fact, the appellant filed return of income from year to year without claiming benefit of Section 11 and 12 of the Act in the status of Association of Persons (AOP) under the head "Income from other sources". In this particular year under consideration, the appellant trust also filed return in the same line.

4. The Ld. AO, CPC, Bangalore, after processing the return of income, issued intimation under Section 143 (1) of the Act on 14.01.2016, assessing total income of the appellant trust at Rs.23,22,869/- and a demand thereof to the tune of Rs.3,97,100/- was raised. Such intimation was received by the appellant trust on 14.01.2016. As the deduction claimed by the appellant under Chapter VI-A, Section 80GGA of the Act for a sum of Rs.23,22,869/- was not allowed, an application for rectification

under Section 154 of the Act against the said intimation issued under Section 143 (1) of the Act was filed which is still pending. Relevant to mention that on the identical facts other Associate Trusts of the appellant trust preferred appeals against the order of rejection under Section 154 of the Act which stood rejected.

5. Since nothing was forthcoming on the application for rectification made under Section 154 of the Act against the intimation issued under Section 143(1) of the Act denying deduction under Section 80GGA of the Act the appellant before us was finally advised to file appeal before the First Appellate Authority against the intimation under Section 143(1) of the Act which has culminated into the impugned order of confirmation of the addition made by the Ld AO, CPC under Section 143(1) of the Act.

6. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record including the order passed by the authorities below and the judgment relied upon by the respective parties.

7. The appellant utilized its income in granting donations to other charitable trust/ institutions holding valid certificate form exemption engaged in similar objects/activities. The appellant trust earned interest income of Rs.23,22,869/- and the same has been utilized for granting donation of Rs. 24,00,000 to Janki Bajaj Gram Vikas Sanstha which is eligible for deduction at 100% under Section 80 GGA r.w.s 35 AC of the Act details thereof has been annexed at page 33 of the paper book filed before us. Apart from other donations aggregating to Rs. 57,00,000 to trust/ institutions eligible under Section 80 G of the Act was made.

8. During the appellate proceedings the Ld CIT(A) came to a finding that in the return of income, the appellant has specifically claimed deduction under Section 11 of the Act as per information furnished in the Section "part A Gen" of the said return. In that view of the matter, he confirmed the disallowance of deduction of Rs.23,22,869/- claimed under Chapter VI-A of the Act. He further relied upon the Auditor's report dated 11.07.2014 which clarified application of fund towards charitable or religious purposes. As there was inconsistency in the information furnished in the return

with the claim of deduction made in the return, such claim was correctly regarded as incorrect claim by the Ld. AO in terms of provisions of Section 143 (1)(a)(ii) read with explanation to the such Section as also the observation made by the Ld. CIT(A).

9. On the other hand the case made out by the assessee is this that considering the non compliance with the provisions of Section 11(5) read with Section 13 (1) (d) of the Act, the Appellant did not claim the benefit of Section 11 and 12 of the Act as it reflects from the intimation under Section 143(1) of the Act and, therefore, the appellant is fully justified and is entitled to deduction under Section 80G / 80GGA of the Act in respect of the donations paid to the eligible institutions.

10. It is the further case made out by the assessee that the appellant right since Assessment Year 1993-94, was computed in the status of AOP and deduction under Section 80GGA read with section 35 AC of the Act was granted year after year. A copy of the scrutiny assessment order under Section 143 (3) of the Act for immediately preceding year i.e. Assessment Year 2013-14 has been

filed before us wherein deduction as aforesaid has been granted. In that view of the matter, considering the principle of consistency, it has been submitted by the appellant on the basis of the law and identical facts available in the year under consideration, that the AO is not justified in denying the deduction 80GGA read with Section 35 AC of the Act.

11. It was further contended by the Ld. AR that on the identical facts and circumstances the Coordinate Bench in ITA No.5093/Del/2019 for Assessment Year 2014-15 passed an order allowing deduction claimed under Chapter VI-A / 80 G/ 80GGA read with section 35AC of the Act in the case of another trust a copy whereof has also annexed to the paper book filed before us. He, therefore, prayed for similar relief before us which is also been considered.

12. Thus, having heard the Ld. Counsels appearing for the respective parties and having regard to the facts and circumstances of the case and considering the relevant records made available before us including the order passed by the AO,

CPC, Bangalore and the Ld CIT(A), NFAC, we find that admittedly the assessee has not claimed the benefit of Section 11 and 12 of the Act as it is reflecting the AO, CPC's intimation order issued under Section 143 (1) of the Act.

If that be so, then we find that the assessee is entitled to deduction under Section VI-A/80G/80GGA read with section 35 AC of the Act. We also note that the assessee has been granted relief as claimed for since 1993-94 and even also in the scrutiny assessment for Assessment Year 2013-14 which is also on record. In fact, such claim of the assessee has not been able to be controverted by the Ld. DR by producing any evidence contrary to the same at the time of hearing of the instant appeal. We have further considered the order passed by the coordinate bench on the identical facts and circumstances of the case wherein the said assessee trust has been granted relief under Section 80GGA read with Section 35AC of the Act.

Moreso, page-33 of the paper book filed before us contains the details of donations made by the assessee to Janki Bajaj Gram Vikas Sansthan along with other donations made by the assessee to the other trusts. However, the veracity of the donations made by

the assessee on which the claim under Section 80GGA read with section 35AC of the Act has been made, has not been done by the authorities below.

13. In that view of the matter, we are disposing of this appeal with the direction upon the Ld. AO to verify the details of donations made by the assessee as reflecting at page 33 of the paper book filed before us and grant relief to the assessee in the light of the observations made hereinabove.

14. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 8th May, 2024.

Sd/-

**(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

Sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**

Date:- 08.05.2024

**Neha, Sr.P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI