

No. denial of Sec. 35 deduction due to cancellation of research institution approval retrospectively

Summary – The Chennai ITAT in a recent case of Smt. Deviyani Dilip Patel, (the Assessee) held that where Research Foundation/institution was enjoying approval as per section 35(1)(ii) on date of receipt of donation, on retrospective cancellation of approval, donor's claim of deduction could not be denied

Facts

- The assessee was carrying on transport business. In the relevant year, an amount had been donated by the assessee to Research Foundation Institution on which weighted deduction was claimed under section 35(1)(ii). The association was approved under section 35(1)(ii) and notification to this effect was also published in the Gazette of India. During survey under section 133A, the donee confirmed the receipt of voluntary donation through account payee cheque and returning back of the same to the donor assessee after deducting a commission at the rate of 5 per cent on the donation amount.
- In response to the SCN, the assessee submitted that donation was directly made to the donee by cheque and it had not received back any cash or cheques. The Assessing Officer denied the assessee's claim for exemption of donation amount on the ground that the approval of the Central Government to the Research foundation had been withdrawn retrospectively.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On further appeal to the Tribunal:

Held

Whether withdrawal of approval under section 35(1)(ii) apply retrospectively for exemption claimed by the assessee

- *Vide* Notification No. 35/2008 dated 14-3-2008, the institution has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 with effect from 1-4-2007. In view of the above notification, donation offered to the institution is exempted to claim deduction under section 35(1)(ii). Thus, the assessee paid donation of Rs. 15.00 lakhs through cheque towards corpus donation to the institution. This fact was not under dispute. Since, the assessee has given donation, claimed deduction of 175 per cent as exempt as admissible under the provisions of section 35(1)(ii).

Denial of assessee's claim on ground that approval of Central Government to institution had been withdrawn

- The Institution was enjoying the approval of the prescribed authority at that time and the assessee made donation was also not under dispute, the disallowance made by the Assessing Officer cannot

be sustained under law. The observation is duly fortified by the decision of Bombay High Court in the case of *Seksaria Biswan Sugar Factory v. Inspecting Assistant Commissioner* [\[1990\] 184 ITR 123/52 Taxman 257](#). The purport of the decision of Bombay High Court was that when the institution was enjoying the approval within the meaning of section 35(1)(ii) as on the date of receipt of donation and retrospective cancellation of approval of the concerned institution, the deduction claimed in respect of donation cannot be denied. Under the above facts and circumstances, denial of exemption claimed in respect of donation cannot be sustained.

- With regard to the donation, the institution confirmed the voluntary donation of Rs. 15 lakhs from the assessee. A copy of the trust's Corporation Bank statement in which the donation received was also sent by the trust. Based on the sworn statement of the Founder Director of the institution, wherein, he has admitted that his organization accept the donation and giving back of the same to the donor after deducting a commission at the rate of 5 per cent on the donation amount. However, the department has not made any effort to get any valid evidence that the organization has given back the donation to the donor after deducting a commission at the rate of 5 per cent on the donation amount. Under the above facts and circumstances, the Assessing Officer is directed to ascertain the means as well as actual amount repaid by the donee to the assessee and decide the issue afresh after giving sufficient opportunities of hearing to the assessee. Thus, the ground raised by the assessee is partly allowed for statistical purposes.