

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1914/Mum/2024  
Assessment Year: 2014-15**

ACIT-14(1)(2), Mumbai	Vs.	Ashitkumar Gunvantrai Shah  372 A & B, Santabai Amre Marg Off 9T, Chembur, Mumbai- 400071.  PAN: AAIPS 5086 N
(Appellant)		(Respondent)

**C.O. No.112/Mum/2024  
(Arising out of ITA 1914/Mum/2024)  
Assessment Year: 2014-15**

Ashitkumar Gunvantrai Shah  372 A & B, Santabai Amre Marg Off 9T, Chembur, Mumbai-400071.  PAN: AAIPS 5086 N	Vs.	ACIT-14(1)(2), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Piyush Chhajed  
Revenue by : Shri Manoj Kumar Singh, Sr. DR

Date of Hearing : 09.09.2024

Date of Pronouncement : 21.11.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

The appeal filed by the revenue and cross-objection filed by the assessee are directed against the order of Addl/JCIT(A), Thiruvananthapuram dated 15.02.2024.

ITA 1914/Mum/2024

*"1. On the facts & circumstances of the case and in law, the CIT(A) erred in allowing claim of assessee u/s 35(1)(ii) ignoring the fact that the genuineness of donation made to the institution i.e. School of Human Genetics and Population Health was in question due to the finding unearthed during and after the survey proceeding that the School of Human Genetics and Population Health was engaged in providing non-genuine donation u/s 35(1)(ii) of the Act in lieu of commission.*

*2. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the assessing officer be restored.*

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

2. Fact in brief is that return of income declaring total income of Rs. 1,21,36,561/- was filed on 31.01.2015. The case was reopened by issuing of notice u/s 148 of the Act on 30.03.2017 on the basis of information received from the from DGIT (Inv.), Kolkata that survey action was carried out in the case of School of Human Genetics and Population Health and it was found that they were engaged in providing accommodation entries of bogus donation to the donors and they accepted that they had refunded amount after deducting commission charges. The assessing officer noticed that assessee had paid donation of Rs. 10,00,000/- during the financial year 2013-14 to the said institution and claimed deduction of Rs. 17,50,000/- @1175% of the donation amount.

3. During the course of re-assessment, the assessee was asked to substantiate genuineness of donation of Rs. 10,00,000/- paid to M/s. School of Human Genetics and Population Health, Kolkata. In response, the assessee explained that donation given to the said party was genuine and same was given on the basis of exemption

certificate issued by the Income Tax Department to the said institution. However, the assessing officer has disallowed the claim of deduction u/s 35(1)(ii) on the ground that assessee failed to substantiate the genuineness of the said donation made to M/s. School of Human Genetics and Population Health, Kolkata and that institution was engaged in providing bogus donation receipts as per the information received from DGIT(Inv.), Kolkata.

4. Aggrieved assessee filed appeal before the First Appellate Authority. The First Appellate Authority has allowed the appeal of the assessee after referring the decision of Hon'ble Bombay High Court in the case of National Leather Cloth Manufacturing Company vs Indian Council Agricultural Research & Others 241 ITR 482 (Bombay) wherein it is held that assessee was entitled to relief on the certificate granted by the prescribed authority u/s 35(1)(ii) of the Act to the institution to which it donated the sum of money for claiming deduction under that section if it was subsisting and valid at the time the donation was made.

5. During the course of appellate proceedings before us, the Id. Counsel has also referred the various judicial pronouncements of ITAT, Mumbai wherein similar issue and identical facts the claim of deduction u/s 35(1)(ii) of the Act on the donation made to M/s. School of Human Genetics and Population Health was allowed.

6. We have perused the decision of ITAT in the case of Shri Ravindra K Reshamwala vs DCIT, the relevant extract of the decision is reproduced as under:

“4. Without reiterating the facts as elaborated above, the Assessing Officer has disallowed the claim of deduction under section 35(1)(ii) to the amount of Rs.1,92,50,000/- as donation provided to School of Human Genetics and Population Health on the ground that said concern was engaged in providing accommodation entries of donations. 5. During the course of appellate proceedings before us, the Ld.Counsel filed paper book comprising copies of various documents filed before the lower authorities, i.e. donation receipt, copy of registration certificate issued under section 12A, copy of notification of approval issued under section 35(1)(ii) of the Act by the CBDT in the name of School of Human Genetics and Population Health. It is further noticed that CBDT vide its notification No.82/2016 F.No.2003/64/2009/ITA-II has withdrawn notification granting approval under section 35(1)(ii) on 15/09/2016 which showed that notification was valid at the time the donation was made. In this regard, we have perused the decision of ITAT, Mumbai Bench “H” in ITA No.1202/Mum/2022 order dated 15/09/2022 wherein it was held that at the time of making donation to School of Human Genetics and Population Health the concern was having valid approval granted under the Act by the CBDT, therefore, subsequent cancellation of such approval retrospectively, vide CBDT order dated 16/12/2016 cannot invalidate the assessee’s claim of deduction under section 35(1)(ii) of the Act. The relevant part of the operating portion of the order is reproduced as under:-

“5. Heard both the sides and perused the material on record. During the course of assessment on the basis of information received from DDIT(Investigation), Kolkata, the A.O has disallowed the claim of deduction u/s 35(1)(ii) of the Act to the amount of Rs.19,25,000/- as donation provided to School of Human Genetics & Population Health (SHG& PH) on the ground that said concern was engaged in providing accommodation entries of donations. During the course of appellate proceedings before us the ld. Counsel filed paper book comprising copies of various document filed before the lower authorities i.e donation receipt, copy of registration certificate issue du/s 12A, copy of notification of approval issued u/s 35(1)(ii) of the Act by the CBDT in the name of School of Human Genetics & Population Health (SHG& PH) etc. During the year under consideration the assessee has claimed deduction u/s 35(1)(ii) amounting to Rs.19,25,000/- on account of donation of Rs.11 lac made to School of Human Genetics & Population Health (SHG& PH) in F.Y. 2013-14. It is further noticed that CBDT vide its notification no. 82/2016 F. No. 2003/64/2009/ITA-II has withdrawn notification for granting approval u/s 35(1)(ii) on 15.09.2016 which showed that notification was valid at the time the donation was made. In this regard we have perused the

*decision of Hon'ble Jurisdictional High Court in the case of National Leather Cloth Manufacturing Company Vs. Indian Council Agricultural Research & Others, 241 ITR 482 (Bom) wherein held that the assessee was entitled to relief on the certificate granted by the prescribed authority u/s 35(1)(ii) of the Act to the institution to which it donated the sum of money for claiming deduction under that section if it was subsisting and valid at the time the donation was made. The retrospective withdrawal or cancellation of the certificate would have no effect upon the assessee who had acted upon it when it was valid and operative. On similar facts and identical issue the coordinate bench of the ITAT, Mumbai in the case of Motilal Dahyabhai Jhaveri & Sons Vs. ACIT vide ITA No. 3453/Mum/2018 and 1584/Mum/2019 dated 24.04.2019 held that donor cannot be affected due to subsequent withdrawal of recognition with retrospective effect. Similarly, the ITAT, Mumbai in the case Unish Jewellers Vs. ACIT (2019) 107 taxman.com 19 (Mumbai Tribunal) held that where approval granted u/s 35(1)(ii) to Scientific Search Society was cancelled subsequently with retrospective effect, weighted deduction claimed by the assessee donor u/s 35(1)(ii) could not be denied, if there was valid and subsisting approval when donation was given. It is undisputed fact that at the time of making donation to School of Human Genetics & Population Health (SHG& PH) that concern was having valid approval granted under the act by the CBDT, therefore, subsequent cancellation of such approval retrospectively vide CBDT order dated 15.12.2016 cannot invalidate the assessee's claim of deduction u/s 35(1)(ii) of the Act. Following the decision of the Hon'ble jurisdictional High Court and the decisions of coordinate benches of the ITAT Mumbai as supra we direct the A.O to allow the claim of deduction u/s 35(1)(ii) of the Act to the assessee. Accordingly, ground of appeal no. 2 of the assessee is allowed."*

*6. Since in the case of the assessee, the donation was given as per the copy of the receipt enclosed on 21/11/2013 and 31/03/2014, respectively, therefore, following the decision of the ITAT, Mumbai as referred above, we direct the Assessing Officer to allow the claim of deduction under section 35(1)(ii) of the Act. Therefore, grounds of appeal of the assessee are allowed."*

7. Since, the issue in the case of the assessee is squarely covered by the various decision of ITAT, therefore, following the decision of ITAT, we do not find any infirmity in the decision of the

First Appellate Authority in allowing the claim of deduction u/s 35(1)(ii) of the act. Therefore, the appeal of the revenue is dismissed.

C.O. No. 112/M/2024

8. Since, we have dismissed the appeal of the revenue, therefore, the technical ground of the appeal filed by the assessee about the validity of re-assessment is not required any adjudication and the same is dismissed as infructuous.

9. In the result, appeal of the revenue and cross-objection filed by the assessee are dismissed.

Order pronounced in the open court on 21.11.2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 21.11.2024  
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