आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.528/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

MRC Transolutions Pvt. Ltd.,
Plot No.81, Transport Nagar,
Nigdi, Pune-411044.

PAN : AAECM6485G .....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-9,
Pune. .....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 15.01.2021
घोषणा की तारीख / Date of Pronouncement : 29.01.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the ld. Commissioner of Income Tax (Appeals)- 13, Pune ('the CIT(A)' for short) dated 06.12.2016 for the assessment year 2013-14.

2. The appellant raised the following grounds of appeal :-

"1. On the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in making addition of Rs.2,18,75,000/- being weighted deduction claimed u/s 35(1)(ii) of the Act by rejecting appellant's contention in this regard.

2. On the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in withdrawing the weighted deduction u/s 35(1)(ii) on the basis of statement of third party and also further erred in concluding the order without offering opportunity of cross examination. Since same results into denial of natural justice the entire proceedings should be quashed.

3. On the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in withdrawing the weighted deduction u/s 35(1)(ii) without making appropriate enquiries in case of appellant and merely on the

basis of general statement made by one Mrs. Samadrita Mukherjee Sardar who has not even alleged that accommodation entry has been given to appellant.

The appellant craves for to leave, add, alter, modify, delete above ground of appeal before or at the time hearing, in the interest of natural justice."

3. Briefly, the facts of the case are as under :-

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of transport solutions. The return of income for the assessment year 2013-14 was filed on 29.09.2013 disclosing the income of Rs.3,07,22,727/-. The said return of income was selected for scrutiny under CASS and the assessment was completed by the Assistant Commissioner of Income Tax, Circle-9, Pune ('the Assessing Officer' for short) vide order dated 23.03.2016 at a total income of Rs.5,35,97,730/-. While doing so, the Assessing Officer disallowed the claim for deduction u/s 35(1)(ii) of the Act of Rs.2,18,75,000/- and another disallowance on account of lorry expenses of Rs.10,00,000/- was also made.

4. The facts relating to the disallowance of claim u/s 35(1)(ii) of the Act with which we are concerned are as follows :

During the previous year relevant to the assessment year under consideration, the appellant company made donation of Rs.1,25,00,000/- to one organization called School of Human Genetics and Population Health (hereinafter called as SHGPH). The Assessing Officer in order to verify the genuineness of the claim conducted enquiry with the said organization by issuing notice u/s 133(6) of the Act vide letter dated 14.09.2015. In response to the said enquiry notice, the SHGPH responded vide letter dated 28.09.2015, wherein it is stated that the said organization filed a petition u/s 245C of the Act before the Hon'ble Settlement Commission, before whom, it was admitted that it was engaged in providing accommodation entries for donations through certain mediators and the donations were refunded to the

donors after retaining the service charges. The donations as well as the refunds were made only through banking channels. It was further submitted that the application made before the Hon'ble Settlement Commission was admitted. Further, the Assessing Officer received information from Investigation Unit of Department from Kolkata that said organization is engaged in providing accommodation entries of donations.

5. Based on this information, the Assessing Officer had conducted survey operations u/s 133A of the Act on the business premises of the appellant on 05.11.2015. During the course of survey operations, the Joint Managing Director of the appellant company, namely, Shri Arvind Arya was examined and the statement was recorded, wherein, he accepted the factum having made the donations and pleaded the ignorance of the modus operandi adopted by the donee organization and also admitted that the claim for deduction made in the return, of income for the assessment years 2013-14, 2014-15 and 2015-16 would be withdrawn. Subsequently, the appellant company was given show-cause notice dated 28.01.2016 why AO calling upon the appellant to show cause why the claim for deduction should not be withdrawn. In response to the said show-cause notice, the appellant company filed a detailed submissions vide letter dated 08.02.2016 wherein, *inter-alia,* it denied allegation of receipt back of the donations in cash or any other form from SHGPH. Further, it was contended that the admission made is not conclusive and it can always open to an assessee to retract the such admission relying upon the decision of the Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala, 91 ITR 18 (SC). The appellant also sought the opportunity of cross-examination of the SHGPH, in case the Assessing Officer relied on the statement of the said organization and lastly it was submitted that the donation was made considering the Research activity carried on by the said organization.

6. On receipt of the said explanation, the Assessing Officer had expressed inability to offer the opportunity of cross-examination of Secretary, SHGPH on the citing the inconvenience and tedious nature instead the appellant company was directed by the Assessing Officer to produce the Secretary of SHGPH. Finally, the summons u/s 131 of the Act were issued on 26.02.2016 to the Secretary, SHGPH, Mrs. Samadrita Mukherjee Sardar was directed to appear in his office on 17.03.2016 with a view to offer an opportunity of cross-examination of the appellant. However, though the appellant was present on the said date i.e. 17.03.2016 none from the SHGPH was attended. However, the Assessing Officer disallowed the claim for deduction u/s 35(1)(ii) of the Act, drawing adverse inferences against the appellant.

7. Being aggrieved by the above assessment order, the appellant preferred an appeal before the ld. CIT(A), who vide his impugned order confirmed the action of the Assessing Officer taking note of the fact that the rescinding of approval granted by the Central Board of Direct Taxes (CBDT) vide Notification No.4 of 2010 bearing F.No.203/64/2009/ITA-II with retrospective effect from 28.01.2010.

8. Being aggrieved by the order of the ld. CIT(A), the appellant is before us in the present appeal.

9. During the course of hearing before us, it was submitted that the appellant had acted in bona-fide manner, no mala-fide can be attributed to the appellate herein. During the course of statement recorded u/s 133A of the Act from the Joint Managing Director of the appellant company, it is clearly stated that he was not aware of the irregularities committed by the said organization, namely, SHGPH. He further submitted that no addition can be made merely based on the admission without any corroborative

material. It was further contended that there is no conclusive proof brought on record by the Department to show that the appellant company received back part of the donations made to the said organization either in cash or in any other form and the appellant was not given an opportunity of cross-examination. He further submitted that though an opportunity of cross-examination was given, the Secretary, SHGPH was not turned up for which the appellant company cannot be held responsible. It is for the Assessing Officer to enforce the attendance of the said person by exercising of his powers conferred on him under the provisions of the Income Tax Act, 1961. He further submitted that the appellant company is not in collusion with the said organization or nor is it party to the fraud committed by the said organization i.e. SHGPH, then it was submitted that deduction cannot be denied to the appellant company in view of the Explanation 1 inserted to section 35(1)(ii) of the Act by the Finance Act, 2006 with retrospective effect from 01.04.2006 and he also placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Chotatingrai Tea & Ors. Etc. 258 ITR 529; decision of the Hon'ble Bombay High Court in the case of National Leather Cloth Manufacturing Co. vs. Indian Council of Agricultural Research & Ors., 241 ITR 482; and the decision of Hon'ble Gujarat High Court in the case of PCIT vs. Thakkar Govindbhai Ganpatlal HUF in R/Tax Appeal No.881 of 2019 dated 20.01.2020.

10. On the other hand, ld. CIT-DR contended that from the very fact that the research organization i.e. SHGPH admitted that the modus operandi before the Hon'ble Settlement Commission is a conclusive evidence to show that the donee had been engaged in the fraudulent activities of providing the accommodation entries for donors and the assessee had failed to discharge primary the onus cast upon it. He further submitted that the doctrine of promissory estoppels has no application to tax concessions and the very fact

that vide Notification dated 28.01.2010 rescinded the approval granted to the donee organization with retrospective effect. It was further submitted that the case laws relied on by the appellant company has no application to the facts of the present case, inasmuch as, there is no allegation of fraud against the assessee in those cases.

11. We heard the rival submissions and perused the material on record. The only issue involved in the present appeal relates to the claim for deduction u/s 35(1)(ii) of the Act. During the previous year relevant to the assessment year under consideration, the appellant made a donation of Rs.1,25,00,000/- to SHGPH. This is undisputed fact. It is a matter of record that the appellant demonstrated before lower authorities that the claim made is bona-fide by stating the circumstances under which donation was made by showing the material in support of the activities carried out by the donee organization. Equally, the Assessing Officer had made sincere efforts to verify the veracity of the claim by corresponding with the donee organization i.e. SHGPH itself, who in-turn admitted the modus of operandi i.e. providing accommodation entries for donation and paying back the money to the donors through banking channels after retaining its commission. This was admitted in the application made before the Hon'ble Settlement Commission.

12. When this material was confronted with the appellant company, the Joint Managing Director of the appellant company pleaded the ignorance of modus operandi adopted by the donee organization. However, he admitted that the claim for deduction u/s 35(1)(ii) of the Act made for the assessment years 2013-14, 2014-15 and 2015-16 would be withdrawn. However, this admission was retracted during the course of assessment proceedings and contending that the appellant company acted bona-fide and it is not responsible for the fraud committed by the donee organization and it did not receive back money in form of cash or through banking channels and also

requested for cross-examination of the donee organization, which was not made possible by the Assessing Officer for whatever reasons. It is important to note that the Assessing Officer had also failed to enforce the attendance of officers of donee organization for purposes of cross examination by the appellant by exercising of powers vested with him. No doubt, the Ministry of Finance vide Notification dated 28.01.2010 rescinded the approval granted to the donee organization with retrospective effect by further stating that the approval given earlier shall deem to have been never issued for tax concessions, which reads as under :-

> *"However, the Ministry of Finance (Department of Revenue) (Central Board of Direct Taxes) Vide Notification No. 82/2016/F.No. 203/64/2009/IT A.I1 dated 15.09.2016 in The Gazette of India: Extra Ordinary had rescinded the Notification granting approval by the Central Government to the appellant for the purpose of clause (ii) of sub section (1) of section 35 of the I.T. Act, 1961, read with Rule 5C and 5E of the Income tax Rule, 1962. The Notification reads as follows:*
>
> *"'Ministry of Finance, (Department of Revenue) (Central Board of Direct Taxes) Notification New Delhi, the 15th September, 2016, S.O. 2961(E)-In exercise of the powers conferred under clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with Rule 5e and 5E of the Income-tax Rules, 1962, the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue number 4/2010 dated 28.01.2010 published in Gazette of India , Part 11, Section 3, Sub-section (ii) dated 28.01.2010 vide S.O. 348 with effect from 1st April, 207 and shall be deemed that the said notification has not been issued for any tax benefits under the Income-tax Act, 1961 or any other law of the lime being in force*
>
> *[Notification No. 82/2016/F.No.203/64/2009/ITA-ll]*
>
> *Deepshikha Sharma, Director."*

13. To decide the issue in appeal, the above Notification is required to be read with the Explanation inserted by the Finance Act, 2006 w.e.f. 01.04.2006 as amended from time to time, which reads as under :-

> *"**Expenditure on scientific research.***
> ***35.** (1) In respect of expenditure on scientific research, the following deductions shall be allowed—*

(i) ……

(ii) an amount equal to one and one half times of any sum paid to a research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research :

***Provided** that such association, university, college or other institution for the purposes of this clause—*

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be pres-cribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government :

***Provided further** that where any sum is paid to such association, university, college or other institution in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the sum so paid;*

.....

Explanation.—The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) 63[63a[to which clause (ii) or clause (iii)]] applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in 63b[63c[clause (ii) or clause (iii)]] has been withdrawn;"

14. From the facts narrated above, it is clear that there is no conclusive evidence on record to show that the appellant company had received back the money from the donee made either in cash or any other or through banking channels. Nor is there any other material to show that the appellant company is also a party to the fraud committed by the donee organization. No doubt the doctrine of promissory estoppels has no application to tax concession granted by the Legislature. However, keeping in view the provisions of Explanation inserted to section 35(1)(ii) by Finance Act, 2006, w.e.f. 01.04.2006 providing that the deduction in the hands of the donor shall not be denied merely because of the fact that an approval granted to the University which is the Research University, Colleges and other University which has been withdrawn subsequently to the payment of donations, the donors should not suffer on account of withdrawal of the approval to done organization. The intent of the Legislature is clear that the donors should not be made suffer on account of fraud committed by the donee organization.

15. Further, the Hon'ble Supreme Court in the case of CIT vs. Chotatingrai Tea & Ors., 258 ITR 529 following the decision of the Hon'ble Calcutta High Court in the case of CIT vs. Bhartia Cutler Hammer Co., 232 ITR 785 held that notwithstanding the fact that the approval granted earlier to the Research Organization was withdrawn subsequent to the payment of donation, the deduction cannot be withdrawn in the hands of the donors. The Hon'ble Jurisdictional High Court in the case of National Leather Cloth Manufacturing Co. vs. Indian Council of Agricultural Research & Ors., 241 ITR 482 also held to the same effect.

16. We notice that the above judgements of the Hon'ble Supreme Court in the case of Chotatingrai Tea & Ors. (supra) was rendered much prior to the insertion of the Explanation to section 35(1)(ii) of the Act and the Explanation inserted by the Finance Act, 2006 w.e.f. 01.04.2006 which means that the Parliament is deemed to have knowledge of the above judicial precedents and accepted the dictum laid therein. Therefore, this clearly establishes the legislative intent of Parliament to allow the deduction u/s 35(1)(ii) in the hands of the donors, notwithstanding the fact that the approval granted earlier to the Research Organization was withdrawn retrospectively. Therefore, the very fact that the approval granted to the donee organization i.e. SHGPH was rescinded with retrospective effect has no relevance to decide the allowability of deduction in the hands of the donors. It is settled principle of Rule of construction of statute that if the words it uses, and, if the words are plain and susceptible of no doubt or difficulty, the intention manifested by the words alone can be given effect to. Legislative intent cannot be inferred to mean otherwise when the law is plain. The following judgements can be referred to in this context :-

(a) Orissa State Warehousing Corporation vs. CIT, 237 ITR 589;

(b) Pradesh Chambers of Commerce and Industry vs. State of Andhra Pradesh, 247 ITR 36;

(c) CAgIT vs. Plantation Corporation of Kerala Ltd., 247 ITR 155.

17. In view of the this clear legislative intent as evident from the insertion of the Explanation, it is not necessary for us to delve into the true nature of the donations made.

18. In the circumstances, we are of the considered opinion that the claim made by the assessee company towards deduction u/s 35(1)(ii) of the Act on account of donation made to SHGPH is clearly allowable. Accordingly, the grounds of appeal filed by the assessee are allowed.

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

Order pronounced on this 29th day of January, 2021.

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(INTURI RAMA RAO)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 29th January, 2021.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.