

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.170 & 171/JP/2022
निर्धारण वर्ष/Assessment Year : 2012-13 & 2013-14

The DCIT Circle-1 Jaipur	बनाम Vs.	M/s. P.R. Rolling Mills Pvt. Ltd. S-707, Road No. 6, VKI Area Jaipur -302 013 (Raj)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCP 4072 F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shailesh Mantri, CA
राजस्व की ओर से/ Revenue by: Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 27/09/2022
उदघोषणा की तारीख/Date of Pronouncement : 04/10/2022

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Both these appeals by the Revenue are directed against two different orders both dated 12-03-2022 passed by the National Faceless Appeal Centre, New Delhi [hereinafter referred to as (NFAC)] for the assessment years 2012-13 and 2013-14 which in turn arise from the order of the Assistant Commissioner of Income Tax, Circle-3, Jaipur passed under section 143(3) r.w.s. 147 dated 18.12.2017 & 29.12.2017 respectively.

2. As the issues involved in the present appeals are common and inextricably interlinked or in fact interwoven and of the same assessee. Therefore, the parties argued them together and are disposed off by this common order. As it is seen that for both these appeals grounds are similar, facts are similar and arguments were similar and were heard on the same day. Therefore, we consider the facts and ground taken by the revenue from the folder in ITA No. 170/JPR/ 2022 for assessment year 2012-13 and this case is taken as lead case.

3. The revenue has marched the appeal in ITA No. 170/JPR/ 2022 for assessment year 2012-13 :

- (i) Whether on the facts and in the circumstances of the case, the Id. CIT(A) is justified in allowing the assessee's claim of deduction of Rs.1,75,00,000/- u/s 35(1)(ii) of the I.T. Act despite the fact that was established to be an accommodation entry taken from one M/s School of Human Genetics and Population Health which was confirmed during the survey action conducted u/s 133A by Investigation Wing of Kolkata.?
- (ii) Whether on the facts and in the circumstances of the case, the Id. CIT(A) is justified in allowing deduction of Rs.1,75,00,000/- made u/s 35 of the I.T. Act ignoring the fact that authorized signatories of M/s. SHG & PH is unequivocal terms admitted that this institute was used for providing accommodation entries on commission basis.

4. The fact as culled out from the record is that the assessee company is incorporated in the year 1997. The assessee company since inception engaged in manufacturing of Angles Shapes & Sections of Alloy and non

Alloy Steel, mainly profile section for use in Automotive Industry, Angies TLT sector and general engineering purpose. In this case a notice under section 148 was issued on 09.03.2017 after recording the reasons with the prior approval of the competent authority. The reasons for issuing notice u/s. 148 are as extracted as under:-

"In this case, assessment for A.Y. 2012-13 was completed u/s 143(3) of the I.T. Act on 31.03.2014 at total income of Rs. 5,93,16,890/-.

It has been observed that during the year under consideration the assessee had given a donation of Rs. 1,00,00,000/- to School of Human Genetics and Population Health, 7, Nilamber Mukherjee Street, Kolkata and claimed weighted deduction u/s 35 to the tune of Rs. 1,75,00,000/- out of which Rs. 1,00,00,000/- had been debited to the P&L Account and the balance of Rs. 75,00,000/- had been claimed in the computation of income.

A report was received from Investigation Wing, Kolkata that a survey action 133A was conducted in the following research organization which had approval u/s 35(1)(ii) of the Act-

Name of the approved organization	PAN	Notification u/s 35(1)(ii)
School of Human Genetics and Population Health	AABAS4570M	4/2010 Dated 28.01.2010 (f n 203/64/2009)ITA. II

During the course of survey proceedings conducted on 27-01-2015 in the case of above organizations, it came to light that donors in connivance with various brokers, entry operators, donees etc misused the benefit conferred under section 35(1)(ii) of the Act by undertaking bogus donations. The transactions were given the colour of legitimacy by routing it through the banking channels. However, evidence gathered during the course of the surveys indicates that the transactions were not genuine as the donors merely took accommodation entries and the alleged donations were routed back to them after deduction of commission by the entry provider at various stages. Due to these illegitimate transactions, the donors, at the first stage, could claim weighted deduction on the donations as per the relevant provisions of section 35(1)(ii) (the donations were not utilized for any scientific purpose by the approved entity Le. dance), while at

the second stage, when the funds were back to the donors through the banking channel or otherwise such amounts become unaccounted funds in their hands. The CBDT vide notification No 82/2016 (FN 203/64/2009/ITA.11) dated 15-09-2016 rescinded the notification number 4/2010 dated 28-01-2010 with effect from 1-04-2007 in the case of M/s School of Human Genetics and Population Health, Kolkata (PAN AABAS4570M).

The assessee is also one of such beneficiary who gave donation of Rs. 1,00,00,000/- to M/s School of Human Genetics and Population Health, Kolkata during the F.Y. 2011-12 and claimed weighted deduction of Rs 1,75,00,000/- In view of above facts it is clear that this was actually an accommodation entry. By such accommodation entry assessee reduced its taxable income and ultimately reduced legitimate tax liability,

It is on the strength of the above information received after the completion of the original assessments u/s 143(3) vide order dated 31.03.2014 that I have sufficient reasons to believe that an amount of Rs. 1,75,00,000/- has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

5. In response to notice u/s. 148, the assessee filed return of income on 05.04.2017 declaring total income at Rs. 5,93,16,890/- Notices u/s. 143(2)/142(1) of the act were issued which were duly served upon the assessee calling for relevant details. The assessee vide letter dated 03.10.2017 objected the issuance of notice u/s. 148 which was rejected by a speaking order dated 06.10.2017. Based on the reasons recorded and after affording proper opportunity to the assessee, the assessing officer has passed a detailed order wherein he has concluded that the approval u/s. 35(1)(ii) granted to M/s. School of Human Genetics & Population Health was being misused and the assessee was part of such racket. The Id. AO thus observed that the assessee took benefit of such racket by claiming

175 % of deduction on payment of meagre 3 % Commission of so called donation amount. Further, the benefits of the law have a purpose behind the same and can't be misused as done in this case. In view of that it is clear that the assessee also took accommodation entry of donation u/s 35 with the help of broker and reduced his taxable income and ultimately reduced legitimate tax liability. This entire manoeuvre was basically a colourable device to give this sham transaction a colour of genuineness. Hon'ble Supreme Court in the case of McDowell Vs CTO has given strong verdict against any such arrangements by stating that "Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges." In view of the Apex Court verdict, this entire arrangement is held as a mere colourable device devised with the aforementioned objectives. Therefore the deduction was disallowed by the AO and Rs 1,75,00,000/- is added back to the total income of the assessee.

6. Aggrieved from the said order of the assessing officer, the assessee company has filed an appeal. The appeal was disposed by the National

Faceless Appeal Center (NFAC). The portion of the decision emerges from the order of the Id. CIT(A), NFAC, New Delhi for the assessment year 2012-13 which is reiterated here in below :

"5.2 Ground No. 2, 3 and 4 related to denial of the deduction claimed u/s 35. The appellant had made donation of the pace 1,00,00,000 to School of Human Genetics and Population Health. The said organization was found to be engaged in the work of providing entry of donation on commission basis. So far the facts and reasons discussed in the assessment order the assessing officer disallowed the claim u/s 35 at Rs. 1.75 Crores. It is seen that the issue is covered in assessee's favour in his own case by decision of ITAT as under:-

"M/s. P.R. Rolling Mills P. Ltd. Vs Deputy Commissioner of Income.. on 5th July, 2018.

IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, JAIPUR

Before: Shri Vijay Pal Rao, JM and Shri Bhagchand, AM

ITA No. 529/JP/2018 – Assessment Year 2014-15

7. The Bench have heard both the sides on the issues raised in appeal, perused the material available on the record and also considered the case laws relied upon. The assessee is a private limited company engaged in manufacturing of rolled steel products. Return of income was filed electronically on 26/09/2014. The assessee has claimed weighted deduction U/s 35(1)(ii) of the Act. The assessee had made donation to a institute engaged in Scientific Research. The authorities below has not allowed the deduction. The assessee had made donation of Rs. 1,00,00,000/- to School of Human Genetics & Population Health, an institute engaged in scientific research and notified by the Central Board of Direct Taxes in terms of Section 35(1)(ii) of the Act vide notification No. 4/2010 dated 28/01/2010. The institute, whom the donation was made was in existence and notified during the F.Y. 2013-14 when the assessee has made donations. The CBDT has rescinded notification on 15/9/2016. Although, it has been made retrospective effect from 01/4/2007. This institute was validly recognized by the CBDT on the date of donation made by the assessee. The approval granted to the institute was very much in force at the time of donation made by the assessee. The assessee had no reason to disbelieve the operation of approval and notification of the institute. In such a situation, the deduction claimed by the assessee is justified. The subsequent notification by the CBDT

rescinding the approval retrospectively shall not or should not affect the claim of the assessee. There was no information with the assessee regarding non-genuinity or not observing the standard fixed by the CBDT for making eligible itself for deduction U/s 35 of the Act. The assessee's act was in a bonafide manner. It is well settled proposition of law that no additional tax burden can be put on the assessee by making retrospective operations of certain notifications or withdrawal of notifications. In the case of Hitendra Vishnu Thakur Vs. State of Maharashtra (supra), the Hon'ble Supreme Court has held that a procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished. Further, a statute which not only changes the procedure but also creates new rights and liabilities shall be continued to be in operation, unless otherwise provided, either expressly or by necessary implications. Similarly in the case of CIT(Central-1), Delhi Vs Vatika Township Pvt. Ltd. (supra), the Hon'ble Supreme Court has held that the beneficial amendment which effects the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given retrospective effect. Thus the retrospective effect can be given only for the beneficial amendments but not to put the additional burden that too on third party. Further the explanation to Section 35(1) of the Act also provides that deduction to which 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) 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 association, university, college or other institution, referred to in clause (ii) or clause (iii) has been withdrawn. The assessee has made donation i.e. on 13/01/2014, the institute was having a valid approval from the appropriate authorities and the assessee's claim cannot be denied. The Coordinate Bench of Kolkata ITAT in the case of M/s Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017, copy of which has been placed at page Nos. 82 to 91 of the paper book, wherein the donation was made to the same institute i.e. school of Human Genetics and Population Health, was held that in view of explanation to Section 35(1)(ii) of the Act, would not be withdrawn subsequently when recognition has been rescinded. Similarly the Coordinate Bench of Kolkata ITAT in the case of Saimed innovation Vs. ITO in ITA No. 2231/Kol/2016 order dated 13/09/2017 has held that weighted deduction claimed U/s 35(1)(ii) of the Act cannot be denied on the basis of statement recorded during the survey and no opportunity was provided to cross examine the third party, who has given such statement. Further in view of the decision of Hon'ble Allahabad High Court in the case of CCE Vs. Shyam Traders 2016 (333) ELT 389 and the

decision of Hon'ble Supreme Court in the case of Andaman Timber Industries (324) ELT 641 and the various other case laws relied upon by the Id. A.R., we find that the authorities below were not justified in denying claim of deduction U/s 35(1)(ii) of the Act to the assessee, hence, we set aside the orders of the authorities below.”

Considering the above, as the issue is covered, by Hon'ble ITAT in appellant's favour on same facts of A.Y. 14-15, the disallowance made is hereby deleted. Ground No. 2,3,4 are allowed.

7. Aggrieved from the said order of the Id. NFAC revenue has marched this appeal as per grounds raised and reiterated here in above. During the course of hearing, the Id. DR opposed the order of the Id. CIT(A) passed in favour of the assessee praying that the relief granted by the Id. CIT(A) is injudicious for which the Id. DR submitted the order copy of order dated 23-03-2017 passed by the Settlement Commission (Income Tax & Wealth Tax) Additional Bench, 10C, Middleton Row, 2nd Floor, Kolkata. In this Order of the Settlement Commission which relates to School of Human Genetics & Population Health (for short "SHGPH") for the assessment years 2012-13, 2013-14 & 2014-15 [the assessment year is also same of the assessee under dispute] wherein at para 16 the Hon'ble Commission observed as under:-

"16. Before concluding, the Commission is of the view that as there is a clear admission by the appellant that in the years under reference it did not carry out any significant research in the fields for which it was granted exemptions/ approvals and the alleged donations received from the donors were refunded through middleman/ brokers, it is expected that the Department would take necessary action as per law in the cases of such donors. The Commission also expects the applicant to render full cooperation and assistance to the

Department during the investigation/ proceedings initiated against the donors, middleman, brokers etc. if any.”

8. On the other hand, the Id. AR relied upon the order of the ITAT, Jaipur Bench in assessee's own case for the assessment year 2014-15 whereby the appeal of the assessee was allowed. The Id.AR further submitted that since the issue is covered by the ITAT order (supra), the grounds raised by the Department should be dismissed. The Id. AR of the assessee further submitted that since there is no cash trail or middlemen statement is relied upon by the revenue and the payment made by the assessee when there is no such investigation initiated or pending and thus the donation given by the assessee is genuine and should be accepted as in the past by the order of the ITAT in assessee's own case. The Id. AR of the assessee further relied upon written submission and judgement as referred in this written submission. The same is extracted here in below for the sake of brevity:

“1. The assessee company is engaged in the manufacturing of rolled steel products. For AY 2012-13 it has filed its return of income and claimed deduction of section 35(1)(ii) in respect of donations made to the School of Human Genetics and Population Health (SHG &PH) an Institution which is approved by the CBDT. The return was assessed u/s 143(3) and the deduction claimed by the assessee company was allowed by the AO. Later on notice u/s 148 was issued on the basis of so called recorded statement of key persons of the Institution to whom the donation was given by the assessee company.

2. The transaction of donation was through account payee cheque, and it is also not in dispute that, at the time of donation SHG &PH was having valid certificate issued by the CBDT which was necessary for claiming deduction u/s 35(1)(ii).

Thus the assessee company rightly claimed the deduction which was available as per Law. Section 35 reads as under:-

35. (1) In respect of expenditure on scientific research, the following deductions shall be allowed:-

(i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.

Explanation Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary (as defined in Explanation 2 below sub section (5) of] to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced;

(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 prescribed; and

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

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) or to a company to which clause (iia)] 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 [clause (i) or clause (iii) or to a company referred to in clause (iia)] has been withdrawn."

3. As the conditions prescribed u/s. 35(1)(ii) have been complied with, by the assessee company in respect of donations to the above mentioned institution. Therefore the company has claimed the deduction in ITR under section 35 (1)(ii) of the I.T. Act on the basis of the certificate granted to the Institutions by the CBDT. It is further submitted that. In the law, a process of registration of Institution u/s 35 is provided and the same reads as under:

"Provided that the research association, university, college or other institution referred to in clause (ii) or clause (iii) shall make an application in the prescribed form and manner to the Central Government for the purpose of grant of approval, or continuance thereof, under clause (ii) or, as the case may be, clause (iii):

Provided further that the Central Government may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual

accounts) or information from the research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the research association, university, college or other institution and that Government may also make such inquiries as it may deem necessary in this behalf."

This also shows that, before issuing registration to any institution the Central Government is verifying the genuineness of the activities and after complete satisfaction the registration is granted. The assessee has believed on the same, that, the institution has got the registration by CBDT after due verification of its genuineness. Thus the claim of deduction made by the assessee is allowable.

4. It is not in dispute that, the donation was made by the assessee company to the SHG& PH which was registered u/s 35(1)(ii), and therefore the assessee company was eligible to claim the deduction. It is further submitted that, in the Section 35 it is very clearly mention that, the deduction allowed u/s 35 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 [clause (ii) or clause (ii) or to a company referred to in clause (iia)] has been withdrawn. Thus it is also very much clear in law that once the claim has been allowed on the basis of registration u/s 35(1)(ii) the same cannot be withdrawn retrospectively. Therefore the claim of the assessee company of deduction could not be disallowed on the ground that the registration of the Institution u/s 35(1)(ii) is cancelled.

5. It is further submitted that the assessee company has made donation to SHG&PH in the A.Y.2014-15. The AO disallowed the same during assessment proceedings, against which appeal was filed by the assessee before the Hon'ble ITAT and the appeal of the assessee was allowed vide order dated 05.07.2018 in case of M/S P. R. Rolling Mills P. Ltd., Vs DCIT. 529/JP/2018. The decision of Hon'ble ITAT Jaipur bench is reproduced as under:

7. The Bench have heard both the sides on the issues raised in appeal, perused the material available on the record and also considered the case laws relied upon. The assessee is a private limited company engaged in manufacturing of rolled steel products. Return of income was filed electronically on 26/09/2014. The assessee has claimed weighted deduction U/s 35(1)(ii) of the Act. The assessee had made donation to a institute engaged in Scientific Research. The authorities below have not allowed the deduction. The assessee had made donation of Rs. 1,00,00,000/- to School of Human Genetics & Population Health, an institute engaged in scientific research and notified by the Central Board of Direct Taxes in terms of Section 35(1)(ii) of the Act vide notification No. 4/2010 dated 28/01/2010. The institute, whom the donation was made was in existence and notified during the FY 2013-14 when the assessee has made donations. The CBDT has rescinded notification on 15/9/2016. Although, it has been made retrospective effect from 01/04/2007. This institute was validly recognized by the CBDT on the date of donation made by the assessee. The approval granted to the institute was very much in force at the time of donation made by the assessee. The assessee had no reason to disbelieve the operation of approval

and notification of the institute. In such a situation, the deduction claimed by the assessee is justified. The subsequent notification by the CBDT rescinding the approval retrospectively shall not or should not affect the claim of the assessee. There was no information with the assessee regarding non genuinity or not observing the standard fixed by the CBDT for making eligible itself for deduction U/s 35 of the Act. The assessee's act was in a bonafide manner. It is well settled proposition of law that no additional tax burden can be put on the assessee by making retrospective operations of certain notifications or withdrawal of notifications. In the case of Hitendra Vishnu Thakur Vs. State of Maharashtra (supra), the Hon'ble Supreme Court has held that a procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished. Further, a statute which not only changes the procedure but also creates new rights and liabilities shall be continued to be prospection in operation, unless otherwise provided, either expressly or by necessary implications. Similarly in the case of CIT(Central-1). Delhi V's Vatika Township Pvt. Ltd. (supra), the Hon'ble Supreme Court has held that the beneficial amendment which effects the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given retrospective effect. Thus the retrospective effect can be given only for the beneficial amendments but not to put the additional burden that too on third party. Further the explanation to Section 35(1) of the Act also provides that deduction to which assessee is entitled in respect of any sum paid to a university, college or other institution 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 association, university, college or other institution, referred to in clause (ii) or clause (iii) has been withdrawn. The assessee has made donation Le. on 13/01/2014, the institute was having a valid approval from the appropriate authorities and the assessee's claim cannot be denied. The Coordinate Bench of Kolkata ITAT in the case of M/s Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017, copy of which has been placed at page Nos. 82 to 91 of the paper book, wherein the donation was made to the same institute Le. School of Human Genetics and Population Health, was held that in view of explanation to Section 35(1)(ii) of the Act, would not be withdrawn subsequently when recognition has been rescinded. Similarly the Coordinate Bench of Kolkata ITAT in the case of Saimed innovation Vs. ITO in ITA No. 2231/Kol/2016 order dated 13/09/2017 has held that weighted deduction claimed U/s 35(1)(ii) of the Act cannot be denied on the basis of statement recorded during the survey and no opportunity was provided to cross examine the third party, who has given such statement. Further in view of the decision of Hon'ble Allahabad High Court in the case of CCE Vs. Shyam Traders 2016 (333) ELT 389 and the decision of Hon'ble 33 ITA 529/JP/2018 M/s P.R. Rolling Mills P. Ltd Vs DCIT Supreme Court in the case of Andaman Timber Industries (324) ELT 641 and the various other case laws

relied upon by the Id. A.R., we find that the authorities below were not justified in denying claim of deduction U/s 35(1)(ii) of the Act to the assessee.."

6. The transaction is genuine as through banking channel and all the documents related to such transaction are furnished. In this case, assessee provided all the evidences that transaction happened apart from it there is no evidence of transaction being routed back. Further only on the basis of the statement of the so called employee the addition is not sustainable without providing opportunity of cross examine the same.

Reliance also placed on following judgments where the deduction of donation made to SHG &PH has been allowed:

(i) PR Rolling Mills Pvt Limited Vs DCIT 529/JP/2018 order dated 05/07/2018.

(ii) Ssl Exports Ltd., Howrah vs Deit, Circle - 3(1), Kolkata on 21 October, 2020. ITA NO 2670/Kol/2018 order dated 21/10/2020.

(iii) Tushar Chawda, Kolkata vs I.T.O ITA No.2362/Kol/2017 order dated 21/03/2018.

(iv) ACIT Vs. J M Enviro Studies Pvt Ltd ITA No. 1229/JP/2018.

(v) Zenith Credit Corporation, Vs Ito ITA NO 718/Kol/2018 order dt 20/07/2018.

7. The Hon'ble CIT(A) (NFAC), rightly deleted the addition being made by the AO after considering the all facts and relying on the gazette notification of registration of institution u/s 35(1)(ii)."

9. We have heard both the parties and perused the materials available on record. From the assessment order dated 18-12-2017, it was noticed that notice u/s 148 of the Act was issued to the assessee on 09-03-2017 after recording the reasons with prior approval of the competent authority. The assessing officer during verification of the details filed in the course of assessment proceedings by the assessee and as per information received it was noted that the assessee had claimed weighted deduction u/s 35(1)(ii) to the tune of Rs.1.75 Crores out of which Rs.1.Crore had been debited to the P&L Account and the balance of Rs.75,00,000/- had been claimed in the computation of income. In order to be eligible for such weighted

deduction u/s 35(1)(ii) of the Act, the assessee had given donation of Rs.1.00 Crore to School of Human Genetics and Population Health concern which is registered u/s 35 of the I.T. Act, 1961. As regards School of Human Genetics and Population Health (Research Organisation), a report was received by the investigation Wing, Kolkata to the AO that a survey action u/s 133A of the Act was conducted which had approval u/s 35(1)(ii). It is further observed that during the course of survey proceedings conducted on 27-01-2015 in the case of School of Human Genetics and Population Health (Research Organisation), it came to the light that the donors in connivance with various brokers, entry operators, donees etc. misused the benefit conferred u/s 35(1)(ii) of the Act by undertaking bogus donations. The AO elaborately discussed the modus operandi of misusing the amount in the garb of donations to the School of Human Genetics and Population Health (Research Organisation) who subsequently disallowed the deduction and Rs.1.75 crore was added back to the income of the assessee. In first appeal, the assessee took the resort of ITAT, Jaipur Bench, Jaipur order dated 05-07-2018 whereby the appeal of the assessee for the assessment year 2012-13 was allowed by Id. CIT(A). It is noteworthy to mention when School of Human Genetics and Population Health (Research Organisation) before the Settlement Commission for the

assessment year 2012-13, 2013-14 and 2014-15 had accepted that it did not carry out significant research work in the fields for which it was granted exemption/ approvals and the alleged donations received from the donors were refunded. The relevant extract of para 16 is reproduced as under:-

“16. Before concluding, the Commission is of the view that as there is a clear admission by the appellant that in the years under reference it did not carry out any significant research in the fields for which it was granted exemptions/ approvals and the alleged donations received from the donors were refunded through middleman/ brokers, it is expected that the Department would take necessary action as per law in the cases of such donors. The Commission also expects the applicant to render full cooperation and assistance to the Department during the investigation/ proceedings initiated against the donors, middleman, brokers etc. if any.”

10. We find from the above finding where in the trust who have been granted registration has categorically accepted that they were not doing any activity and accepted the income of commission before the settlement commission and the Id. AR of the assessee did not controvert the fact that the party to whom they have given the donation were in fact carrying any research activity. All the judicial precedents available were even in the case of the assessee's own case and other relied upon judgments are prior to the decision of the settlement commission in the case of the party to whom the donation were given and also prior to the judgement of Honourable supreme court in case of CIT V Batanagar Education trust [2021] 129 taxmann.com 30 (SC) where cancellation of registration of The Trust u/s 12

A as well as 80 G were upheld and this trust has also connection to the same society where the assessee has. Thus, when the recipient of donation has confirmed that donation were taken in lieu of cash and no activity is done, it would be too naïve to believe that assessee has donated sum in good faith.

11. In this view of the matter, the Bench feels that the assessee has adopted the unfair means to take the benefit under the garb of Section 35(1)(ii) amounting to Rs.1.75 Crore. Hence, taking into consideration the above facts, circumstances of the case as well as the order of the Hon'ble Settlement Commission, we do not concur with decisions of the Id. CIT(A). Thus, the appeal of the Department for the assessment 2012-13 is allowed. It is not imperative to repeat the facts of the Departmental appeal for the assessment year 2013-14 being similar issue, therefore, the decision taken by us in the appeal of the Department for the 2012-13 shall apply mutatis mutandis. Thus, both the appeals of the Department are allowed.

12. In the result, the appeals of the department are allowed.

Order pronounced in the open court on 04/10/2022

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/10/2022

*Ganesh Kumar

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

1. The Appellant- The DCIT, Circle-1, Jaipur
2. प्रत्यर्थी / The Respondent- M/s. P.R. Rolling Mills Pvt. Ltd, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 170 & 171/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar