

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA Nos.254 & 113/Ahd/2021
Assessment Years: 2013-14 & 2014-15**

Haresh Acids and Chemicals Pvt. Ltd., Plot No.2111, Phase-III, Near Trikampura Bus Stop, GIDC, Vatva, Ahmedabad – 382 445. [PAN – AAACH 3795 C]	Vs.	The Income Tax Officer, Ward – 2(1)(3), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri M.K. Patel, AR	
Revenue by	Shri Sanjay Jain, Sr. DR	
Date of Hearing	05.10.2023	
Date of Pronouncement	15.12.2023	

ORDER

These two appeals are filed by the Assessee against order dated 31.08.2021 & 26.03.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Years 2013-14 & 2014-15 respectively.

2. The assessee has raised identical grounds in both the appeals and hence grounds raised in ITA No.254/Ahd/2021 for A.Y. 2013-14 are being reproduced as under:-

- “1. *The order passed by the Ld CIT(A) - National Faceless Appeal Centre, Delhi by upholding the assessment order of Ld. AO Ward 2(1)(3) Ahmedabad for the A.Y. 2013-14 is bad in law and on facts of the case as the initiation of reassessment proceedings has been exercised in utter disregard to the provisions of law and/or settled principle of law applicable to proceedings of Section 147 of the Income Tax Act 1961.*
2. *The Ld. CIT(A) - National Faceless Appeal Centre, Delhi has failed to appreciate the appellant's submission in proper perspective and also failed to address various factual and legal contentions raised by the appellant. The appellate order is therefore perverse and may please be cancelled.*

3. *The Ld CIT(A) - National Faceless Appeal Centre, Delhi grossly erred in law and on facts of the case in confirming the action of the Ld. AO in making the addition/disallowance by making use of the evidence collected behind the back of the assessee and without providing copies of statements of various persons in spite of the specific requests made by the appellant. The Ld. AO has passed the impugned order in violation of the principle of natural justice and therefore the order passed is required to be quashed.*
4. *The Ld CIT(A) - National Faceless Appeal Centre, Delhi grossly erred in law and on facts of the case in confirming the action of the Ld. AO in making the addition/disallowance without providing the appellant an opportunity to cross examine the persons whose statements had been blindly followed by the Ld AO for making the impugned addition. The action of the Ld. AO is in clear violation of principles of natural justice and therefore the order, passed is required to be quashed.*
5. *The Ld CIT(A) - National Faceless Appeal Centre, Delhi grossly erred in law and on facts of the case in confirming the action of the Ld. AO in making the addition/disallowance without appreciating the fact that the appellant is legitimately entitled to deduction for a sum of Rs.8,75,000/- in respect of the donation of Rs.5,00,000/- given to School Human Genetic & Population Health @ 175% which has been duly approved u/s.35(1)(ii) of the Income Tax Act and the appellant has furnished before the Ld. AO corroborative documentary evidences in support of the donation so given. It is therefore prayed that the impugned additions may please be deleted being contrary to law and facts of the case.”*

3. Firstly we are taking up ITA No.254/Ahd/2021 for Assessment Year 2013-14 as the facts of the both the years are identical. The assessee is in the business of Trading in Acids & Chemicals. Return for the A.Y. 2013-14 was filed on 27.09.2013 showing total income of Rs.4,47,832/-. The case was reopened under Section 147 of the Act after duly recording the reasons for reopening the case. Notice under Section 148 of the Act dated 25.03.2019 was issued over ITBA Portal. In response to notice under Section 148 of the Act, the assessee filed its return on 19.04.2019. Notice under Section 143(2) of the Act was duly issued to the assessee. Copies of reasons recorded were duly supplied to the assessee on 02.05.2019. The assessee raised objections against reopening of the assessment proceedings under Section 147 of the Act. These objections were duly disposed off by the Assessing Officer by passing speaking order dated 04.11.2019. A survey was carried out on School of Human Genetics and

Population Health (SHG&PH) on 27.01.2015 by Investigation Wing, Kolkata. It was noticed that assessee had donated an amount of Rs.5,00,000/- to the said Institute and had claimed deduction of Rs.8,75,000/- under Section 35(1)(ii) of the Act for the said donation. The Founder and Secretary of the said Institute namely Smt Samadrita Mukherjee Sardar (who signed the donation receipt submitted by the assessee) had categorically accepted in the statement recorded during survey that the said Institute (SHG&PH) is engaged in providing Bills in guise of Donation and money is routed back to donors via various concerns in form of purchases. The founder and Secretary of SHG&PH during survey had admitted in her statement recorded during survey "that the source of income of the organisation is mainly out of donations from Corporate Bodies as well as from individuals. In fact we receive donations through cheques in name of some companies and in this process our organisation gets @ 7% to 8% of Donation amount." In view of these facts the Assessing Officer held that "Founder and Secretary of SHG&PH has admitted that Trust was involved in providing bogus donation entries. Survey report states that SHG&PH is returning back amount of donation after deducting their commission to donors through bogus bilking and other ways. Survey report is based on facts recorded during survey operation. The assessee has obtained benefit of such bogus donation. Signature on donation receipt of assessee is matching and verified with the signature on statement recorded during survey of founder and secretary of SHG&PH. This proves that assessee has indulged in giving bogus donation to SHG&PH to claim bogus deduction under Section 35(1)(ii) of the Act to suppress its taxable income. Thus, the deduction of Rs.8,75,000/- claimed under Section 35(1)(ii) of the Act was disallowed and same was added to total income of the assessee. There is no sound reason for assessee situated in Ahmedabad making donation to Institute based in Kolkata. Thus, donation shown of Rs.5,00,000/- was treated as Bogus donation and deduction of Rs.8,75,000/- claimed u/s.35(1)(ii) of the Act was disallowed and added to total income of the assessee"

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards to ground nos.1 & 2, the Ld. AR submitted that the Assessment Order itself is bad in law as the initiation of reassessment proceedings was exercised in disregard to the provisions of law and/or settled principles of law applicable to proceedings of Section 147 of the Income Tax Act, 1961. The Ld. AR further submitted that the Assessing Officer as well as the CIT(A) failed to appreciate the assessee's submission in proper perspective and wrongly reopened the assessment. The Ld. AR pointed out paragraph no.3 of the Assessment Order where it has been clearly mentioned that the assessee has raised his objection against reopening where the assessee has stated and submitted the details as well as documentary evidences in respect of claim of donation made to School of Human Genetics and Population Health (SHG&PH) under Section 35(1)(ii) of the Act and the same was not disputed by the Revenue at any occasion. As regards to ground nos.3 & 4, the Ld. AR submitted that the Assessing Officer has not given opportunity to the assessee in respect of the statement of various persons on which the assessment order is based on and thus violated the principles of natural justice. As regards to merit of the case, the Ld. AR submitted that the Institute most specifically that of School of Human Genetics and Population Health was legally registered in A.Y. 2013-14 and 2014-15 for which the assessee has pointed out the Income Tax Certificate related to renewal of approval dated 12.12.2011 and also that of 01.04.2013 issued by Ministry of Science and Technology, Government of India wherein the recognition of the Scientific Industrial Organisation was renewed. The Ld. AR further submitted that all the evidences are related to the amount of donation and the receipt thereof was submitted before the Assessing Officer and there was no malafide intention on the part of the assessee. In fact, the CBDT vide Notification No.4/2010/F.No.203/64/2009-ITA-II dated 28.01.2010 approved the Institute M/s. School of Human Genetics and Population Health, Kolkata for the purpose of Clause (ii) of Sub-section (1) of Section 35. The Ld. AR submitted that the assessee made donation of Rs.5 lakhs which is evident from the bank statement and the donation receipt submitted to the Assessing Officer. The Assessing Officer did not make any effort to enquire or call for information from the donee to confront the documentary evidences submitted by the assessee as he had preconceived notion that the donation of Rs.5 lakhs was bogus. The Ld. AR

further submitted that the objections raised by the assessee for reopening was also not fully considered.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). The Ld. DR further submitted that the certificate issued by the Department is only for A.Y. 2011-12 and, therefore, the assessee has not brought on record related to renewal of the said approval for A.Y. 2013-14 and 2014-15. Besides this, the Ld. DR submitted that the donee has admitted that the said Institute is engaged in providing bogus bills in providing donation and money is routed back to donors via various concerns in form of purchases.

7. Heard both the parties and perused all the relevant material available on record. From the perusal of the details, the statement made by the Director of the said School of Human Genetics and Population Health Institute, the said Institute was engaged in providing bills in guise of donation and money is routed back to donors via various concerns in form of purchases. As related to reopening of the proceedings, the assessee has raised objection which was properly taken into account by the Assessing Officer and there is no discrepancy mentioned by the assessee in respect of reopening the assessee's case. The renewal of School of Human Genetics and Population Health for A.Y. 2013-14 & 2014-15 was never submitted by the assessee before any of the Revenue Authorities. The receipt annexed at page 57 of Paper Book in footnote mentions that exemption is upto A.Y. 2011-12. The assessee is located in Ahmedabad and trading in Acids and Chemicals. The Institute is based in Kolkata and how the Institute and its research is helpful in the business of Acid & Chemicals was not explained by the assessee at any juncture. The assessee was given opportunity of hearing at all occasions but the relevant details for A.Y. 2013-14 and 2014-15 in respect of renewal of the said Institute by the Income Tax Department was not submitted by the assessee at any point of time. The assessment is not solely based on acceptance of the Director of the Institute but also as elaborately taken cognisance of the details filed by the assessee and, therefore, the submissions of the Ld. AR that the assessee was not given opportunity to cross-examine or providing the other details upon which the assessment is based on is not correct. Thus, the CIT(A) has rightly dismissed the appeal of the assessee. Besides this,

the Ld. AR relied upon the decision of Hon'ble Gujarat High Court in the case of PCIT vs. M/s. Thakkar Govindbhai Ganpatlal HUF (R/Tax Appeal No.881/2019, order dated 20.01.2020) which will not be relevant in the present case as the issue therein was related to Institute namely M/s. Herbicure Healthcare Bio-Herbal Research Foundation and from the perusal of the said order it was not pointed out whether the renewal of the said Institute for the relevant year whether produced or not and in fact in present assessee's case the same was not produced at all. Thus, the said decision will not be applicable on factual difference. Thus, ground nos.1 & 2 as well as ground nos.3 & 4 related to reopening and the opportunity are dismissed. As regards to ground no.5, the same is also dismissed. The CIT(A) as well as the Assessing Officer has given a detailed finding and there is no need to interfere with the same. Hence, ITA No.254/Ahd/2021 for A.Y. 2013-14 filed by the assessee is dismissed.

8. As regards to A.Y. 2014-15, being ITA No.113/Ahd/2021, the issue involved therein is also identical and the documents issued by the Income Tax Authorities does not relate to renewal for the relevant A.Y. Hence, appeal filed by the assessee for A.Y. 2014-15 is also dismissed.

9. In the result, both the appeals are dismissed.

Order pronounced in the open Court on this 15th December 2023.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th December, 2023

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad