

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.2285 & 2286/KOL/2025

(निर्धारण वर्ष / Assessment Year : 2012-2013 & 2013-2014)

A.K.Exporters, Phase-1, Plot No.3, Kasba Industrial Estate, Kolkata, West Bengal-700017	Vs	DCIT, Circle-32, Kolkata
PAN No. :AAFFA 2164 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by		Shri Miraz D. Shah, AR
राजस्व की ओर से /Revenue by	:	Shri Santanu Ghosh, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	10/12/2025
घोषणा की तारीख/ Date of Pronouncement	:	10/12/2025

आदेश / O R D E R

Per Bench :

These two appeals filed by the assessee against the separate orders of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, both dated 19.08.2025 for the assessment year 2012-2013 & 2013-2014.

2. It was submitted by the Id.AR that the issue was in regard to the deduction u/s.35(1)(ii) of the Act in respect of donations to M/s Herbicare Healthcare Bio Herbal Research Foundation, Kolkata. It was the submission that the issue was now squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of M/s Maco Corporation India Pvt. Ltd., passed in ITA/35/2021, dated 12.08.2022 as also the decision of the Hon'ble Jurisdictional High Court in the case of M/s J.P. Financial Services Pvt. Ltd., in ITAT/153/2023, dated 02.08.2023. The Hon'ble Jurisdictional High Court in the case of M/s Maco Corporation India Pvt. Ltd., referred to supra, has held as follows :-

We have heard Ms. Smita. Das De, learned standing Counsel for the appellant and Mr. J. P. Khaitan, learned senior counsel for the respondent.

The learned tribunal while dismissing the revenue's appeal in the impugned order had followed its earlier decision in the assessee's own case in ITA/16/2017 dated 14.3.2018 the previous appeal against this order. Against the said order, the revenue preferred appeal in ITA/42/2020 which was dismissed by judgment dated 12.8.2022. The operative portion of the judgment reads as follows:-

"In our considered view, we need not travel this far to decide the substantial question of law in the case on hand as we are considering the case falling under Section 35 of the Act. In terms of Explanation to Section 35(1) (iii) of the Act, deductions to which the assessee is entitled to in respect of any sum paid research organisation, university etc. shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to the research organisation or university etc. has been withdrawn. This issue was considered by the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Chotatingrai Tea & Ors, reported in (2002) 258 ITR 529 (SC). The operative portion of the said decision is as follows:

"It is not in dispute that the assessee had made donations Society Integral Development, Calcutta, which had as its object the undertaking to carry out approved programmes of rural development. The society had granted a certificate to the assessee which had also been approved by the prescribed authority.

According Revenue authorities the assessee were not entitled to deduction as claimed despite the aforesaid because subsequently the approval granted by the prescribed authority was withdrawn with retrospective effect. was also alleged that the assessee had received back the donation which had been made by them to the society. When the matter came up before the Tribunal at the instance of the assessee, the Tribunal found, as a matter of fact that the assessee had fulfilled all the conditions under section 35CCA of the Act for grant of deduction thereunder. The Tribunal also found that the assessee's position could not be affected by any subsequent withdrawal of the certificate granted by the prescribed authority under section 35CCA but found that there was no evidence in support of the Revenue's case that the assessee had received back the amount donated by them to the society. However, the matter was remanded back to the Assessing Officer for fresh disposal for the purpose of determining whether the money had in fact been

utilised for an approved programme. Pursuant to the directions of the High Court the following questions were referred under section 256 (2) of the Act (page 645) :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal having held that the assessee have fulfilled all the conditions laid down in section 35CCA of the Income-tax Act, 1961, read with rule 6AAA of the Income-tax Rules for deduction of the amount donated to the approved society, which had not come back to the assessee soon after or later on in some form or the other, that the Tribunal was justified in law in restoring the matter to the Assessing Officer on the reasons and grounds given in the order passed on appeal?

(2) Whether, on the facts and in the circumstances of the case, and in view of the findings of facts recorded by the Tribunal on questions of facts arising for decision, the Tribunal was justified in law in holding that the entitlement of the assessee for claiming deduction of the amount donated to the approved society would depend upon the utilisation of such fund by the approved society in the approved programme before the date specified in the section and on this basis only restoring the matter to the Assessing Officer?"

The High Court followed the reasoning of the Calcutta High Court in CIT v. Bhartia Culter Hammer Co. [1998] 232 ITR 785, and came to the conclusion that once it was found that the assessee had fulfilled all the conditions which had been laid down under section 35CCA of the Act for claiming deduction of the amount donated by it, there was no obligation on the part of the assessee to see that the amount was utilised for the for which it purpose was donated. Furthermore, deduction was allowed on the certificate furnished and it was not for the assessee to show whether the institution to which the money had been donated was carrying on the rural development work, as envisaged under section 35CCA of the Act. the

In our view, the reasoning of the High Court while answering the question referred to it in favour of the assessee is sound and calls for no interference.

In the light of the above decision, we find the reasoning given by the tribunal to be just and proper and cannot be held to be perverse. In the result, the appeal filed by the the substantial and revenue (ITA/42/2020) is dismissed question of law is answered against the revenue."

Thus, following the above decision substantial questions of law nos. 1, 2 and 3 are answered against the revenue.

3. It was the submission that the claim of deduction u/s.35(1)(ii) of the Act for both the years under consideration may be directed to be allowed.

4. In reply, Id.Sr. DR submitted that the coordinate bench of this Tribunal has in some cases held that the donations to M/s Herbicare Healthcare Bio Herbal Research Foundation, Kolkata would not be allowable for deduction/s.35(1)(ii) of the Act. It was the prayer that the addition as made by the Assessing Officer and as confirmed by the Id.CIT(A) for both the years is liable to be upheld.

5. We have considered the rival submissions. A perusal of the decision of the Hon'ble Jurisdictional High Court in the case of M/s J.P. Financial Services Pvt. Ltd., referred to supra, clearly shows that the issue before the Hon'ble Jurisdictional High Court was in regard to deduction u/s.35(1)(ii) of the Act in respect of donation made to M/s Herbicare Healthcare Bio Herbal Research Foundation, Kolkata and the Hon'ble Jurisdictional High Court has held as follows :-

OD-5

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/153/2023
IA NO: GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX 5, KOLKATA
VS
JP FINANCIAL SERVICES PVT. LTD.

BEFORE:-

THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
-AND-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

DATE: 2nd AUGUST, 2023.

Appearance:
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for appellant

The Court: This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated November 13, 2019 in ITA No. 07/Kol/2019 as well as the order in M.A. No. 4/Kol/2021 dated May 27, 2022 for the assessment year 2015-16.

The revenue has raised the following substantial questions of law for consideration :-

A. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing the deductions claimed under Section 35(1)(ii) of the Act by the assessee company for donation to the M/s. Herbicure Healthcare Bio-Herbal Research Foundation is perverse

considering that there were ample evidence on the contrary and placed on record where it is clearly evident that such transactions were carried out by the assessee firm were 1 the nature of bogus donations made with the sole intention to evade taxes ?

B. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in giving relief to the assessee by allowing the claim of bogus donations under Section 35(1)(ii) by stating that the CBDT had recognized such bogus entry providing concerns namely M/s. Herbicure Healthcare Bio-Herbal Research Foundation under section 35(1)(ii) whereas on the contrary such approval and recognition had been withdrawn by the CBDT vide Gazettee Notification S.O. 2882(E) dated 6th September, 2016 and O.M. vide F. No. 203/09/2015/ITA.II dated 21st September, 2016 considering the nature of unscrupulous activities carried on by these donee concerns ?

We have heard Mr. Om Narayan Rai, learned standing counsel along with Mr. Soumen Bhattacharjee, learned Advocate for the appellant/revenue.

The short issue which falls for consideration in this appeal is whether the Tribunal was right in allowing the deductions claimed by the assessee under Section 35(1)(ii) of the Act for the donation to a organization who initially enjoyed a registration under Section 35(1) of the Act, which was subsequently withdrawn with retrospective effect.

The learned Tribunal followed the decision of a co-ordinate Bench of the Tribunal dated 27.07.2018 in the case of Narbheram Vishram in L.T.A. Nos. 42&43/Kol/2018. Apart from certain factual similarities

the Tribunal in the said decision has also taken note of the decisions of the Hon'ble Supreme Court holding that there is no provision for withdrawal of recognition under Section 35(1)(ii) of the Act. The view taken by the learned Tribunal in the impugned order is supported by the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of Income Tax Versus General Magnets Ltd.; (2002) 256 ITR 471 wherein the Court after taking note of various decisions namely CIT v. Ethelbari Tea Co.(1931) Ltd., [2002] 256 ITR 470 (Cal), B.P. Agarwalla and Sons Ltd. v. CIT [1994] 208 ITR 863 (Cal), K.M. Scientific Research Centre v. Lakshman Prasad [1998] 229 ITR 23, Seksaria Biswan Sugar Factory Ltd.v. IAC [1990] 184 ITR 123, CIT U. Bhartia Cutler Hammer Co.[1998] 232 ITR 785, Chotatingrai Tea Estate Pvt. Ltd. v. CIT [1999] 236 ITR 644, held that for the mistake committed by the department the assessee should not suffer. The withdrawal of approval to the society for retrospective effect is itself bad and no assessee should suffer for the mistake of the department. The department has power of withdrawal but in such cases withdrawal can be only with prospective effect. Further it was held that if the donation to the approved society is genuine, in that case withdrawal with retrospective effect does not affect the right of the assessee for deduction of the amount which has accrued to the assessee on the basis of the payment to an approved society under Section 35CCA of the Act.

In the light of the above, the order passed by the learned Tribunal does not call for any interference.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

The stay application being GA/2/2023 is also dismissed.

*(T. S. SIVAGNANAM)
CHIEF JUSTICE*

(HIRANMAY BHATTACHARYYA,J.)

6. As it is noticed that the issue is now squarely covered by the decision of the Hon'ble Jurisdictional of the Calcutta High Court, referred to supra, respectfully following the decision of the Hon'ble Jurisdictional High Court, the Assessing Officer is directed to grant the benefit of deduction u/s.35(1)(ii) of the Act as claimed by the assessee for both the years under consideration.

7. In the result, both appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 10/12/2025.

Sd/-
(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 10/12/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

Income Tax Appellate Tribunal, Kolkata