

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM

आयकर अपील सं/ I.T.A. No.5375/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2016-17)

Jalaj Ashwin Dani Home Villa, 48, Krishna Sanghi Path, Gamdevi, Mumbai-400007.	बनाम/ Vs.	ACIT,Cir-15(1)(1) Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPD5466F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Dalpat Shah (AR)	
Revenue by:	Ms. Usha Gaikwad (DR)	

सुनवाई की तारीख / Date of Hearing: 22/07/2021

घोषणा की तारीख /Date of Pronouncement: 03/09/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 08.05.2019 passed by the Commissioner of Income Tax (Appeals)-24, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2016-17.

2. The assessee has raised the following grounds: -

“On the facts and circumstances of the case, the CIT(A)-24, Mumbai, erred in confirming the disallowance of Rs.15,00,000 claimed u/s 35AC on the ground that such donations are inadmissible against the exempt income from partnership firm ignoring the fact that the said deduction u/s 35AC is to be shown in the Schedule BP of ITR 3.



ITA No. 5375/Mum/2019

A.Y.2016-17

Without Prejudice, the said CIT(A) also erred in not allowing alternate claim of deduction u/s 80GGA(2)(bb) for the said donations which is allowable by the law and erred in not appreciating the fact that the said AO ought to have allowed the same as a rectification u/s 154 as the power of AO is quasi-judicial in nature and he is duty bound to act fairly in the discharge of his functions as directed by CBDT vide circular no.14 (XL-35) dated 11.04.1955.

Without Prejudice, the said CIT(A) erred in not appreciating the fact that if a deduction for an expenditure is allowable under different section the claim for such deduction cannot be rejected in the appeal proceedings. The appellant submits that the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT 284 ITR 323 does not debar the appellant authorities in admitting alternate legal claim as held in the case of CIT Vs. Pruthvi Brokers & Shareholders Pvt. Ltd. 349 ITR 336 (Bom).

Levy of Interest u/s 234B & u/s 234D

The said CIT(A) erred in confirming the levy of interest u/s 234B of Rs.2.04,032/- and u/s 234D of Rs.7,125/- when no such interest can be charged

The appellant craves leave to add, amend, alter, modify and / or delete all or any of the above grounds on or before the date of hearing."

ISSUE NO.1.2

3. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The contention of the Ld. Representative of the assessee is that the AO did not consider the alternative claim in view of the provisions u/s 80GGA(2)(bb) of the Act, therefore, the issue should be remanded to the AO in view of CBDT Circular No.14(XL-35) dated



ITA No. 5375/Mum/2019
A.Y.2016-17

11.04.1955. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the finding of the AO as well as CIT(A), we find that the alternative claim of the assessee in view of provisions u/s 80GGA(2)(bb) of the Act has not been considered and decided, therefore, without going into the merits of the case, we remand the issue before the AO to consider the alternative claim in view of the provisions u/s 80GGA(2)(bb) of the Act in accordance with law by giving an opportunity of being heard to the assessee. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NOs.1.1 & 1.3

4. In view of the decision of the issue no. 1.2, we left open the ground to contest as and when the necessary stage came before us.
6. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 03/09/2021

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 03/09/2021
Vijay Pal Singh (Sr. PS)

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 5375/Mum/2019
A.Y.2016-17

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, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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