

No denial of sec. 35 deduction if approval to scientific research society was cancelled with retro-effect

Summary – The Mumbai ITAT in a recent case of Vora Financial Services (P.) Ltd., (the Assessee) held that where approval granted under section 35(1)(ii) to scientific research society is cancelled subsequently with retrospective effect, weighted deduction claimed by assessee under section 35(1)(ii) cannot be denied, if there was valid and subsisting approval when donation was given

Where major portion of dividend income had been received from shares held as stock-in-trade, that too out of a single scrip, it may not be appropriate to apply provisions of rule 8D and, accordingly, requirements of provisions of section 14A would be met, if disallowance was to be made at 5 per cent of dividend income earned by assessee

Provisions of section 56(2)(viiia) should be applicable only in cases where shares become property in hands of recipient

Facts

- The assessee paid donation to a Research Society, which was an institution undertaking scientific research and claimed deduction under section 35 on the donation.
- The revenue had carried out survey operations in the hands of some donors of society various persons which revealed that they person had paid donations to these kinds of trusts/societies, which were subsequently returned back in cash after deducting commission. These donors had claimed weighted deduction under section 35(1)(ii). Accordingly it was reported that the donations were, in fact, bogus in nature. In the assessment order passed in the hands of the trust, the Assessing Office observed that the research activities were not carried and had made suitable recommendation for withdrawal of approval given under section 35(1)(ii).
- Based on the above, the Assessing Officer concluded that the assessee was one of the beneficiaries of the bogus donations and, accordingly, disallowed the claim of 50 lakhs made under section 35(1)(ii).
- The Commissioner (Appeals) noticed that the registration granted to the above said society under section 12AA had been cancelled on 28-2-2017 with retrospective effect from 1-4-2010. Hence the Commissioner (Appeals) confirmed the disallowance made by the Assessing Officer.
- On appeal:

Held

- The assessee had given donation during the financial year 2013-14. The Assistant Commissioner refers in his remand report about the survey conducted in the year 2015 in the hands of certain donors. Based on the survey findings, the assessment in the hands of Research Society has been

completed on 29-3-2016. These facts show that the above said society was very much having approval in the financial year 2013-14.

- It is also an undisputed fact that the revenue did not carry on any survey operations in the hands of the assessee. It is also not clear as to whether any survey operation was conducted in the hands of Research Society also.
- In the instant case, the assessee has given the donation to Research Society. In the assessment order passed by the Assessing Officer in the hands of the abovesaid society, he has only recommended for cancellation of the approval granted under section 35(1)(ii). According to assessee the said approval has not been cancelled till date. Though the Survey proceedings conducted in the hands of certain donors, revealed that the donations were bogus in nature, but no such finding had been given in the hands of the assessee thus, genuineness of payment of donations cannot be doubted in the instant case, particularly in the absence of any material to support the view taken by the Assessing Officer. Hence the Assessing Officer was not justified in rejecting the claim of weighted deduction. The Commissioner (Appeals) has placed reliance on the cancellation of registration granted under section 12AA to Research Society with retrospective effect. The registration granted under section 12AA and the approval granted under section 35(1)(ii) operates on different field. Hence, the Commissioner (Appeals) was not justified in placing reliance on the order of cancellation of registration under section 12AA.
- Even if the approval is cancelled subsequently with retrospective effect, the weighted deduction claimed by the assessee under section 35(1)(ii) cannot be denied, if there was valid and subsisting approval when the donation was given. In the instant case, it is the contention of assessee that the approval was not cancelled till date and the revenue did not furnish any material to refute the contentions of assessee.
- In view of the foregoing discussions, there is no justification in rejecting the claim of weighted deduction claimed under section 35(1)(ii). Accordingly the order passed by the Commissioner (Appeals) on this issue is aside and the Assessing Officer claimed to allow the weighted deduction claimed under section 35(1)(ii).