

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/120/2021
IA NO:GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
TIRUPATI MEAL PRODUCERS [P] LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : AUGUST 12, 2022.

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv. ...for appellant.

Mr. Subash Agarwal, Adv.
.....for respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 29.11.2019 passed by the learned Income Tax Appellate Tribunal, "C" Bench, Kolkata [Tribunal] in I.T.A. No. 904/Kol/2019 for the assessment year 2014-2015. The revenue has raised the following questions of law for consideration.

- a) Whether in the facts and circumstances of the case the Learned Income Tax Appellate Tribunal erred in law by ignoring the facts that the Central Government vide notification no.79/2016 dated 6.9.2016 withdrew the recognition given to grant approval under section 35[1][ii] of the Income Tax Act, 1961 of M/s. Herbicare Bio-Herbal Research Foundation w.e.f. 1.4.2007 ?
- b) Whether in the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in deleting the

disallowance made by the Assessing Officer in respect of the claim of assessee regarding deduction under section 35[1][ii] of the Income Tax Act, 1961 ?

We have heard Mr. Vipul Kundalia, learned standing Counsel for the appellant and Mr. Subash Agarwal, learned counsel for the respondent.

The learned tribunal has allowed the appeal filed by the assessee by following its earlier decision in the case of *DCIT vs. M/s. Maco Corporation [India] Pvt. Ltd.* in ITA/16/2017 dated 14.3.2018. Against the said decision, the revenue had preferred appeal in ITA/42/2020 which was dismissed by judgment dated 12.8.2022. The operative portion of the judgment reads as follows :

"In our considered view, we need not travel this 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 assesseees 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 assesseees 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 assesseees, 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 assesseees' 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 assesseees 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."

In the light of the above decision, the appeal filed by the revenue has to be necessarily dismissed and, accordingly, the same is dismissed and substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)