

ITA/42/2020
IA No.GA/2/2019 (Old No.GA/1477/2019)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX-4, KOLKATA

-Versus-

M/S. MACO CORPORATION (INDIA) PVT.
LTD.

Appearance:
Ms. Smita Das De, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Anil Dugar, Adv.
Mr. Rahjarshi Chatterjee, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 12th August, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 14th March, 2018 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.16/Kol/2017 for the assessment year 2013-14.

The appeal was admitted on 11th March, 2020 on the following substantial questions of law:

" i) *Whether on the facts and in the circumstances of the case, the impugned order of the tribunal dated 14th March, 2018 is perverse for failing to take into account that the donation in question to the trust was not "genuine" and also not considering the effect of cancellation of registration of the donee?"*

We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior Advocate assisted by Mr. Anil Dugar and Mr. Rajarshi Chatterjee, advocates for the respondent/assessee.

The short issue involved in the instant case is whether the donation given by the assessee to two organizations can be held to be not genuine on the ground that the registration granted to those organisations under Section 35C of the Act having been cancelled with retrospective effect. On facts, the tribunal noted that there is nothing on record to show that the respondent/assessee connived with the scheme of arrangement between the concerns in bogus billing etc. The factual finding recorded by the CIT(A) is to the following effect:

"5.5 *It has been brought to my notice that vide notification No.82/2016 dated 15.09.2016 and notification No.79/2016 dated 06.09.2016 the registration of SHG&PH & HHBHRF respectively has been cancelled by CBDT. Thus there remains no doubt that these concerns were engaged in the improper utilization of moneys received by them. If the statements are taken at face value then on perusal of*

extracts of statements of brokers/mediators/and entry operators as reproduced in the assessment order I find that there remains no doubt that the management of these concerns were directly or indirectly engaged is misappropriating the funds and not utilizing the donation amounts entirely for research related activities. However the connivance of appellant in this scheme of arrangements between these concerns as well as the bogus billing parties is not established either by DDIT, (Inv), Kolkata or by the AD. The allegation that the cash was refunded to the appellant after deducting commission by these concerns remains in serious doubt. It is observed that a suspicion how so ever strong it may be cannot form disallowing any claim of the appellant until any material is brought on record."

After noting the above factual position, the tribunal examined the law on the subject and took note of the decision of the Hon'ble Supreme Court in the case of *Industrial Infrastructure Development Corporation (Gwallior) M.P. Ltd. vs. Commissioner of Income Tax* reported in [2018] 403 ITR 1 (SC).

In our considered view, we need not travel thus far to decide the substantial question of law in the case on hand as we are considering the case falling under Section 35 of the Act. In terms of Explanation to Section 35(1)(iii) of the Act, deductions to which the assessee is entitled to in respect of any sum paid to a research organisation, university etc. shall not be denied merely on the ground that subsequent to the payment of such sum by

the assessee, the approval granted to the research organisation or university etc. has been withdrawn. This issue was considered by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax vs. Chotatingrai Tea & Ors.* reported in (2002) 258 ITR 529 (SC). The operative portion of the said decision is as follows:

"It is not in dispute that the assessees had made donations to the Society for Integral Development, Calcutta, which had as its object the undertaking to carry out approved programmes of rural development. The society had granted a certificate to the assessee which had also been approved by the prescribed authority.

According to the Revenue authorities the assessees were not entitled to deduction as claimed despite the aforesaid because subsequently the approval granted by the prescribed authority was withdrawn with retrospective effect. It was also alleged that the assessees had received back the donation which had been made by them to the society. When the matter came up before the Tribunal at the instance of the assessees, the Tribunal found, as a matter of fact that the assessee had fulfilled all the conditions under section 35CCA of the Act for grant of deduction thereunder. The Tribunal also found that the assessees' position could not be affected by any subsequent withdrawal of the certificate granted by the prescribed authority under section 35CCA but found that there was no evidence in support of the Revenue's case that the assessees had received back the amount donated by them to the society. However, the matter was remanded back to the Assessing Officer for fresh disposal for the purpose of determining whether the money had in

fact been utilised for an approved programme. Pursuant to the directions of the High Court the following questions were referred under section 256(2) of the Act (page 645) :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal having held that the assessee have fulfilled all the conditions laid down in section 35CCA of the Income-tax Act, 1961, read with rule 6AAA of the Income-tax Rules for deduction of the amount donated to the approved society, which had not come back to the assessee soon after or later on in some form or the other, that the Tribunal was justified in law in restoring the matter to the Assessing Officer on the reasons and grounds given in the order passed on appeal?

(2) Whether, on the facts and in the circumstances of the case, and in view of the findings of facts recorded by the Tribunal on questions of facts arising for decision, the Tribunal was justified in law in holding that the entitlement of the assessee for claiming deduction of the amount donated to the approved society would depend upon the utilisation of such fund by the approved society in the approved programme before the date specified in the section and on this basis only restoring the matter to the Assessing Officer?"

The High Court followed the reasoning of the Calcutta High Court in CIT v. Bhartia Culter Hammer Co. [1998] 232 ITR 785, and came to the conclusion that once it was found that the assessees had fulfilled all the conditions which had been laid down under section 35CCA of the Act for claiming deduction of the amount donated by it, there was no obligation on the part of the assessee to see that the amount was utilised for the

purpose for which it was donated. Furthermore, the deduction was allowed on the certificate furnished and it was not for the assessee to show whether the institution to which the money had been donated was carrying on the rural development work, as envisaged under section 35CCA of the Act.

In our view, the reasoning of the High Court while answering the question referred to it in favour of the assessee is sound and calls for no interference."

In the light of the above decision, we find the reasoning given by the tribunal to be just and proper and cannot be held to be perverse. In the result, the appeal filed by the revenue (ITA/42/2020) is dismissed and the substantial question of law is answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2019) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)