

IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,  
MUMBAI

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 2975/MUM/2023  
(A.Y. 2014-15)

D Thakkar Developers Pvt. Ltd. D1 & D2, 4 <sup>th</sup> Floor, Court Chambers, Vitthaldas Thackersey Marg, 35 New Marine Lines, Marine Lines, Maharashtra-400020	v/s. बनाम	DCIT 14(1)(2), Mumbai Aayakar Bhavan, Churchgate, Mumbai Maharashtra-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCP6396E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

ITA No. 3477/MUM/2023  
(A.Y. 2014-15)

ACIT 14(1)(2), Mumbai Room No. 455, 4 <sup>th</sup> Floor, Aayakar Bhavan, M K. Road, Mumbai Maharashtra-400020	v/s. बनाम	D Thakkar Developers Pvt. Ltd. 1105/1106, Universal Magestic, Behind RBK International School, P. L. Lokhande, Marg, Chembur West, Mumbai-400043
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCP6396E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Kirith Sheth
Revenue by :	Shri R. R. Makwana

Date of Hearing	05.11.2024
Date of Pronouncement	20.12.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

These cross appeals are filed by the assessee and the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-22/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 02.08.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2014-15.

2. The assessee has raised following grounds of appeal:

*"1. The notice u/s.148 and consequent order u/s. 143 (3) r.w.s. 147 are bad in law since the notification withdrawing the approval u/s. 35 (1) (ii) granted to the School of Human Genetics and Population Health was issued on 15th September 2016 i.e. well before the passing of original assessment order u/s. 143 (3) dated 28th December 2016 and as such there was no new material with the learned AO to allow him to assume jurisdiction to issue notice u/s.148. Your appellant respectfully submits that by issuing notice u/s. 148 and completing the assessment u/s. 143 (3) r.w.s. 147, the learned AO has effectively exercised the revisional power u/s. 263 vested with the Commissioner of Income Tax and therefore notice u/s. 148 and order u/s 143 (3) r.w.s. 147 are bad in law  
2 Even otherwise, the learned CIT(A) has erred in confirming the disallowance of deduction u/s 35 (1) (ii) of the IT Act, though the extent of disallowance confirmed in CIT(A) order is not very clear to the appellant, which was claimed @ Rs. 5,25,00,000 in the Return of Income. Your appellant respectfully submits that, in the light of various judicial pronouncements, the disallowance of the aforesaid deduction is unjustified and the entire amount of Rs. 5,25,00,000 should be allowed as deduction u/s. 35 (1) (ii)"*

3. The revenue has raised following grounds of appeal:

*"1. Whether on the facts of the instant case and in law, the Ld. CIT(A) was justified in reducing the rate of weighted deduction to 125% from 175% ignoring the provisions of section 35(1)(ii) of the Income Tax Act, which prescribes a specified rate of 175% for claiming weighted deduction.  
2. Whether on the facts of the instant case and in law, the Ld. CIT(A) was justified in reducing the rate of weighted deduction to 125% from 175% without assigning any reason for the same and also without discussing the genuineness of the donations made.  
3. Whether on the facts of the instant case and in law, the Ld. CIT(A) was justified in reducing the rate of weighted deduction to 125% from 175% ignoring the fact that the organization to whom assessee made donation had accepted before Income Tax Settlement Commission that it has been providing bogus donation entries in lieu of commission and also the Central Government*



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*has withdrawn eligibility of organization u/s. 35(1)(vii) vide notification dated 15.09.2016.*

*4. 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.”*

4. Brief facts of the case are that the return declaring income of Rs. 4,79,05,930/- was filed by the assessee on 28.11.2014. The case was selected for scrutiny and the original assessment was completed on 28.12.2016 at returned income. Subsequently, on receipt of information regarding bogus claim of donation given to M/s. School of Human Genetics and Population Health (SHG&PH) in respect of which weighted deduction of Rs. 5,25,00,000/- was claimed u/s 35(1)(2) by the assessee, the case was reopened. A notice u/s 148 was issued on 02.03.2017 in response to which the assessee requested that the original return filed on 28.11.2014 should be treated as return in response to notice u/s 148 of the Act. The assessee also sought reasons for reopening which were duly supplied. Subsequently, Ld. AO proceeded to make the assessment u/s 143(3) r.w.s. 147 of the Act in which Rs. 5,25,00,000/- was added on account of disallowance of claim u/s 35(1)(ii), after detailed discussion in respect of bogus donation made by the assessee.

5. Aggrieved with the order of the Ld. AO, the assessee filed an appeal before Ld. CIT(A). Vide order dated 02.08.2023, Ld. CIT(A) upheld the disallowance to the extent of 3,75,000/-.

6. Aggrieved with the order of the Ld. CIT(A), both the revenue and the assessee are in appeal before us.



7. The assessee's first ground pertains to reopening of the assessment. It has been stated by the assessee that even though no objection was raised before AO against the issue of notice, the validity of notice u/s 148 is being challenged on legal grounds. The assessee has made following written submissions/statement in this regard:

*"[(a) The recorded reasons refer to information received from Directorate of Investigation (Kolkata) alleging some wrongdoing by the donee institution namely School of Human Genetics and Population Health. The alleged wrongdoing resulted in retrospective withdrawal of approval u/s. 35 (1) (ii) granted to the donee institution. The Id. AO has not made any enquiry of his own before issuing the notice u/s. 148. In any case, in the recorded reasons, there is neither any allegation of repayment of donated amount to the appellant in cash, or in some other form, nor any reference to some negative material specific to the appellant.*

*Explanation below section 35 (1) (iii) prohibits denial of deduction w/s. 35 (1) (ii) only on the ground that approval granted to the donee institution was subsequently withdrawn. Thus, withdrawal of approval can not be considered as a fresh tangible material for formation of opinion, as regards the escapement of income, before the issue of notice u/s. 148. Even otherwise, withdrawal notification was issued prior to the completion of original assessment vide order u/s. 143 (3) dated 28th December 2016 and hence can not be considered as a fresh tangible material. Further, the information received from Directorate of Investigation (Kolkata) can also not be considered as a fresh material since the unearthing of negative information about the donee institution preceded the withdrawal of approval and in fact the said negative information was the apparent reason for withdrawal of approval.*

*(b) H'ble Bombay Court in the case of National Leather Cloth Manufacturing Co (copy of judgement already furnished) has held that notice u/s. 148, issued on the basis of subsequent withdrawal of approval, is invalid*

*(c) H'ble Supreme Court in the case of Chotatingrai Tea (copy of judgement already furnished) has held that deduction u/s. 35 (1) (ii) can not be denied in absence of any evidence to demonstrate that the donor had received back the donated amount"*

8. On the other hand, Ld. DR has made following submissions with regard to the reopening of the assessment:

- i. The assessee has not objected to the re-opening during the course of re- assessment proceedings.



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- ii. Reliance is placed on the decision of Kolkata ITAT in the case of Tarasafe International (P.) Ltd. v. Deputy Commissioner of Income- tax [2023] 153 taxmann.com 282 (Kolkata Trib.) wherein it was held that The information supplied by the Principal DIT(Investigation), Kolkata was sufficient to harbour belief that income in the shape of alleged claim of donation to Herbicure is a bogus one, because the Department was able to lay its hand on a large number of material, which was available with the Revenue and it was intimated to all the Assessing Officers.

On above grounds, Ld. DR has vehemently supported the action of the Ld. AO with regard to reopening of the assessment.

9. We have carefully considered the rival submissions in this regard. It is noted that the reopening was triggered by the information received from the Investigation Wing of the I.T. department. There was, accordingly, sufficient prima facie evidence to justify of the reopening of the assessment. The assessee has submitted that subsequent withdrawal of the notification u/s 35(1)(ii) cannot be a ground for reopening. However, it is noticed that the main reason for reopening was the information received through the DDIT Investigation Wing, Mumbai regarding bogus donation of Rs. 3,00,00,000/- made to M/s. SHG&PH. In this regard, enquiries had been conducted by the Directorate of Investigation, Kolkata and it was discovered, during the course of survey action u/s 133A, that M/s. SHG&PH had shown bogus donations in connivance with a



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network of brokers and accommodation entry providers and the assessee was one of the donors involved in it.

10. Ld. AR has placed reliance on the decision of the Hon'ble Bombay High Court in the case of *National Leather Cloth Manufacturing Co. v/ss ICAR (2008) 241 ITR 482*. However, in that case, it was held that the claim of deduction u/s 35(i)(ii) in respect of donation made to an institution, relying upon the certificate granted by the prescribed authority, cannot be subsequently rejected simply because the certificate is retrospectively withdrawn/cancelled later on. But in the present case, the facts are entirely different as the donation itself has been held as non-genuine in view of the incriminating evidence, found during the course of survey action undertaken by Investigation Wing, Kolkata in the case of SGH&PH. Thus, the basis of reopening in the instant case was the incriminating material/information received by the AO through Investigation Wing, Mumbai and not the subsequent withdrawal of the notification u/s 35(i)(ii) of the Act.

11. Similarly, facts in the case of *CIT v/s Chotatingrai Tea (2003) 126 Taxman 399 (SC)*, relied upon by the assessee are also quite different. In that case, the approval granted by the prescribed authority u/s 35CCA was subsequently withdrawn with retrospective effect on the ground that the donations had not been utilized for the prescribed purposes of rural development. In view of this withdrawal, the claim of the assessee donor for deduction u/s 35CCA was denied by the revenue and it was also alleged that the



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assessee had received back the donation made to the society. It was, therefore, held by the Hon'ble Apex Court that since the assessee had fulfilled all the conditions for grant of deduction, there was no obligation on the part of the assessee to see that the amount is utilized for the purpose for which it was donated. In that context, it was further observed by the Hon'ble Apex Court that there was no evidence to support the revenue's case that the assessee had received back the amount donated by them to the society.

11.1 This decision is also from the instant case distinguishable as the facts here are quite different. In this case, the donation itself is stated to have been made as part of an accommodation entry network wherein bogus donations were being taken by M/s. SHG&PH. This fact was also admitted by SHG&PH before the Hon'ble Settlement Commission. Hence, the instant case is clearly distinguishable on facts from the case of *Chotatingrai Tea (supra)*.

12. In view of above facts and after careful consideration of rival submissions, we are of the view that there was sufficient material before the Ld. AO to justify the reopening of the assessment u/s 148 of the Act which is, accordingly, upheld.

13. On merits, the assessee has raised ground no.2 stating that part disallowance of deduction u/s 35(i)(ii) upheld by CIT(A) is not justified. On the other hand, revenue, in its appeal, has raised all 3 grounds pertaining to the only part confirmation of disallowance made by AO in respect of 35(i)(ii) claim. All these grounds are accordingly considered together.



14. Before us, Ld. AR has submitted that the assessee was not provided any opportunity to cross-examine the persons based on whose statement the disallowance was made. He reiterated that the donation had been made through banking channel and was, therefore, a genuine donation.

15. On the other hand, Ld. DR pointed out that SHG&PH had itself accepted before the Hon'ble Settlement Commission that they had taken bogus donations as alleged by the revenue. A copy of the order of Hon'ble Settlement Commission has been submitted before us. Moreover, in the assessment order, the Ld. AO has specifically mentioned that the assessee was asked to prove the genuineness of the transaction of donation which it failed to establish. The assessee was also asked, vide a specific ordersheet entry, to furnish details such as frequency of donations made by it in the past and in subsequent years, reasons for making donations, persons contacted etc. to prove the genuineness of the transaction. However, the assessee failed to furnish any of the details sought by the Ld. AO.

16. We have considered the rival submissions. It is clear that the assessee did not comply with any of the requirements during the course of assessment proceedings despite being given specific opportunity to do so. On the other hand, a copy of Settlement Commission's order in the case of M/s. SHG&PH as well as statements of the concerned persons based on which the disallowance was made, have also not been made available to the assessee by the Ld. AO. In this regard, Ld. AR has made the following written submissions:



*“2 The H'ble bench may direct the De Novo assessment by the learned AO, with a liberty to the appellant to raise all the factual and legal grounds / arguments before the Id. AO. The Id. AO may also be directed to provide statement of all office bearers, on which he has relied, to the appellant and to provide an opportunity to the appellant to cross examine these officer bearers (please refer page 6 of CIT (A) order in which similar plea is recorded)”*

17. In view of above facts, we deem it appropriate to remand the matter to the Ld. AO with the directions to examine the issue afresh and to provide documents relied upon by him to the assessee with due opportunity to furnish requisite reply. The assessee is also directed to make necessary compliance before the Ld. AO to substantiate its claim regarding the genuineness of the donation.

18. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the open court on 20.12.2024.

**Sd/-**

**BEENA PILLAI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 20.12.2024

अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

