

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA
BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

ITA No. 628/Kol/2022
Assessment Years: 2015-16

GAJRAJ TRADECOM PVT. LTD. 9/12, Lal Bazar Street Kolkata - 700001 [PAN: AAECG5268M]	Vs.	Deputy Commissioner of Income Tax, Circle-6(1), Kolkata
(Appellant)		(Respondent)

Assessee by :	Shri Soumitra Choudhury, Advocate
Revenue by :	Shri P.P. Barman, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 29/12/2022
घोषणा की तारीख/Date of Pronouncement : 28/02/2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order passed by the National Faceless Appeal Centre, Delhi, (hereinafter the "Id. CIT(A)") dated 27/09/2022 for Assessment Year 2015-16 against the assessment order passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by DCIT, Circle-6(1), Kolkata, dated 23/12/2017.

2. Assessee has taken as many as ten grounds and the issues involved in these grounds relate to disallowance of deduction claimed u/s 35(1)(iii) and 35AC of the Act for contribution made by it under respective Sections and in respect of credit of Rs.10,00,000/- towards advance tax paid, not given in computation of tax as reflected in Form 26AS. Grounds of appeal are not reproduced for the sake of brevity.

3. Brief facts of the case are that, assessee filed its return of income on 29/09/2015, reporting total income of Rs.56,66,010/-. Case of assessee was selected for scrutiny through CASS for which statutory notices were issued and served and were duly complied with by the assessee. In course of assessment proceedings, ld. Assessing Officer noted that assessee has claimed deduction of Rs.2,38,25,000/- which included weighted deduction of Rs.1,41,25,000/- u/s 35(1)(iii) and Rs.97,00,000/- u/s 35AC of the Act. Ld. Assessing Officer called for details and explanation in respect of the said deductions claimed by the assessee. Details of contributions/payment made by assessee in respect of aforesaid deductions are tabulated as under:-

<i>Name of Trust</i>	<i>Address</i>	<i>Donation made (Rs.)</i>	<i>Deduction claimed u/s</i>	<i>Amount of Deduction (Rs.)</i>
<i>Kashba Youth</i>	<i>P.O.-Egra, Dist. Purba Midnapore, West Bengal</i>	<i>1,30,00,000/-</i>	<i>35(1)(iii)</i>	<i>1,41,25,000/-</i>
<i>Red Plus Society</i>	<i>22, Baghajatin station Road, Kolkata</i>	<i>30,00,000/-</i>	<i>35AC</i>	<i>30,00,000/-</i>
<i>Gohaldiya Jati Upajati Blue Bird Women's Welfare Centre</i>	<i>Vill-Gohaldiha PO-Kharikamathani Dist - Paschim Medinipur, West Bengal</i>	<i>67,00,000/-</i>	<i>35AC</i>	<i>67,00,000/-</i>

3.1. In support of its claim for above tabulated deductions, assessee submitted all necessary documents such as donation receipts, trust registration certificate, copy of Gazette notification, bank statements, balance sheet etc. Ld. Assessing Officer, disallowed the aforesaid deduction and added it back to the income of

assessee while completing assessment. The said contributions made by the assessee were alleged to be bogus by Id. Assessing Officer. He disallowed claim of assessee on the premise that these trusts/institutions were engaged in providing bogus donations to beneficiaries in lieu of commission income. While arriving at such a view, Id. Assessing Officer has relied on reports of DDIT (Inv.), Kolkata and statements recorded by Investigation wing, in this respect. Id. Assessing Officer issued commission to Investigation wing of Kolkata, seeking information in respect of genuineness of the establishments and also genuineness of the transactions with aforesaid three trusts/societies. While giving this adverse finding, Id. Assessing Officer observed that *"bank statements of these institutes reflected clear pattern of donation coming and going in short span of period. Most of the debit entries were found to be in name of shell companies and paper concerns, which was found to be non-existent."*

4. Aggrieved, assessee went in appeal before Id. CIT(A). Before him, assessee reiterated its submissions and furnished documents placed before Id. Assessing Officer. It was strongly contended before Id. CIT(A) that Id. Assessing Officer has simply relied on the report received from Investigation wing containing certain statements which formed basis of treating donations/contributions as bogus. It was also submitted that, Id. Assessing Officer has not made any effort to examine the evidence placed before him but simply relied on observations of the investigation wing without any material to support the said observations. Further, assessee submitted that statements recorded of certain persons had no relation with the assessee and moreover, said statements were not supplied to assessee for cross-examination and rebuttal. It was thus contended that all the observations, findings and conclusions arrived at by the Id. Assessing Officer are based on suspicion and surmises. According to the assessee, the presumption or suspicion, howsoever

strong it may appear to be true has to be corroborated with evidence to prove that assessee had adjusted its profit in the form of bogus donations. According to assessee, statements relied upon by Id. Assessing Officer were just plain statements without any supporting material or evidence in support of such statements. Contrary to this, all the positive material filed by the assessee has been ignored. It was also strongly submitted that neither Id. Assessing Officer himself has examined neither these persons nor any opportunity to cross-examine has been given to assessee which has formed basis for the disallowance, violating the principles of natural justice.

4.1. In respect of credit for the advance tax paid of Rs.75,00,000/-, a lesser credit of Rs.10,00,000/- was given, which was contested by assessee before Id. CIT(A). In this respect, Id. CIT(A) directed Id. Assessing Officer to verify the claim of assessee from Form 26AS along with bank statement and allow credit for same, based on the said verification.

4.2. After considering the aforesaid submission of assessee, Id. CIT(A) did not find any infirmity in order of Id. Assessing Officer. Contentions of the assessee were rejected thereby sustaining the disallowance made by Id. Assessing Officer as tabulated above.

5. Aggrieve, assessee is in appeal before Tribunal.

6. Before us, Id. Counsel for assessee, referred to documentary evidence which was placed before Id. Assessing Officer, forming part of paper book, to demonstrate the genuineness of transaction with the three trusts/institutions. For each of the trust/institution tabulated above, Id. Counsel for assessee submitted factual position which is recapitulated as under, *seriatim*:-

- (i) Contribution to Kashba Youth (weighted deduction of Rs.1,41,25,00,000/- u/s 35(1)(iii) of the Act) -
- a) Kashba Youth is a registered Trust u/s 12A of the Act vide registration certificate dt. 10/08/2007.
 - b) It is also recognised by Central Government u/s 35(1)(iii) of the Act, effective from AY 2010-11.
 - c) The said Trust was recognised vide gazette notification no. 42/2010 issued by CBDT u/s 35(1)(iii) of the Act. Assessee made contribution/donation by account payee cheque/RTGS. The said Trust had issued receipts for donations made by assessee which have been duly accounted in books of both the Trust and the assessee. All the necessary documents as stated above have been furnished before Id. Assessing Officer, in the course of assessment proceedings.
 - d) Id. Assessing Officer also issued summons to Principal Officer of Kashba Youth, whose statement was recorded on 11/12/2017 u/s 131 of the Act. From answer to question no. 11 of the statement of Shri Ambikesh Manna, secretary of the said Trust, Id. Counsel pointed that for the statement made in respect of providing accommodation entries, these activities were controlled by Shri Raj Kr. Mishra, who acted as the accommodation entry provider for the bogus donations.
 - e) In answer to question no. 12 of the same statement, it is stated that Shri Raj Kr. Mishra, does not hold any position in the trust, Kashba

Youth. Ld. Counsel asserted that merely on some telephonic communication as stated in the answer, Shri Raj Kr. Mishra arranged for the accommodation entry who is stated to hold no position in the aforesaid trust. According to Id. Counsel, Department has not identified who is Shri Raj Kr. Mishra and what are his connection with the assessee and the said trust.

f) Ld. Assessing Officer, according to the Id. Counsel, has simply relied on these statements which do not have any legs to stand in absence of any corroborative material. Ld. Counsel submitted that Shri Raj Kr. Mishra, is neither an employee nor Director of the assessee company and has no relation with the assessee. According to him, Id. Assessing Officer has made no effort to summon Shri Raj Kr. Mishra to who Shri Ambikesh Manna, has alleged that cash was given. According to Id. Counsel, all the observations and conclusions are thus based on suspicion and surmise.

(ii) Red Plus Society (deduction of Rs.30,00,000/- u/s 35AC of the Act) -

- a) This society is registered under the West Bengal Societies Act, 1961, vide Registration No. 5/66458/1990-91, as a Trust. This trust has been granted Registration u/s 12A of the Act vide Registration No. DIT(E)S-161/8/E/335/200102/4403-05.
- b) This trust has been approved for eligible activities u/s 35AC of the Act vide gazette notification no. S.O. 406(E) dt. 09/03/2012.
- c) Assessee has made payments through proper banking channel for which this Society has issued receipts to the assessee. Society also

provided its certificate of expenditure by way of payment in respect of eligible project or schemes notified u/s 35AC in prescribed Form 58A under rule 11.

- d) In respect of this society, ld. Assessing Officer noted that funds had been transferred to certain companies which according to him are bogus companies managed by some Mr. Praveen Agarwal and Mr. Umesh Singh. Statements of these two persons were recorded on the basis of which ld. Assessing Officer drew the conclusion that contributions/donations made by the assessee are bogus. Ld. Counsel submitted that ld. Assessing Officer has placed reliance on the statement of these two persons which are just plain statements without any supporting material or evidence to taint the assessee for bogus donations. According to ld. Counsel, in their statements, these two persons never mentioned that they have done any transaction with the assessee, nor does the assessee have any relation with these persons. Ld. Counsel for assessee also submitted that assessee was never allowed any opportunity to contradict the statements of the aforesaid persons violating principles of natural justice.

(iii) Gohaldiha Jati Upajati Blue Bird Women's Welfare Centre (Deduction of Rs.67,00,000/-, u/s 35AC of the Act).

- a) This trust is a society registered under the West Bengal Societies Act, 1961 vide registration no. 5/79235 of 1994-95. It is also registered u/s 12A of the Act. This trust is also notified u/s 35AC of the Act vide notification no. S.O. 2397 (E) dt. 09/10/2012.

- b) Form 58A under rule 11 towards certificate of expenditure by way of payment in respect of eligible project or schemes notified u/s 35AC along with donation receipts were issued by the trust to the assessee, placed on record, giving all the details in respect of the donation.
- c) Ld. Counsel submitted that in this case also, ld. Assessing Officer has taken similar view by placing reliance on the commission report. Ld. Counsel submitted that Secretary of the trust sought some time to submit its reply against the summons. In absence of the response from the secretary, ld. Assessing Officer took an adverse view and treated the donations as bogus, ignoring all the documents and evidence filed by the assessee. In this case also, it was submitted that ld. Assessing Officer has presumed the donations as bogus without conducting any independent enquiry to verify the authenticity of the transaction, from the evidence placed on record.

7. Per contra, ld. Sr. D/R, vehemently argued and submitted that, donations made by assessee are rightfully held as bogus since funds were transferred by the respective societies/trust to the companies which are shell companies as observed by the ld. Assessing Officer from the bank statement of the trusts/societies. Ld. Sr. D/R reiterated the observations made by the ld. Assessing Officer that these are accommodation entries for which the cash has been routed giving it a colour of donations eligible for deduction u/s 35(1)(iii) and 35AC of the Act. Ld. Sr. D/R also submitted that the statements recorded

and referred to by Id. Assessing Officer clearly demonstrates the nature of transaction which have been rightly held by Id. Assessing Officer as bogus, leading to disallowance.

8. We have heard the rival contentions and perused the material on record. We take note of the fact that in support of the claim of deduction u/s 35(1)(iii) and 35AC of the Act, assessee has furnished all the relevant documents and details, stated above and forming part of the paper book on record. From perusal of the orders of the authorities below, it is noted that submissions made by assessee have not been controverted. Documents and evidence filed by the assessee in respect of the claim of deduction have not been proved to be either false or bogus or not genuine by conducting enquiry and examination by the Id. Assessing Officer himself. It is noted that evidence filed before the Id. Assessing Officer have not been rebutted by Id. Assessing Officer who had not conducted any examination or enquiry in this regard before arriving at the conclusion. It is noted that Id. Assessing Officer chose to remain silent on these documentary evidence furnished by the assessee and has not found any discrepancy in the details filed by the assessee. It is noted that Id. Assessing Officer is completely guided by the report of the investigation wing and has not made any independent enquiry in this regard by applying his independent mind.

8.1. While arriving at the conclusion for disallowing the donations made by the assessee, Id. Assessing Officer has relied on the report of investigation wing who had recorded statements of certain persons which have been claimed by the assessee as having no relation with assessee or trust. From the perusal of answers to certain questions noted by the Id. Assessing Officer in the assessment order, we note that the persons mentioned in the answers have no connection with the assessee as claimed by the assessee. Such an aversion in the

statements relied upon, leads us to understand that heavy reliance placed by the Id. Assessing Officer on these statements, is misplaced.

8.2. From the perusal of documentary evidence placed in the paper book, it is evident that the three trusts/societies are eligible entities duly notified by the Central Government/CBDT u/s 35(1)(iii) and u/s 35AC of the Act. It is also noted that approval is granted to an organization u/s 35(1)(iii) and u/s 35AC by the Central Government/CBDT only after strict compliance of law. The approval is granted for after various levels of scrutiny and checks and to the concerns of evident track record and doing research activity. It is also a fact that the three trusts/societies were eligible to receive the contributions from assessee as duly notified by CBDT. Further, Id. Counsel for assessee had made submission before the Bench which is taken on record as a statement at the Bar that in case of all the three trusts/societies, their registrations have not been cancelled by the Department.

9. We also note that Id. Assessing Officer has made some enquiries regarding the bank account of the assessee and that of the three trusts/societies from where he noted that donations made by assessee got transferred from the accounts of the three trusts/societies to certain companies which have been alleged to be shell companies. In this respect, we take note of the statement of the Id. Counsel that once assessee has made payments to these trusts/societies, it was neither authorized nor required to check the end use of the funds by these organizations that are independent in their own accord. Thus, if any irregularities have happened, those have happened at the end of the said trusts/societies and the assessee is in no way connected to the scheme of arrangement, if any, alleged to be bogus by the authorities below; more particularly, is absence of any positive material or evidence to prove that cash

in lieu of the bank payments made by the assessee was given back either to the assessee or to any of its representatives.

10. From the facts emerging out of records, statement of Shri Umesh Singh has been stated to be recorded on 10.10.2014 and that of Shri Praveen Agarwal on several dates viz. 12.11.2012, 05.02.2014, 30.04.2014, 18.11.2014, 11.02.2015, all of which are prior to the date of filing of return by the assessee on 29.09.2015 and issuing of notice u/s 143(2) of the Act by the ld. AO on 22.04.2016. Further, it is not in dispute that ld. Assessing Officer indeed has neither provided copies of statements recorded by the investigation wing nor the reports prepared, to the assessee for rebuttal. Ld. Assessing Officer nor ld. CIT(A) have also not allowed any cross-examination of such persons whose statements were relied upon by ld. Assessing Officer in the course of assessment proceedings for taking the adverse view. We note that, ld. Assessing Officer has heavily relied on statements of such persons and report of investigation wing. If these statements are ignored, the independent findings of ld. Assessing Officer remains minimal.

10.1. On the claim of cross-objection of the witnesses relied upon by the ld. Assessing Officer and the supply of reports for rebuttal, we note that there is serious flaw in not allowing the assessee to cross-examine and providing the material on the basis of which adverse view has been taken. In such circumstances, it makes the order a nullity as it amounts to violation of principles of natural justice because of which the assessee has been affected adversely. Assessee has disputed the correctness of the statements and always wanted to cross-examine the same, for which no opportunity was granted to the assessee, more importantly when the persons who have been claimed to be accommodation entry provider are unrelated to the assessee.

10.2 While noting this, we draw force from the judgment of the Hon'ble Supreme Court in the case of *CIT vs Andaman Timber Industries Ltd.* [2015] 62 *taxmann.com* 3 (SC), which is squarely fitting into the facts of the case. It was held by the Hon'ble Supreme Court as under:-

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could

justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.

9. We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."

11. Thus, in view of the above, in any assessment, principles of natural justice plays an important role and no addition or disallowance can be made without following such principles. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. Further, provisions of Section 142(3) makes it incumbent on the Id. Assessing Officer to give an opportunity of being heard to the assessee in respect of any material gathered on the basis of any enquiry which is proposed to be utilized for the purpose of assessment. This is a mandatory and statutory procedural requirement before completing the assessment in which Id. Assessing Officer has failed.

12. Before concluding, we also draw attention to the decision of the Hon'ble Supreme Court in the case of *CIT (Exemp) vs. Batanagar Education and Research Trust [2021] 129 taxmann.com 30 (SC)*, which has dealt with the cancellation of registration of Trust u/s 12AA of the Act on the ground that the Trust had received bogus donation. On this, Id. Counsel for the assessee has made a statement before the Bench noted above that in the present case of the assessee, registration of the three donee trust/societies has not been cancelled and, therefore, the ratio of this judgment does not apply to the facts and circumstances of assessee's case.

13. After carefully considering the entire gamut of facts and circumstances of the present case, answers to specific questions in the statements recorded referred to in assessment order and the submission made along with

corroborative documentary evidence placed on record and the judicial precedence stated above, we find favor with the claim of the assessee to allow the claim of deduction u/s 35(1)(iii) and 35AC of the Act, details of which are already tabulated above. Thus, grounds taken by the assessee in this respect are allowed.

14. In respect of short credit of advance tax of Rs.10,00,000/-, we do not find any reason to interfere with the directions given by Id. CIT(A) for verification of records to allow the credit so claimed. Accordingly, ground taken in this respect is allowed.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28 .02.2023.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Kolkata, Dated: 28.02.2023
SC. Sr. P.S.

Copy to:

1. The Appellant:
2. Respondent :
3. The CIT(A)- Kolkata
4. The CIT , Kolkata.
5. The DR ITAT, Kolkata.

//True Copy//
By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata