

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

BEFORE SHRI KULDIP SINGH(JUDICIAL MEMBER)
AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

ITA 2649/Mum/2022
(Assessment year 2014-15)

Shri Ravindra K Reshamwala 7/A, Pil Court, 111, Maharshi Karve Road, Churchgate, Mumbai-400 020 PAN : AAAGR2227C	vs	The Deputy Commissioner of Income-tax 17(1), Kautilya Bhawan, Bandra Kurla Complex Bandra (East), Mumbai-400 051
APPELLANT		RESPONDENT

Assessee represented by	Shri Piyush Chajjad
Department represented by	Smt. Mahita Nair – Sr AR. CIT

Date of hearing	13/02/2023
Date of pronouncement	21/02/2023

ORDER

PER:AMARJIT SINGH (AM)

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter called, Ld.CIT(A)] dated 20/09/2022 for the assessment year 2014-15. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (A) erred in confirming the order of assessing officer without

appreciating that the disallowance of donation on the basis of certain statements recorded of the Donee Trust without giving any opportunity to cross-examine the said persons is bad in law.

*2. On the facts and in the circumstances of the case, the Id. Commissioner of Income Tax (A) failed to appreciate that at the time when the **donation of Rs.1,10,00,000/-** was made by the appellant, the proper Approvals/Exemptions were in force and in favour of the said Trust i.e. **Human genetics and population health**.*

*3. On the facts and in the circumstances of the case, the Id. Commissioner of income tax (A) erred in confirming the order of assessing officer without appreciating that the **cancellation of approval** in the subsequent year which was earlier granted to the trust u/s.35(l)(ii) to avail exemption of donation made by the appellant does not affect the availability and genuineness of the claim made by the appellant company as held by **Hon supreme court in case of Chotatingrai Tea & Ors Etc., 258 ITR 529.**”*

2. Facts in brief are that return of income declaring income of Rs.4,00,50,450/- was filed on 10/11/2014. The case was subjected to scrutiny assessment and notice under section 143(2) of the Act was issued on 30/08/2015. During the course of assessment, Assessing Officer noticed that assessee has paid donation of Rs.1,10,00,000/- to School of Human Genetics and Population Health (SHGPH) and claimed deduction of Rs.1,92,50,000/- under section 35(1)(ii) of the Act being 175% of the donation amount. The Assessing Officer stated that information was received from the office of 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 have accepted that they have refunded amount after deducting commission charges. Therefore, a show cause notice was issued to the assessee as to why the deduction under section 35(1)(ii) claimed by the assessee should not be disallowed. In response, the assessee filed his submission alongwith copy of receipt issued by School of Human Genetics and

Population Health. However, Assessing Officer has disallowed the claim of deduction under section 35(1)(ii) on the basis of information received from the survey action in the case of DGIT(Inv) that assessee had taken the accommodation entry in the form of donation. Aggrieved, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) has dismissed the appeal of the assessee.

3. Heard both the sides and perused the materials on record.

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 Id. 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. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 21/02/2023.

Sd/-	sd/-
(KULDIP SINGH)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 22 February, 2023

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प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Dy./Asstt. Registrar) ITAT, Mumbai