

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.01/Ahd/2019

निर्धारण वर्ष/Asstt. Year: 2013-14

Mohanraj Mishrimal Singhi B-1102, Sundervan Epitome Opp: Star Bazar Satellite Ahmedabad 380 015. PAN : ACBPS 8906 J	Vs.	ACIT, Cir.4(2) Ahmedabad.
--	-----	------------------------------

आयकर अपील सं./ ITA No.02/Ahd/2019

निर्धारण वर्ष/Asstt. Year: 2013-14

Sandip Mohanraj Singhi B-1102, Sundervan Epitome Opp: Star Bazar Satellite Ahmedabad 380 015. PAN : ACAPS 7055 B	Vs.	ACIT, Cir.4(2) Ahmedabad.
---	-----	------------------------------

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
-------------------------------	---------------------------------

Assessee by :	Shri P.D. Shah, AR
Revenue by :	Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/08/2021

घोषणा की तारीख/Date of Pronouncement: /08/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT

The above two appeals are filed at the instance of the above two assesseees against separate order of the Id.CIT(A)-4, Ahmedabad even dated i.e. 30.10.2018 passed for the Asstt.Year 2013-14. Common

issue is raised in both the appeals, therefore, we dispose of both the appeals by this common order.

2. Only common ground raised by both the assesseees is that the Id.CIT(A) has erred in disallowing claim of donation of Rs.87,50,000/- in the case of Mohanraj M. Singhi and Rs.52,50,00/- in the case of Sandip M. Singhi under section 35(1)(ii) of the Income Tax Act, 1961 in respect of donation made to the School of Human Genetics & Population Health, Kolkatta.

3. Facts in brief are that the assesseees are legal professionals and having income from profession, short term capital gain, long term capital gain and income from other sources. They filed their respective return of income declaring total income at Rs.5,10,67,710/- and Rs.2,11,69,840/- respectively for the Asstt.Year 2013-14. After processing the return under section 143(1), they are taken selected for scrutiny assessment. During the scrutiny assessment, the Id.AO noticed that the assessee has made donation to the Schools of Human Genetics & Population of Rs.50.00 lakhs and Rs.30.00 lakhs and claimed weighted deduction of Rs.87.50 lakhs and Rs.52.50 lakhs respective under section 35(1)(ii) of the Act. On the basis survey carried out by the Kolkata Director at some of the institutions, the department has received an information from DDIT(Invt), Ahmedabad, that assessee was one of the beneficiaries indulged in giving bogus donations to one School of Human Genetics & Population Health (SHG&PH), Kolkata 2013-14. As per the information, the donations made by the assessee to the above Institution in the Asstt.Year 2013-14 were bogus to the said institution, and claimed weighted deduction under section 35(1)(ii) of the Act at Rs.7 lakhs. 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 after deducting commission charge. During the survey, a statement was recorded on oath of the concerned person by the survey team. On the basis of that survey report registration granted to its favour was cancelled. On the basis of the outcome of that survey report, and statement on oath of the concerned person, it was revealed that the assessee has taken the accommodation entry in form of giving bogus donation, and accordingly the Id.AO construed that the donation given by the assessee was bogus. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

4. Before us, at the outset, the Id.counsel for the assessee contended that the issue of donation so made to the institutions based in Kolkata has been settled by the Hon'ble Gujarat High Court in the case of PCIT Vs. Thakkar Govindbhai Ganpatlal HUF in appeal no.881 of 2019 dated 20.1.2020, which was based on the decision of ITAT, Ahmedabad in the case of SG VAT Care Pvt. Ld. Vs. ITO, ITA No.1943/Ahd/2017 dated 15.1.2019. Since the facts of the present case are identical and reasons for disallowance by the Department were also similar, the appeals of the present assessee are also deserve to be allowed. Further reliance was placed on the decision of ITAT, Ahmedabad bench in ITA No.2358 and 2359/Ahd/2018 order dated 30.4.2021 wherein similar claim was allowed by the Tribunal. Therefore, the issue on hand no more remains *res integra*. The Id.counsel has placed on record copies of both the orders of the Hon'ble Gujarat High Court and the decisions of the Tribunal cited (*supra*) by the Id.counsel for the assessee.

5. The Id.DR, on the other hand, contended that in the investigation it came to know about bogus affairs conducted by the donee, and it was a typical case of laundering of unaccounted money. The assessee has failed to furnish specific queries raised during the assessment

proceedings. Hence, these donations are rightly treated as bogus, and addition is rightly made.

6. We have duly considered rival contentions and gone through the record carefully. We have also gone through the judgment of Hon'ble Gujarat and also the decisions of the ITAT, Ahmedabad on similar issue. We find that Hon'ble Gujarat High Court in the case of PCT Vs. Thakkar Ganpatlal HUF has dealt with the issue, and while allowing the claim of the assessee, has also referred to the decision of ITAT, Ahmedabad Bench in the case of S.G. Vat Care P.Ltd. Vs. ITO, ITA No.1943/Ahd/2017 order dated 15.01.2019, which was authored by one of us. In this The Hon'ble Gujarat High Court noted the observation and finding of the Tribunal on this issue, and recorded the same in page no.3 to 5 of the High Court's order, and thereafter came to the conclusion that the onus placed on the assessee has been discharged and no interference in the order of the ITAT is required. The Hon'ble Court, thus allowed claim of donation made to M/s.Herbicure Healthcare Bio-Herbal Research Foundation). For the consideration of the issue on hand, it is imperative upon us to reproduce the relevant part of the Hon'ble Gujarat High Court's order as under:

"6. Learned Senior Advocate Mr.M.R.Bhatt for the appellant submitted that there no appeal is filed by the Revenue against the decision of the Tribunal in the case of S.G.Vat Care Private Limited (Supra). It would therefore be germane to refer to the following findings, given by the Tribunal in the case of S.G.Vat Care Private Limited (Supra):-

"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 Herbicure Heathcare 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 Herbicure 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 donation from various sources, and after deducting certain amount of commission, these donation were refused 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 25.03.2014. 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 6.9.2016. 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 tern of Calcutta. He has not specifically recorded statement of representative 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 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 C/TAXAP/881/2019 ORDER 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 veraci, 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."

7. In the facts of the present case, the CIT(Appeals) has given the finding of the fact that the amount of donation was transferred to the Herbicure through Bank channel and there is no evidence that the same is returned back in cash.

8. It is also found that the Herbicure Foundation has confirmed that the amount has been utilized for scientific research vide confirmation dated 29.09.2016. Accordingly, the onus placed upon the assessee was discharged.

9. In view of the aforesaid findings of the fact given by both the authorities below, no interfere in the impugned order passed by the Tribunal is required to be made. No substantial question of law arise from the order of the Tribunal. Therefore, the appeal fails and is hereby, dismissed.”

There is nothing before us as to how the issue on hand differs from the issues raised in the cases cited (supra), so as to take a different view on the issue. Therefore, since the issue on hand being squarely covered, following the principle of consistency, we find merit in the submissions of the assessee and allow their claim of deduction under sections 35(1)(ii) of the Act.

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

Order pronounced in the Court on 24th August, 2021 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 24/08/2021