

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
(CONDUCTING THROUGH VIRTUAL COURT)**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.1724/Ahd/2018
(Assessment Years: 2014-15)

Ramawtar D Gupta-HUF C/o Haresh Enterprises, Plot No. 2111, Phase-III, GIDC, Nr. Trikampura Bus Stop, Vatva, Ahmedabad-382445	Vs.	ITO Ward-1(2)(5) Ahmedabad
[PAN No. AAHGG6929A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M. K. Patel, AR
Respondent by:	Shri R. R. Makwana, Sr. DR

Date of Hearing:	30/09/2021
Date of Pronouncement:	04/10/2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 08.05.2018 passed by the Ld. CIT(A)-10, Ahmedabad arising out of the order dated 24.10.2016 passed by the ITO, Ward-1(2)(5), Ahmedabad under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2014-15.

2. The issue relates to the addition of Rs. 5,00,000/- under Section 35(1)(ii) of the Income Tax Act 1961 in respect to donation paid to one School of Human Genetics & Population Health (SHG&PH), Kolkata.

3. At time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered by the judgment passed by the Coordinate Bench in the case of Kaustubhbhai Dhirajlal Patel vs. DCIT in ITA

No. 210/Ahd/2019 for A.Y. 2014-15. A copy whereof has also been submitted before us.

4. The Ld. DR failed to controvert such contentions made by the Ld. AR.

5. Heard the parties, perused the relevant materials available on record and considered the judgment passed in the matter of Kaustubhbhai Dhirajlal Patel vs. DCIT by the Coordinate Bench in ITA No. 210/Ahd/2019 for A.Y. 2014-15. While dealing with the issue the Hon'ble Bench has been pleased to observe as follows:

“6. We have heard the respective parties and we have also perused the relevant materials available on record.

7. Upon perusal of the judicial pronouncement as relied upon by the Ld. Counsel appearing for the assessee it appears that the issue is squarely covered in favor of the assessee.

While dealing with the issue the Coordinate Bench is observed as follows:-

“6. We have also carefully considered the judgment passed by the Ld. Tribunal in ITA No. 2318/Ahd/2017 for A.Y. 2014-15, the relevant portion dealing with the issue is as follows:-

“5. We have duly considered rival contentions and gone through the record carefully. In the case of S.G. Vat care P.Ltd. (Supra), the Tribunal has recorded the following finding:

2.In the first ground of appeal, the grievance of the assessee is that the ld.CIT(A) has erred in confirming addition of Rs. 8,75,000/- on account of alleged bogus donation to Herbicare Healthcare Bio- Herbal Research Foundation.

3.Brief facts of the case are that the assessee has filed return of income on 20.11.2014 declaring total income at Rs.4,47,910/-. On scrutiny of the accounts, it revealed that the assessee-company has given donation to Herbicare Healthcare Bio-Herbal Research Foundation,Calcutta. A survey action was carried out at the premises of the donee wherein it revealed to the Revenue that this concern was misusing the benefit of notification issued by the Income Tax Department. It has been getting donations from various sources, and after deducting certain amount of commission, these donations were refunded in cash. On the basis of that survey report registration granted to its favour was cancelled. On the basis of the outcome of that survey report, the ld.AO construed the

donation given by the assessee as bogus. Appeal to the ld.CIT(A) did not bring any relief to the assessee.

4.Before us, the ld.counsel for the assessee contended that donations were given on 25.3.2014. At that point of time, donee was notified as eligible institution and fall within the statutory eligibility criterion. Certificate for receiving donation was cancelled on 5.9.2016. There is no mechanism with the assessee to verify whether such donee was a genuine institute or not, which can avail donation from the society.

5.The ld. DR, on the other hand, contended that in the investigation it came to know about bogus affairs conducted by the donee. Hence, these donations are rightly been treated as bogus, and addition is rightly made.

6.We have duly considered rival contentions and gone through the record carefully. The AO is harping upon an information supplied by the survey tem of Calcutta. He has not specifically recorded statement of representatives of the donee. He has not brought on record a specific evidence wherein donee has deposed that donations received from the assessee was paid back in cash after deducting commission. On the basis of a general information collected from the donee, the donation made by the assessee cannot be doubted. Neither representatives of the donee have been put to cross-examination, nor any specific reply deposing that such donation was not received, or if received the same was repaid in cash, has been brought on record. In the absence of such circumstances, donation given by the assessee to the donee, on which the assessee no mechanism to check the veracity, can be doubted, more particularly, when certificate to obtain donation has been cancelled after two years of the payment of donation. It is fact which has been unearthed subsequent to the donations. Therefore, there cannot be any disallowance on this issue. We allow this ground.”

6. There is no disparity on the facts. On the basis same survey report, the genuineness of the donation has been doubted in the case of the assessee also. Therefore, the issue in dispute is squarely covered in favour of the assessee. Respectfully following the order of the ITAT in the case of S.G. Vat care P. Ltd., We do not find any merit in the appeal of the Revenue. It is dismissed.

7. In the result, appeal of the Revenue is dismissed.”

From the above judgments it appears that the case is squarely covered in favour of the assessee and in the absence of any changed facts and circumstances of the case we find it fit to allow the appeal preferred by the assessee. Thus, addition is hereby deleted.

7. In the result, assessee’s appeal is allowed.”

Thus, respectfully relying upon the same we do not hesitate to allow the appeal filed by the assessee by deleting the disallowance made by revenue to the tune of Rs. 26,50,000/- relating to the claim of donation made by the assessee to School of Human Genetics & Population Health(SHG&PH). We, therefore, delete such disallowance made by revenue.”

6. In the absence of any changed circumstances we find no reason to deviate from the stand taken by the Coordinate Bench and respectfully relying upon the same we allow the appeal by deleting the addition made by Revenue. Assessee's appeal is, thus, allowed.

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

This Order pronounced in Open Court on

04/10/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 04/10/2021

Tanmay

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The PCIT- Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad