

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3759/Mum/2023
(Assessment Year :2011-12)**

Anjali Neeraj Hardikar E/3, Vibhawari Apartments Sahwas Society Lane No.1, Karve Nagr Pune City- 411 052	Vs.	National Assessment Delhi	Faceless Centre,
PAN/GIR No.AAFPH0320K			
(Appellant)	..	(Respondent)	

Assessee by	Shri Siddharth Kothari a/w. Simran Dhawan
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	12/03/2024
Date of Pronouncement	18/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 22/08/2023 passed by CIT(A)-54, Mumbai in relation to the penalty proceedings u/s.271(1)(c) for the A.Y.2011-12.

2. The assessee is mainly aggrieved by levy of penalty of Rs.3,24,450/- of disallowance of deduction claimed u/s.80GGC of Rs.10,50,000/-.

3. The brief facts are that assessee has claimed deduction u/s.80GGC of Rs.10,50,000/-. In response to show-cause notice, the assessee submitted invoices "Rashtravadi" which showed that money was paid for giving some advertisement in the news letter. Even the cheque was drawn in the name of the editor. Accordingly, ld. AO held that same is not allowable for deduction u/s.80GGC which clearly states that deduction should be made to a political party registered u/s. 29A of The Representation of Peoples Act, 1951 or an electoral trust. The newsletter "Rashtravadi" is neither a trust. In the first appeal, before the ld. CIT (A), assessee made following submissions on this issue:-

"It is submitted that during the previous year relevant to the AV 2011-12, the appellant has paid an aggregate amount of Rs. 10,50,000/- on account of publishing advertisement in the newsletter known as "Rashtrawadi", which is evident from copy of bank statements and invoices placed at page no. 31-53 of the paper book. It is submitted that the issue relating to the allowability of deduction u/s. 80GGC or section 37(1) was explained by the appellant before the AO vide letter dated Nil filed during the course of assessment proceeding in the month of March, 2014, which is placed at page no. 29-30 of the paper book.

It is submitted that the auditor in notes to accounts at point no. 2.2 has specifically stated that "during the year the assessee has debited in the books of accounts of A.N. Enterprises Rs. 10,50,000/- under the head "Advertisement Expenses" being Advertisements in monthly Magazines These are treated as disallowable u/s. 37(28) but are allowable u/s. 80GGC of the Income-tax Act, 1961", which is verifiable from page no. 14 of

the paper book. Further the auditor in clause 17 of Form No. 3CD has quantified the amount disallowable u/s 37(28) and also quantified the deduction admissible u/s 80GGC at Rs. 10,50,000/- and u/s. 80G at Rs. 1,14,911/-in clause 26 of Form No. 3CD.

It is further submitted that the payments for publishing the advertisement were made through account payee cheques and after deduction of tax at source u/s. 194C. It is submitted that the expenditure were laid out or expended wholly and exclusively for the purpose of the business of the appellant and therefore the same are allowable deduction u/s. 37(1) or section 80GGC of the Income-tax Act, 1961.

4. The Id. CIT (A) allowed the deduction after observing and holding as under:-

“3.3 The provisions of section 80GGC brought into the statute w.e.f. 11.09.2003 and amended w.e.f. 01.04.2014, requires that any person shall be allowed deduction in respect of any amount of contribution made by her in the previous year to a political party or an electoral trust, except by way of cash. For the purposes of this section, political party, means a political party registered u/s 29A of The Representation of Peoples Act. The explanatory note to the introduction of the section states that "this section is introduced to make election fund transparent and free of corruption and is meant to encourage people wanting to donate to the political parties". There is no limit to the amount of deduction allowed but it cannot exceed the total taxable limit. Therefore, this section required that the appellant be able to demonstrate that donations have been made to an eligible political party, have been made by cheque, and with proper documentation, supporting the payment.

3.4 It is seen that the Assessing Officer has not doubted the payment. The copy of the bank statement and Invoices were examined by the Assessing Officer and were accepted by him. The doubt arises in the mind of the Assessing Officer that the newsletter "Rashtrawadi" to which the payment has been made is not a political party and that the payment has been made to the editor of the newsletter. It is seen that 'Rashtrawadi is the newsletter run by the Rashtrawadi Congress Party which is the political party registered u/s 29A of the Representation of the

People Act, 1951 run by Shri Sharad Pawar and which in the current Lok Sabha election, has returned 6 Members of Parliament. The receipt issued by the newsletter has acknowledged donation received by the Rashtrawadi Congress Party and, therefore, the payment clearly falls under the purview of section 80GGC. The Assessing Officer also notes, that the assessee did not have any Business activity beyond sub-contracting work however, this appears to be not borne out by facts. The appellant has, during the year received sub-contracts from various companies viz. IRB Infrastructure Pvt. Ltd., MEP Infrastructure Developers Pvt. Ltd, Ideal Road Builders Pvt. Ltd., Baramati Tollways Pvt. Ltd. Certain of these parties were related concerns u/s 40A(2)(b), as evidenced from annexure-2 of form 3CB. But related parties together account for only 26.63% of the total expenditure on contracts incurred by the appellant and, therefore, 73.37% of the total expenditure has been incurred for work done for independent and unrelated parties. Therefore, it is not correct to hold that even though transacting sales of 25.14 Crores, the appellant has not done any Independent business for which such expenses need to be made. In any event as required by the section 80GGC the payment has been made to an eligible political party and properly received as acknowledged by said political party, the payment has been made through account payee cheques and, therefore, deduction u/s 80 GGC is allowable.

5. In the second appeal before Tribunal, the issue was set aside to the file of the ld. AO holding as under:-

“In the present case, the payment has been made to a newspaper being run by a political party for insertion of some advertisements in the said newsletter/newspaper The assessee has made payment of Rs. 10,50,000/- to the newsletter/newspaper during April, 2010 to March 2011 The Commissioner of Income Tax (Appeals) while allowing the assessee's claim of deduction u/s 80GGC has observed that "The receipt issued by the newsletter has acknowledge donation received by the Reshyawadi Congress Party and therefore, the payment clearly falls under the purview of section 80GGC This findings given by the Commissioner of Income Tax (Appeals) appears to be contrary to the documents on record before us. The receipts issued by 'Rashtrawadi' are at pages 42 to 53 of the paper book. On perusal of same we find that none of the

receipts mention that the amount received is donation. However, for proper adjudication of this issue we deem it appropriate to restore the issue back to Assessing Officer for verification. If the assessee has made donation to a political party as defined u/s. 80GGC, the assessee is eligible to claim deduction under the provisions of aforesaid section. The Assessing Officer shall decide this issue after examining the documents on record and after affording opportunity of hearing to the assessee, in accordance with law Accordingly, ground No. 1 raised in appeal by the Revenue is allowed for statistical purpose.

6. In the set aside proceedings, ld. AO has analysed invoices and found that assessee made payment to newspaper / newsletter 'Rashtravadi' for publishing colour advertisements. Nowhere, the bills mentioned that the payment made to the newspaper is donation to the party even though the newspaper belongs to Rashtravati Congress Party. The payment has been made in the name of 'Prabandh Sampadak Rashtravadi' which indicates that payment was made to the newsletter and not to the party and accordingly, he disallowed the claim u/s.80GGC. Further, he held that the said expenditure cannot be allowed u/s. 37 also, because it falls within the definition of Section 37(2B) because it belongs to the political party. Thereafter, assessee did not prefer any appeal against the said order.

7. Now, penalty has been levied by the ld. AO for furnishing of inaccurate particulars of disallowance of Rs.10,50,000/- @100% of the tax sought to be evaded i.e. Rs.3,24,450/-. The ld. CIT (A) too has confirmed the said penalty holding that such a claim is not allowable.

8. After hearing both the parties and on perusal of the impugned material on record and the explanation and

submissions given by the assessee on this issue during the course of the quantum proceedings as well as penalty proceedings, as noted above, in the first round the disallowance made by the ld. AO has been deleted by the ld. CIT (A) after observing and holding as noted above (supra). Though the deduction is not allowable for the reasons given by the ld. AO however, for the purpose of charging assessee for furnishing of inaccurate particulars of income, what has to be seen is, whether at the time of making the claim for deduction, there was any bonafide belief and explanation for making such a claim in the return of income. From the records, it appears that the claim was made on the basis of auditor's note who had given the detailed reasoning for making such a claim that it is allowable u/s.80GGC. The explanation given to this effect reads as under:-

"It is submitted that the auditor in notes to accounts at point no. 2.2 has specifically stated that "during the year the assessee has debited in the books of accounts of A.N. Enterprises Rs. 10,50,000/- under the head "Advertisement Expenses" being Advertisements in monthly Magazines These are treated as disallowable u/s. 37(2B) but are allowable u/s. 80GGC of the Income-tax Act, 1961", which is verifiable from page no. 14 of the paper book. Further the auditor in clause 17 of Form No. 3CD has quantified the amount disallowable u/s 37(2B) and also quantified the deduction admissible u/s 80GGC at Rs. 10,50,000/- and u/s. 80G at Rs. 1,14,911/-in clause 26 of Form No. 3CD."

9. Apart from that, the ld. CIT (A) in the first round too has held to be a bonafide claim of deduction. Though in the quantum proceedings finally the matter has been decided against assessee, but that alone is not sufficient for the penalty proceedings u/s 271(1)(c). For the purpose of penalty

proceedings one has to see, whether assessee has furnished any inaccurate particulars by making a false claim or it is a claim which has not been found to be admissible by the ld. AO. Here the claim was made on the basis of an opinion of the auditor who has given his opinion which too has been found to be acceptable by the ld. CIT (A). Though such an order has been set aside subsequently and AO has made the disallowance after verification, but it cannot be held that the claim at the time of filing of return of income based on opinion of an auditor was not bonafide. Accordingly, following principles laid down by the Hon'ble Supreme Court in the case of **Reliance Petro Products Ltd. reported in 322 ITR 158**, it cannot be held that the claim of deduction by the assessee tantamount to furnishing of inaccurate particulars of income. Accordingly, the penalty levied by the ld. AO and confirmed by the ld. CIT (A) is deleted.

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

Order pronounced on 18th March, 2024.

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 18/03/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai