

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM**

ITA No. 4075/Mum/2023
(Assessment Year: 2017-18)

The Asst. Commissioner of
Income Tax 26(1)
202, Kautilya Bhavan, BKC,
Bandra (East),
Mumbai-400 051

(Appellant)

Vs. RD Tata Trust,
2nd Floor, Bombay House, 24
Homi Mody street, Fort,
Mumbai-400 001

(Respondent)

PAN No. AAATR8173R

Assessee by : Shri Atul T. Suraiya AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 14.05.2024
Date of pronouncement : 21.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 4075/Mum/2023 is filed by the Asst. Commissioner of Income Tax, 26(1), Mumbai [the Ld. AO] for A.Y. 2017-18 against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] on 21st September, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of The Income Tax Act, 1961 [the Act] dated 10th December, 2019, passed by the Asst. Commissioner of Income Tax, Circle 17(3), Mumbai was partly allowed.
02. The learned Assessing Officer is aggrieved with the same and is in appeal raising following grounds of appeal:-

“1. Whether on the facts and in the circumstances of the case, the learned CIT (A) erred as the provisions of Sec. 80G(4), the donation made in excess of 10% of gross total income is ignored for the purpose of computation of aggregate of sum in respect on which deduction is to be allowed under section 80G.

2. Whether on the facts and in the circumstances of the case, the learned CIT (A) erred in allowing deduction under Section 80GCA without considering the fact that the said deduction was not claimed by the assessee in its return of income. Since, the claim not made in the return of income, claim of deduction under Section 80GCA of ₹1,27,02,000/- is not allowable.

3. Whether on the facts and in the circumstances of the case, the learned CIT (A) has not given opportunity to assessing officer on the issue of additional ground taken by assessee with respect to disallowance of carry forward of excess expenditure incurred over income for adjustment in subsequent years and failed to adjudicate properly.”

03. Brief facts of the case shows that assessee is a charitable trust and is registered with the Charity Commissioner of Mumbai. Assessee has earned interest income from interest on bonds, savings bank interest and interest on deposits. Assessee has already surrendered his registration under Section 12A of the Income-tax Act, 1961 (the Act) and is now assessable as an Association of Person (AOP). Assessee filed its Return of Income [ROI] at total income of Rs Nil. Wherein it has claimed deduction under Section 80G of Rs 1,42,33,000/-



and Section 80GGA of the Act of Rs 12702000/- . Assessee has claimed deduction under CH VIA ₹269,35,000/- [disclosed against the column of deduction u/s 80 G of the Act] and restricted the same to ₹247,23,301/- to the extent of gross total income of the assessee.

04. The learned Assessing Officer found that as per the provisions of Section 80G(4), the donation made in excess of 10% of gross total income is to be ignored for the purpose of computation of deduction under Section 80G of the Act. The assessee explained that assessee has given donation to Tata Institute of Social Science which is approved under Section 80G(2)(iiiif) of the Act by the Director General of Income Tax Exemption, same is not covered u/s 80 G (4) of the Act and therefore, the deduction is allowable at the rate of 100% of the amount donated without applying the restriction of 10% of the gross total income. The assessee submitted that restriction of 10% of the total income applies to donation under Section 80G(4) of the Act only. However, the learned Assessing Officer rejected the same and restricted the deduction under Section 80G of the Act to the extent of 10% of gross total income.
05. Assessee has also made claim of deduction under Section 80GGA of ₹1,27,02,000/-. However, as per the claim of the assessee there was no specific column in the return of income separately for section 80GGA of the Act. The learned Assessing Officer found that assessee has mentioned the above donation under Section 80G column of the return. The assessee explained that in the computation of total income assessee has shown the deduction of Section 80GGA separately in the computation. The learned Assessing Officer held that though the deduction to the extent of ₹127,02,000/- has been claimed by the assessee under Section 80GGA of the Act in the

computation of income and also submitted so during the course of assessment proceedings but as no such claim has made in the return of income filed by the assessee on line. The claim is not made in the return income hence, he disallowed the claim of deduction under Section 80GGA of ₹1,27,02,000/-. Accordingly, the assessment order was passed under Section 143(3) of the Act on 10th December, 2019, wherein he did not allow any deduction under Section 80GGA of the Act. However, he allow deduction under Section 80G of the Act of the amount of donation of ₹1,42,33,000/- and restricted it determining the qualifying amount at the rate of 10% of gross total income of ₹2,47,23,301/- at ₹24,72,330/-. Thus, under Section 80G of the Act, he allowed the claim of donation of ₹1,42,33,000/- to the extent of ₹24,72,330/-. The total income was computed at ₹2,22,50,971/-.

06. Aggrieved with the above assessment order assessee preferred an appeal before the learned Commissioner of Income-tax (Appeals). With respect to the deduction under Section 80GGA of the Act of ₹1,27,02,000/-, the learned CIT (A) noted that the above amount was clubbed with deduction under Section 80G of the Act in the return of income as there is no separate provision for claiming deduction under Section 80GGA of the Act in ITR filed. He further noted that as the learned Assessing Officer has denied the claim by stating that though same has been claimed in the computation of income but no such claim is made in the return of income filed online. He further held that the assessee has claimed under Section 80GGA of the Act by clubbing it with its claim for deduction under Section 80G of the Act as no separate of functionality was there for claiming the deduction under Section 80GGA of the Act, assessee has submitted the requisite documents in respect of its claim during the assessment



proceedings, therefore, relying on circular no.14 (XL)-35 dated 11th April, 1955, and also of the decision of the Hon'ble Punjab and Haryana High Court in case of CIT v. Ramco International [2009] 180 Taxman 584, directs the learned Assessing Officer to consider the claim of the assessee for deduction under Section 80GGA of the Act and if the appellant fulfills the condition of deductibility under that Section to allow the same with respect to the deduction under Section 80GGA of the Act. He held that assessee has claimed deduction of ₹1,42,33,000/- under Section 80G of the Act to an institute approved under Section 80G (2)(a)(iiif) of the Act. However, the Assessing Officer restricted the claim of the appellant to ₹24,72,330/- being 10% of the gross total income of the appellant. He categorically held that the donation is given to Tata Institute of Social Sciences which is approved under Section 80G(2)(a)(iiif) of the Act to which restriction of 10% of gross total income as provided u/s 80G (4) of the Act does not apply. He held that Provision of Section 80G(4) does not cover the donation to an entity approved under Section 80G(2)(a)(iiif) of the Act and therefore, assessee is entitled to the claim of deduction under Section 80G of the Act to the extent of 100% of donation made to such an entity. He directed the learned Assessing Officer to verify the claimed of the appellant that if the donation made to the entity registered under Section 80G(2)(a)(iiif) of the Act is found correct, same may be allowed to the assessee while passing the appeal effect order. He passed an appellate order on 21st September, 2023, by which the learned Assessing Officer is aggrieved.

07. The learned Departmental Representative referred to the Provisions of Section 80G(4) and submitted that the donation made in excess of 10% of gross total Income is to be ignored for the purpose of

deduction under Section 80G of the Act. With respect to the deduction under Section 80GGA of the Act, it was stated that assessee did not claim the deduction in the return of income and therefore, it is not allowable. With respect to the ground no.3, assessee submitted that as assessee is not a charitable trust to which the Provisions of Section 11,12 and 13 applies and therefore, the direction of the learned CIT (A) with respect to the disallowance of carry forward of excess of expenditure incurred over income for an adjustment in subsequent year giving an opportunity to the Assessing Officer is not proper.

08. The learned Authorized Representative referred to the order of the learned CIT (A) and submitted that as assessee is not a trust registered under Section 12A of the Act no benefit under Section 11, 12 is allowable to the assessee and therefore, ground no. 3 of the appeal is infructuous. With respect to the ground no's of the appeal, he submitted that monetary cap of 10% of gross total income is applicable only on the donations specified under Section 80G(4) of the Act. He submitted that the donation is given by the assessee to a trust which is approved as an university under Section 80G (2)(a)(iiif) of the Act as per notification dated 15th December, 1993, to the Tata Institute of Social Sciences. Therefore, the CAP of 10% does not apply. With respect to the ground no's of the appeal, he submitted that assessee has claimed deduction under Section 80GGA of the Act of ₹1,27,02,000/- in the computation of total income. As at that time, there was no functionality available in ITR filed by the assessee to show deduction under Section 80GGA of the Act separately, It clubbed the deduction under Section 80GGA and 80G together. Therefore, the assessee has claimed deduction in the return of income as well as disclosed it in the computation of total income.

Accordingly, it is incorrect to state that assessee did not claim the same in the return of income. He specifically referred to the assessment order where the learned Assessing Officer himself took the total deduction of ₹2,69,35,000/- which is comprising of donation under Section 80G of the Act of ₹1,42,33,000/- and deduction under Section 80GGA of the Act of Rs,1,27,02,000/-. He further referred to paragraph no.9.3 of the assessment order where it is mentioned that assessee has claimed deduction in the computation of income. He therefore submitted that denial of deduction to the assessee is not proper. Therefore, the learned CIT (A) has directed the learned Assessing Officer to consider the deductions after verification and if allowable, allow the assessee. Therefore, the grievance of the Revenue is not proper. He submitted that the learned CIT (A) has directed the learned Assessing Officer to grant deduction under Section 80G and 80GGA of the Act after proper verification. Thus, there is no infirmity in the order of the learned CIT (A).

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the assessee is a public trust registered under the Bombay Public Trust Act, 1950, originally registered under Section 12A of the Act on 10th December, 1990 but subsequently, it surrendered its registration on 26th February, 2015, as it did not want to claim any benefit under Section 11 of the Act. The assessee has earned interest income of ₹247,23,301/-. Out of this interest income, it claimed deduction of ₹1,42,033/- under 80G of the Act and ₹1,27,02,000/- under Section 80GGA of the Act. It was stated that as no separate column was available in ITR filed for section 80GGA of the Act, the assessee clubbed both this deduction together and accordingly, restricted the taxable income to ₹ nil. In

the computation of total income file during the course of assessment proceedings, the assessee claimed deduction under Section 80GGA of the Act of ₹1,27,02,000/- and also claimed deduction under Section 80G of the Act of ₹1,42,33,000/-. The deduction under Section 80G of the Act was made by the assessee as it donated ₹1,42,33,000/- to Tata Institute of Social Sciences, Deonar, Bombay which is approved university or educational Institution by prescribed authority as per notification dated 15th December, 1993. Therefore, the deduction under Section 80G of the Act was not restricted to 10% of the gross total income as deduction granted to the specified entities and therefore, 50% of the above amount was allowed. The learned CIT (A) has restored the matter back to the file of the learned Assessing Officer to grant deduction to the assessee under Section 80G of the Act to the entities registered under Section 80G(3)(a)(iiiif) of the Act after verification. Thus, according to him on perusal of Section 80G(4) of the Act, it does not restrict the donation given to such entity by restricting it to the 10% of the total income.

010. Provision of section 80 G (4) are as under :-

[(4) Where the aggregate of the sums referred to in sub-clauses (iv), (v), (vi) ¹, (via) and (vii) of clause (a) and in ²[clauses (b) and (c)] of sub-section (2) exceeds ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by ³any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), then the amount in excess of ten per cent of the gross total income shall be ignored for the purpose of computing the aggregate of the sums in respect of which deduction is to be allowed under sub-section (1)].

011. Indeed donation u/s 80 G (2) (iiif) is not mentioned u/s 80 G (4) of the Act. Thus, Id CIT (A) is correct and hence we confirm his order. Accordingly, we do not find any merit in ground no.1 of the appeal, hence, dismissed.
012. Ground no.2 of the appeal is with respect to the claim of deduction under Section 80GGA of the Act claimed in the return of income which was clubbed with deduction under Section 80G of the Act but shown separately in the computation of total income. The learned CIT (A) has relied upon the CBDT Circular as well as the decision of the Hon'ble Punjab and Haryana High Court and directed the learned Assessing Officer to verify the claim and if same is allowable to the assessee to grant it while passing order giving effect. We find that it cannot be said that assessee has not claimed such deduction in the return of income filed in ITR 5 as same was clubbed with deduction under Section 80G of the Act. This fact is also recorded by the learned Assessing Officer in his assessment order at paragraph no. 9.3. Thus, assessee claimed it in the return of income albeit clubbed it with the different section. However, the deduction is claimed under Chapter VIA of the Act. It is not the claim of the Revenue that in ITR filed by the assessee such functionality was available at that time. In view of this, we do not find any infirmity in the order of the learned CIT (A) in directing the learned Assessing Officer to verify the same and grant in order giving effect to the appellate order if available to the assessee. Therefore, the ground no.2 of the appeal is dismissed.
013. Ground no. 3 of the appeal is infructuous, as assessee has not claimed benefit of section 11 and 12 of the Act. Therefore, there is no question of granting the benefit of deficit of this year to the assessee to be carried forward in the next year.



014. In the result, the appeal of the learned Assessing Officer is dismissed.

Order pronounced in the open court on 21.05. 2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.05.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai