

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "E" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 4519/Mum/2024 (A.Y. 2012-13)

Himar Specialty Chemicals Private Limited Shop No. 8, Plot No. 4D/2 Sun Heights CHS Off. Adishakaracharya Marg, Powai, Mumbai 400 076. PAN : AAACH8277M (Appellant)	Vs.	ITO-10(1)(1) Aayakar Bhavan M.K. Road Chuchgate Mumbai-400 020. (Respondent)
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Assessee by	Shri Himansh Gandhi
Department by	Shri Praveen Shrivastava
Date of Hearing	10.10.2024
Date of Pronouncement	11.11.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above cited appellant's appeal, appellant company raised following two grounds :-

1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld. AO in issuing notices under section 148 of the Income Tax Act, 1961 which bad in law and required to be quashed.
 2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the disallowance of Rs. 3 lakhs under section 35AC of the Income Tax Act, 1961.
2. The Ld. AO made an addition of Rs. 3 lakhs by holding that the donation given to Navjeevan Trust is not proper. From the assessment order, it is observed that this additon of Rs. 3 lakhs was made based on the

statement of one of the trustee Mr. Subhash Rajaram Kadam, who has stated that the money taken by the Trust was given back to the donor in cash. Based on the said statement, appellant was requested to explain as to why donation of Rs. 3 lakhs should not be added back to the income. On 26.12.2016, the appellant was go give reply for the above query and on 26.12.2016 no one attended in the Income Tax office nor any submission was made. Since there is no reply from the appellant, the Ld. AO has added Rs. 3 lakhs while completing the assessment.

3. Aggrieved by the addition made by the Ld. AO, an appeal was filed before the Ld. CIT(A). During the appeal before the Ld. CIT(A), the appellant has stated that the addition made u/s. 35AC was factually and legally not tenable because addition was made and assessment was reopened only on the basis of statement of one person. Since the reason to believe for escapement of income is not proper, reopening itself is invalid. The appellant contended before the Ld. CIT(A) that there is only reason to suspect and certain roving enquiries was made without finding any fact. It was also mentioned before the Ld. CIT(A) that the assessment order u/s. 147 of the Act was passed without disposing objections raised by the appellant before completing assessment. The appellant relied on the decisions of GKN Driveshafts (India) Ltd. Vs. ITO & other cases and argued before the Ld. CIT(A) that the assessment order is bad in law because show-cause notice dated 22.12.2016 seeking to make an addition is after retraction of original statement by the witness and also the Ld. AO did not give any opportunity to cross examine the person who gave statement. Several other cases were also relied upon by the appellant before the Ld. CIT(A) to state that the reopening of the assessment by the Ld. AO is illegal and invalid. Even on merits also, the Ld. AR of the appellant has stated before the Ld. CIT(A) that the addition cannot be bade solely based on the statement, but it should be corroborated by independent evidence. The Ld. CIT(A) passed a very detailed order stating that the department has got information that the donation made to this

particular Trust is bogus and accordingly confirmed the addition. Even on reopening of the assessment, the Ld. CIT(A) has adjudicated the issue in favour of the Department by stating that prima facie belief is enough for reopening the assessment and the Ld. CIT(A) relied on the decisions of Nova Promoters and Finlease (P) Ltd. 342 ITR 169 (Del) and also Peass Industrial Engineers (P) Ltd., 76 Taxman.com 106(Guj), where it was held that if tangible information from Investigation Wing is received than notice of reassessment justified. The Ld. CIT(A) has relied on the Hon'ble Madras High Court decision in the case of Home Finders Housing Ltd.404 ITR 611 (Madras) for the proposition that non-disposal of objection of appellant by the Ld. AO through a speaking order would not make reassessment proceedings ab initio void and SLP filed against this decision was dismissed by Hon'ble Supreme Court vide 256 Taxman 59 (SC). The Ld. CIT(A) has also mentioned that cross examination opportunity was given to the appellant on 26.11.2016 wherein Mr. Kadam has confirmed that his earlier statement dated 10.11.2014 was duly deposed and signed by him. Accordingly, the Ld. CIT(A) has confirmed the addition made by the Ld. AO.

4. Aggrieved by the orders of the Ld. AO and the Ld. CIT(A), appeal was filed before the ITAT with two grounds of appeal mentioned in page No. 1 of this order. During the proceedings before the ITAT, Ld. AR of the appellant has again challenged the reopening of the assessment by saying that the reopening proceedings as invalid as it is initiated for “verification” purpose and on wrong facts. Ld. AR of the appellant has relied upon the decision of Hon'ble Bombay High Court in the case of Chandni J. Ahuja 160 Taxman.com 404, wherein it was held that reasons recorded indicate that the case need verification is not a valid for reopening. For the same proposition, Ld. AR of the appellant relied on the decision of PCIT Vs. Manzil Dineshkumar Shah, 95 taxman.com 46 (Guj High Court) has held that if the reasons recorded for reopening show that it was for verification purpose, then reopening is invalid. Ld. AR has further stated that this case of Hon'ble

Gujarat High Court was upheld by Hon'ble Supreme Court in the same case reported in 101 taxman.com 259 (SC). It was also argued by Ld. AR that the statement on which the Department relying on was retracted by the same person and hence the same is not valid.

5. Ld. DR relied on the orders of the Ld. AO and the Ld. CIT(A) and especially the order of the Ld. CIT(A) who confirmed the order of the Ld. AO wherein issues of reopening of assessment and on merits were dealt with.

6. After hearing both sides, it is held that the reopening of assessment u/s. 148 of the Act is invalid due to the ratio laid down by Hon'ble Gujarat High Court decision in the case of PCIT Vs. Manzil Dineshkumar Shah (supra) which is upheld by Hon'ble Supreme Court subsequently. It was held that reassessment proceedings cannot be initiated for making any inquiry or verification. In the present case it is clear from the reasons recorded from reopening the case was reopened for verification purposes as the Ld. AO used word "the appellant is donor of Navjeevan Charitable Trust, which needs further "verification" and for the purpose of verification of the donations made by the appellant, proposal for seeking approval for issue of notice u/s. 148 of the Act was sent to the Range Head, which was duly approved subsequently. As the issue was directly covered by the decision of Hon'ble Gujarat High Court against the Department, hence reopening of assessment is held as invalid. Apart from this, the Hon'ble Jurisdictional High Court's decision of Chandni J. Ahuja (supra) is directly on the point and against the Department.

7. As far as merits are concerned, the statement on which the Department relied upon for the proposition that the amounts given to the Trust were given back to the appellant by cash does not have any corroborative evidence except the statement of person who again retracted.

Hence, there is no evidentiary value attached to the statement given by Mr. Subhas Rajaram Kadam.

8. In view of the above, the appeal of the appellant is allowed.

Order pronounced in the open court on 11th November, 2024.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 11.11.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai