

आयकर अपीलीय अधिकरण, ए / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

A / SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2316/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Deviyani Dilip Patel,  
No.66, Flat No.12 – Alsuha Flats,  
Spur Tank Road, Chetpet,  
Chennai - 600 031.

v.

The Income Tax Officer,  
Business Ward XV (3),  
Chennai - 600 034.

PAN : AALPP 6624 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. T.C.A. Sangeetha, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 14.06.2016

घोषणा की तारीख/Date of Pronouncement : 18.08.2016

### **आदेश / O R D E R**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) - 4, Chennai, dated 15.10.2015 and pertains to assessment year 2011-12.

2. Ms. T.C.A. Sangeetha, the Ld.counsel for the assessee, submitted that the only issue arises for consideration is with regard to disallowance of ₹25,00,000/-. According to the Ld. counsel, the

assessee is engaged in the business of investing in shares and debentures. During the year under consideration, the assessee borrowed a sum of ₹25,00,000/- from M/s Megatrends Inc in which the assessee's husband was a partner and donated the same to M/s Society for Welfare of Handicapped Persons, Durgapur, West Bengal. According to the Ld. counsel, M/s Society for Welfare of Handicapped Persons, Durgapur, West Bengal was notified as a society eligible for deduction under Section 35(1)(iii) of the Income-tax Act, 1961 (in short 'the Act'). The Assessing Officer, however, disallowed the claim of the assessee on the basis of the so-called communication said to be received from the Society informing that the Axis Bank opened an account with the help of some miscreants, including bank officials, in Prince Anwar Shah Road Branch, Kolkata. The Assessing Officer further found that the account in Axis Bank was opened without compliance of KYC norms. According to the Ld. counsel, if an account was opened without following the KYC norms, then the account has to be freezed and there cannot be any transfer of funds from that account to another account. In this case, there was transfer of funds from Axis Bank account to which the amount transferred by the assessee was credited. Therefore, according to the Ld. counsel, there was no

meaning in claiming that the Axis Bank could not comply with KYC norms while opening the account. On a query from the Bench what is the status of criminal proceeding pending before the Kolkata Police? The Ld.counsel submitted that she has no idea and she does not know the status of the investigation.

3. The Ld. counsel for the assessee submitted that Government of India granted approval under Section 35(1)(iii) and when the statutory provision allows deduction for the donation given by the assessee, the same cannot be disallowed by the Assessing Officer on the ground that the recipient-society misused the funds. According to the Ld. counsel, it is immaterial for the assessee about the utilization of funds. The question to be considered in this case, according to the Ld. counsel, is whether the assessee has donated the funds to the institution, which is approved under Section 35(1)(iii) of the Act. In this case, the donation was given to the institution, which was approved by competent authority under Section 35 of the Act. Therefore, according to the Ld. counsel, the recipient-institution utilised the funds for which the approval was granted. The Ld.counsel placed her reliance on the judgment of Calcutta High Court in CIT v. M/s Bhartia Cutler Hammer Ltd. (1998) 232 ITR 785 and also judgment of Gauhati High Court in

Chotatingrai Tea Estate Pvt. Ltd. v. CIT (1999) 236 ITR 644. According to the Ld. counsel, the Gauhati High Court in Chotatingrai (supra) followed the judgment of Calcutta High Court in Bhartia Cutler Hammer Ltd. (supra). The Ld.counsel further submitted that the judgment of Gauhati High Court was confirmed by the Apex Court in CIT v. Chotatingrai Tea & Others (2002) 258 ITR 529.

3. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee claimed that she donated a sum of ₹25,00,000/- after borrowing from a partnership firm in which the assessee's husband was a partner. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the assessee's husband, a partner in M/s Megatrends Inc also claims that he had donated a sum of ₹1.5 Crore to the very same Society at Kolkata. The *modus operandi* of the assessee is to credit an amount in the Axis Bank account opened in the name of the Society. In fact, according to the Ld. D.R., the bank account to which the amount was credited does not belong to the Society to which the approval under Section 35 was granted. The Society, in fact, made a complaint to the Kolkata Police about the illegal activities in opening the bank account in the name of so-called Society. Referring to the assessment order, the Ld. D.R. submitted

that the Society has made a complaint to the Police, a copy of complaint was given to the Assessing Officer. The Axis Bank with its own officials opened an account in the name of the Society and credited the amount. The Assessing Officer made a thorough investigation and found that the entire transaction was sham.

4. The Ld. Departmental Representative further submitted that the assessee actually participated in the deceptive transaction in order to evade payment of tax. The so-called credit given to Axis Bank account was the amount transferred from various other organisations and concerns and none of them engaged in said activities for the purpose for which the institute was granted approval. Of course, the utilization of funds by the recipient-society may not be within the control of the assessee, but, it is the duty of the assessee to donate funds to an approved institution. In this case, even though the institution, to which the funds were donated, was approved one, the fact remains that the amount was credited in an account opened by fictitious persons in the name of the Society, therefore, according to the Ld. D.R., the real beneficiary is not the society approved under Section 35 of the Act.

4. The Ld. Departmental Representative further submitted that the Assessing Officer made an investigation in exercise of his power under Section 133(6) of the Act. The Assessing Officer found that cheque No.020716 dated 25.02.2011 for an amount of ₹25,00,000/- was issued by M/s Megatrends Inc holding account in Axis Bank at Radhakrishnan Salai. The Axis Bank clarified that the cheque was deposited into Account No.255010100128834 in the name of Society for Welfare of Handicapped Persons, at Axis Bank, No.85, Prince Anwar Shah Road Branch, Kolkata. The account holder address was Village & Post Madhabpur, C/o Medicine House, Madhabpur Bazaar, District Moyna, West Bengal. The Assessing Officer further found that the recipient-society, as per the bank account, continued the account for a period from 25.2.2009 to 14.3.2014. The total credits to this bank account was ₹20,79,36,287/-. After considering the debits in the account, the Assessing Officer found that the funds credited in the account were admittedly transferred to other organisations. Therefore, according to the Ld. D.R., it is obvious that the assessee has actually participated in the deceptive transaction in order to evade payment of tax, therefore, the Assessing Officer has rightly disallowed the claim of the assessee.

5. I have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that a payment of ₹25,00,000/- was made to M/s Society for Welfare of Handicapped Persons, Durgapur, West Bengal, which was approved under Section 35 of the Act. For research activities, there is no prohibition in the Income-tax Act to make donation to the societies approved under Section 35 of the Act. But, similar transactions were made by several persons in Chennai to the institution at Kolkata through Axis Bank and claimed deduction under Section 35 of the Act. The Axis Bank at Kolkata opened a fictitious account to give credit to this kind of transactions and subsequently the same was transferred to various other institutions and persons. In one such transaction, a Division Bench of this Tribunal found one credit in the fictitious account opened in the Axis Bank by way of donation was, in fact, transferred to real account maintained by the Society itself in State Bank of India. Therefore, it is obvious that the so-called Society for Welfare of Handicapped Persons, Durgapur, West Bengal is also a party to the fraudulent transaction for receiving donation. On identical set of facts, this Tribunal remitted back the matter to the file of the Assessing Officer to examine the matter further and to find out the action taken

against the officials of the Axis Bank for opening such fraudulent account at Kolkata. The Assessing Officer was also directed to give an opportunity to the assessee to cross-examine the persons who are In-charge of Society at the relevant point of time and find out how they were able to receive such kind of donation and transfer the same to other institutions. The Assessing Officer also needs to examine when the funds were credited in the so-called fictitious account, how this money credited into such fictitious account was transferred to real account maintained by the Society for Welfare of Handicapped Persons. These facts are not examined by the Assessing Officer. The chain of transactions, which happened to credit the large amount of funds with fictitious account opened by Axis Bank at Kolkata, the role played by the officials of Axis Bank and the receipt of society need to be examined. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined. The Division Bench of this Tribunal, in fact, on identical set of facts in I.T.A. No. 2244/Mds/2016 dated 01.06.2016 in the case of Mrs. Rekha Goenka v. ITO has remitted back the matter to the file of the Assessing Officer after observing as follows:-

“This Tribunal is of the considered opinion that when the society claims that they have no account in Axis Bank, how the funds were transferred from that account to State Bank of India account needs to be examined. Moreover, when the Assessing Officer received a letter dated 24.03.2014 from the society, the copy of the same shall be furnished to the assessee. Since the copy of the letter was not furnished, this Tribunal is of the considered opinion that there was violation of principles of natural justice. When the Assessing Officer received a letter from the recipient-society claiming that they have no bank account in Axis Bank and the only one bank account is maintained with State Bank of India, this Tribunal is of the considered opinion that the Assessing Officer ought to have given an opportunity to the assessee to respond to the above claim of recipient-society. Since such an opportunity was not given to the assessee, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer after furnishing a copy of the letter dated 24.03.2014 to the assessee. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to furnish a copy of the letter dated 24.03.2014 said to be received from the Society For Welfare Of The Handicapped Persons, Durgapur, Kolkata and thereafter decide the issue after giving reasonable opportunity to the

assessee. It is made clear that this Tribunal is not commenting upon the merit of the addition made by the Assessing Officer and it is for the Assessing Officer to decide the same in accordance with law without being influenced by any of the observation made by the CIT(Appeals) and made by this Tribunal in this order.”

6. In view of the above, by following the decision of Division Bench of this Tribunal by order dated 01.06.2016, the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the matter as indicated by the Division Bench of this Tribunal and thereafter decide the issue in accordance with law after giving reasonable opportunity to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 18<sup>th</sup> August, 2016 at Chennai.

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 18<sup>th</sup> August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.