

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'E', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER**

**ITA No.1066/Mum/2024
Assessment Year: 2016-17**

Income Tax Officer-11(3)(1), Mumbai	vs	Tainwala Holdings Private Limited 403, Ackruti Star, Central Road, MIDC, Andheri East, Mumbai- 400093. PAN: AAAC 1542 R
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shreyash Shan, Advocate a/w Shri Kunal Shah
Revenue by : Shri P.D. Chougule, Addl. CIT/ Sr. DR

Date of Hearing : 22.07.2024

Date of Pronouncement : 24.09.2024

ORDER

PER AMARJIT SINGH, AM:

This appeal of the revenue for the assessment year 2016-17 is directed against the order dated 02.01.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The revenue has raised the following grounds of appeal:

"i. Whether on the facts and in the circumstances of the case, the Ld. (CITA) erred in deleting the disallowance made by the AO of the deduction claimed u/s 35AC of the Act by the assessee in its ROI of Rs.4,00,00,000/- without considering the merit of the case

ii. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance made by the AO of the deduction claimed by the assessee in its ROI of Rs.4,00,00,000/- without considering the genuine fact of the case that the assessee is not conducting any business activity for the year under consideration and thereby not eligible for claiming deduction u/s. 35AC of the Act "

iii. The appellant prays that the order of the Ld. CIT(A) on the above grounds may kind be set aside and addition made by the Assessing Officer be restored ".

iv. The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary."

2 Fact in brief is that return of income declaring total income of Rs. 21,02,320/- was filed on 27.09.2016. The return was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 13.07.2018. The assessee also filed revised return of income on 30.03.2018 by declaring income at Rs. 21,02,320/-. During the course of assessment on perusal of the revised return of income the assessing officer observed that assessee has shown Rs. 4 crores as donation u/s 35AC under the head other expenses whereas in the original return of income no claim of deduction u/s 35AC was shown under the head other expenses. Therefore, assessee was asked to explain as to why the expenses claimed as donation u/s 35AC should not be disallowed since the issue involved in the case on hand was similar to that of A.Y. 2014-15 wherein the expenses claimed u/s 35AC was disallowed in absence of any business activity. In its submission, the assessee submitted that without prejudice if deduction u/s 35AC is not allowed then alternatively requested to allow deduction u/s 80GGA of the Act. However, the assessing officer rejected the claim of deduction u/s 80GGA on the ground that assessee has not claimed the same in the return of income filed by it.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee of deduction u/s 80GGA of the Act. The relevant extract of the ld. CIT(A) is reproduced as under:

"These grounds are w.r.t. to claim of deduction u/s. 35AC in respect of donation of Rs.4,00,00,000/- made for eligible project.

The assessee submitted that in doing So, the AO Wrongly held that the assessee did not have any Income under the head Income from Business and Profession since it was not carrying on business while assessing income under that head and disallowed deduction u/s.35AC.

The assessee further submitted that without prejudice to above ground of appeal no.2, the assessee may be allowed deduction u/s. 80GGA of the Income-tax Act, 1961 if it is held that the assessee does not have any income under the head Business and Profession and is denied deduction u/s.35AC of the Income-tax Act, 1961.

In my opinion if the donation to the institutions approved by the National Committee for carrying out eligible projects or schemes is not doubted than no addition can be made. The deduction has to be allowed either u/s 35AC or u/s 80GGA(2(bb) of the IT Act.

More over on similar facts the CIT(A) for AY 2014-15 has allowed the deduction in the case of assessee itself u/s 80GGA.

It is therefore held that assessee is eligible for deduction u/s 80GGA of the Act.

The AO is therefore directed to delete the addition.”

4. During the course of appellate proceedings before us, the ld. Counsel filed paper book comprising copies of various details filed before the lower authorities and also placed reliance on the decision of ITAT, Mumbai in the case of M/s. Dudhana Investment & Trading Pvt. Ltd. vs ITO dated 24.03.2010.

5. On the other hand, ld. DR supported the order of assessing officer.

6. Heard both the sides and perused the material on record. Without reiterating the fact as discussed supra in this order. The ld. CIT(A) after considering the relevant supporting documents allowed the claim of deduction u/s 80GGA holding that assessee has made donation to the institutions approved by the national committee for

eligible project or scheme. Further, we have perused the decision of co-ordinate bench of the ITAT referred by the ld. Counsel wherein on identical issue, the ITAT has allowed the claim of deduction u/s 80GGA of the Act after rejecting the claim of deduction u/s 35(1)(ii) of the Act. The relevant extract of the decision is reproduced as under:

“6. We have heard the parties. We have also carefully perused the record as well as considered the facts. The Ld. Counsel for the assessee submitted that in one of the group concern, on identical set of facts, the Tribunal has confirmed the action of the Ld. CIT(A) allowing the deduction u/s. 80GGA and also same time rejected the plea of the assessee for claiming deduction u/s. 351) (ii) of the Act. The Ld. Counsel has filed the copy of the Tribunal order in the case of Chittoda Investment & Trading Pvt. Ltd., v/s. ITO, ITA No. 836, 837, 996 & 997/Mum/2007 dt. 17.12,209. We also heard the Ld. D.R. We have also perused the order of the Tribunal in the case of Chittoda Investment 995/Mum/2009 and Trading Pvt. Ltd. (supra). In the said case also, the advances were made to M/s. Indo American Hybrid Company Ltd., Bangalore and interest on the same was claimed as a business income and also a weighted deduction u/s. 35(1)(ii) as well as 35AC of the Act was claimed. The assessee's claim was rejected by the A.O and which was confirmed by the CIT(A) in the said case, but the alternate plea of the assessee for allowing the deduction u/s. 80GGA was accepted. It is seen that the facts are identical in both these cases, We. therefore. find no reason to differ from the view taken by the Tribunal in the case of Chittoda Investment & Trading Pvt. Ltd., (Supra): Admittedly, in this case also, the assessee itself was showing the interest income under the head income from other sources' in preceding years. We, therefore., uphold the order of the ld CIT(A) on the issue that the assessee has not carried out any business activity in the form of money lending for earning interest income. We, accordingly, dismiss all the grounds taken by the assessee on this issue. Same way, as the assessee is fulfilling the conditions for deduction u/s. 80GGA, we uphold the order of the Ld CIT(A) for allowing the deduction to the assessee under the said section even if the assessee has no income from the business. Accordingly, the grounds taken by the Revenue are dismissed.”

7. In the light of the above facts and findings following the decision of co-ordinate bench of the ITAT as referred above, we do not find any reason to interfere in the decision of ld. CIT(A). therefore, grounds of the revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24.09.2024

Sd/-

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai: 24.09.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai