

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2925/Mum./2023

(Assessment Year : 2010-11)

Ravindra K. Reshamwala
7/A, Pil Court, 111, Maharishi Karve Road
Churchgate, Mumbai 400 020
PAN – AAAPR2227C

..... Appellant

v/s

Income Tax Officer
Ward-17(1), Mumbai

..... Respondent

Assessee by : Shri Piyush Chhajed

Revenue by : Smt. Mahita Nair

Date of Hearing – 20/12/2023

Date of Order – 29/12/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 26/06/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2010-11.

2. In this appeal, the assessee has raised the following grounds:-

"The Grounds of Appeal mentioned hereunder are without prejudice to one another:-

1. On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals), NFAC erred in confirming the Notice issued u/s.148 without obtaining requisite satisfaction as required u/s.151(2) of the Income Tax Act and therefore the said Notice is void ab initio and bad in law.

2. *On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals), NFAC erred in confirming the action of assessing officer i.e. not disposing of the complete objections raised by the assessee during the course of reassessment proceedings as required u/s.147 as laid down by Honourable Supreme Court in case of GKN Driveshafts (India) Ltd, 251 ITR 19.*

3. *On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals), NFAC erred in confirming the Reopening Notice issued u/s 148 without bringing out any tangible material on the basis of which the reason to believe that income has escaped assessment was formed.*

4. *On the facts and circumstances of the case, the Id. Commissioner of Income Tax (A) failed to appreciate that at the time when the donation of Rs.35,00,000/- was made by the appellant, the proper Approvals/Exemptions were in force and in favour of the said Trust i.e. Navjeevan Charitable Trust.*

5. *On the facts and 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.35AC 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.*

The appellant craves leaves to add, to delete or amend any of the above grounds of appeal at the time of hearing.”

3. The brief facts of the case are that the assessee is an individual and for the year under consideration filed his return of income on 30/09/2010 declaring a total income of Rs. 2,17,44,883 after claiming a deduction of Rs. 35,00,000 under section 35-AC of the Act. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the DCIT, Central Circle-2(1), Mumbai that Navjeevan Charitable Trust has accepted donations in cheque, which was later on returned in cash to the donor after deducting the commission and the assessee is one of the beneficiaries who has claimed deduction of the donation made to Navjeevan Charitable Trust, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 24/03/2017. During the reassessment proceedings, the assessee was

asked to show cause as to why the donations made by it to Navjeevan Charitable Trust be not treated as non-genuine and corresponding claim of deduction under section 35-AC of the Act be not disallowed. In response thereto, the assessee submitted that there is no material available on record that the donation was received by the trust and after deduction of commission the cash was given to the assessee. It was further submitted that nowhere assessee's name has been mentioned for cash returned back in view of donations made. The assessee also submitted that the grant of income tax exemption certificate and time-to-time renewal of the same makes the assessee to believe that the trust activities are being carried out for the purpose for which the approval was granted. The Assessing Officer ("AO") vide order dated 22/12/2017 passed under section 143(3) read with section 147 of the Act did not agree with the submissions of the assessee and held that it is established beyond doubt that Navjeevan Charitable Trust was only involved in taking donations and giving the cash back to the donors and this fact has also been accepted by the trustee of Navjeevan Charitable Trust an accommodation entry provider. The AO also took into consideration the notification dated 30/11/2016 whereby the approval granted to Navjeevan Charitable Trust was cancelled. Accordingly, the AO disallowed the deduction of Rs. 35,00,000 claim by the assessee under section 35-AC of the Act and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, upheld the initiation of reassessment proceedings under section 147 of the Act and also dismissed the appeal filed by the assessee against disallowance of deduction claimed under section 35-AC of the Act. Being aggrieved, the assessee is in appeal before us.

4. During the hearing, at the outset, the learned Authorised Representative submitted that a similar issue in respect of the donation made to Navjeevan Charitable Trust has been decided in favour of the assessee in the preceding assessment year.

5. On the other hand, the learned Departmental Representative ("*learned DR*") by vehemently relying upon the orders passed by the lower authorities submitted that the initial notifications granting approval to Navjeevan Charitable Trust were withdrawn vide notification dated 30/11/2016. It was further submitted that since the earlier notifications were withdrawn therefore the assessee is not entitled to claim the deduction under section 35-AC of the Act and the same has rightly been disallowed by the lower authorities.

6. We have considered the submissions of both sides and perused the material available on record. As per the assessee, Navjeevan Charitable Trust was approved as an eligible trust under section 35-AC vide notification dated 12/01/2009 for three financial years beginning from 01/04/2008. Subsequently, the said approval was extended for a further three years vide notification dated 27/04/2011. Thus when the assessee made the donation of Rs. 35,00,000 in the financial year 2009-10 to Navjeevan Charitable Trust the aforesaid approvals were valid. In support of its claim, the assessee has also furnished the donation receipts and Form No. 58A provided by Navjeevan Charitable Trust. On the other hand, it is the claim of the Revenue that Navjeevan Charitable Trust has been involved in a bogus transaction of accommodation entry and has returned the donation to the donors in cash after deducting the commission. The Revenue has also relied on the

statement of the trustee recorded during the course of search action under section 132 of the Act at the premises of Navjeevan Charitable Trust. We find that a similar issue came up for consideration before the Co-ordinate Bench of the Tribunal in assessee's own case in Ravindra K. Reshamwala v/s DCIT, in ITA No.2648/Mum./2022, for the assessment year 2009-10, wherein assessee claimed deduction under section 35-AC of the Act in respect of donation made to Navjeevan Charitable Trust. The Co-ordinate Bench of the Tribunal vide its order dated 03/04/2023 decided the issue in favour of the assessee by observing as under:-

"10. Considered the rival submissions and material placed on record, we observe from the record that assessee has raised grounds challenging the reopening as well as on merit. Since the issue involved is covered in favour of the assessee on merits, we do not intend to go into jurisdictional issue at this stage. We kept open this ground open.

11. Coming on merits, we observe that assessee has made the donation on 30.01.2009 and assessee has submitted all the relevant information with regard to payment of donation and all these donations were made through banking channels. It is fact on record that the trust was searched on 27.10.2014 and subsequently registration of the trust was cancelled on 01.11.2016. On the similar facts on record, the Coordinate Bench in the case of Shri Mrunal H. Shah v. ACIT in ITA.No. 4878/Mum/2019 dated 24.05.2021 dealt with the similar issue and observed as under: -

"4. During assessment proceedings, it transpired that the assessee made donation of Rs.15 Lacs to a Trust namely Navjeevan Charitable Trust and claimed deduction u/s 80GGA against the same. However, there was a search action u/s 132 on trust on 27/10/2014 wherein it was found that the trust was involved in the activities of providing accommodation entries by way of donation. The donation received in cheque were stated to be returned in cash after deducting commission of 3%. Relying upon the admission made by the Trustees during search, Ld. AO proceeded to disallow the deduction so claimed by the assessee. The assessee defended the claim by submitting that the donations were paid through cheque against valid receipt. However, not convinced, Ld. AO denied the deduction to the assessee.

5. During appellate proceedings the assessee submitted that the trustee had not named the assessee as recipient of cash and there was no substantiated statement that the appellant received the cash back from the trust. However, in the light of search findings, Ld. CIT(A) confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

6. After going through documents on record, it could be seen that the assessee had given donation on 21/06/2004 against valid receipt issued by the Trust. The donation was made through cheque which got cleared from assessee's

bank account. The assessee was issued requisite Form No.58A by the trust. The trust had valid registration at the time of making of donation. The approval was withdrawn only subsequently vide notification dated 30/11/2016. Further, it is evident from the assessment order that the deduction has been denied to the assessee only in the basis of allegations that the donations were bogus donations and the amount so donated has flown back to the assessee. However, except for statement of trustee of the society, we find that there is no positive evidence on record to substantiate the same. There is nothing on record which would show that on the date of donation, the trust did not have valid registration or its registration stood withdrawn. It was only subsequently that the approval was withdrawn. This being so, the deduction could not be denied to the assessee since Ld. AO failed to conduct any inquiry before making disallowance and except for mere allegations, he did not brought on record any fact to establish that donation given by the assessee was subsequently returned back in cash. The assessee, in our opinion, has duly discharged the onus casted upon him and it was incumbent upon Ld. AO to refute the same. However, no such inquiry has been conducted and the deduction has been denied more on mere allegations. Therefore, the deduction could not be denied to the assessee as held by this very bench in the case of *Devajyoti N. Bhattacharya V/s ACIT* (ITA No. 5051/Mum/2018 order dated 12/03/2020). Our observations therein were as follows: -

4. Upon due consideration, we find that the assessee was denied aforesaid deduction, in more or less similar factual matrix, in AYs 2009-10, 2012-13 & 2014-15 which was agitated before this Tribunal vide common order dated 30/09/2019. The coordinate bench, vide para-7, held that that the assessee had adduced evidence to establish that payment of donation to Navjivan Charitable Trust and the onus had shifted to Ld.AO. However, Ld. AO failed to conduct any inquiry before making disallowance and did not brought on record any fact to establish that donation given by the assessee was subsequently returned back in cash except mere allegations. Reliance was placed on the decision of Hon'ble Delhi High Court in *CIT V/s A and A Bakery P. Ltd.* (2008 302 ITR 51) to support the conclusions. Finally, the disallowance was deleted. We find that fact to be *pari-materia* the same in this year. The assessee has duly discharged the onus casted upon him and it was incumbent upon Ld. AO to refute the same. However, no such inquiry has been conducted and the disallowance has been made on mere allegations. Therefore, respectfully following the earlier order, we delete the disallowance as made by Ld. AO.

Therefore, we direct Ld. AO to grant the deduction u/s 80GGA and recompute assessee's income."

12. Respectfully following the above said decision, we are inclined to decide the issue in favour of the assessee and therefore deduction could not be denied to the assessee. Accordingly, we allow the ground raised by the assessee."

7. From the perusal of the aforesaid order, we find that the deduction claimed under section 35-AC of the Act in respect of the donation made to Navjeevan Charitable Trust was denied on a similar basis as in the present case. Therefore, respectfully following the aforesaid decision of the Co-

ordinate Bench of the Tribunal rendered in assessee's own case, the AO is directed to allow the claim of deduction under section 35-AC of the Act. Accordingly, grounds No. 4 and 5 raised in assessee's appeal are allowed.

8. During the hearing, the learned AR submitted that if the issue is decided on merits in favour of the assessee then it would not be necessary to go into the jurisdictional issues raised in the present appeal. Accordingly, in view of the submission of the learned AR, grounds no. 1-3 raising the jurisdictional issue is kept open.

9. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 29/12/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/12/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai