

**IT: Where payment was made to newspaper for advertisement and deduction under section 80GGC claimed contending that newspaper was run by political party, matter to be remanded back**

**IT: Where assessee had failed to demonstrate that payment had been made for seeking legal opinions/consultations in connection with business carried out by assessee, expenditure could not be allowed merely for reason that payments had been made through cheque and TDS had been deducted on such payments**

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**[2018] 92 taxmann.com 430 (Pune - Trib.)**

**IN THE ITAT PUNE BENCH 'B'**

**Deputy Commissioner of Income-tax, Circle-3, Pune**

**v.**

**Smt. Anjali Hardikar\***

**D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND VIKAS AWASTHY, JUDICIAL MEMBER  
IT APPEAL NO. 173 (PUN.) OF 2016  
[ASSESSMENT YEAR 2011-12]  
APRIL 6, 2018**

**I Section [80GGC](#) of the Income-tax Act, 1961 - Deductions - Political contribution (Illustrations) - Assessment year 2011-12 - Assessee was engaged in business of execution of sub-contract work and passing on same to other sub-contractors mainly related to road repairing work - Payment had been made to a newspaper being run by a political party for insertion of some advertisements - Assessing Officer disallowed assessee's claim of deduction under section 80GGC on ground that payment had been made to a newspaper for advertisement and not to a political party or an electoral trust as envisaged under section 80GGC - However, Commissioner (Appeals) allowed said claim observing that receipt issued by newspaper had acknowledged donation received by Rashtrawadi Congress Party and, therefore, payment clearly fell under purview of section 80GGC - It was found that none of receipts mentioned that amount received was donation - Whether on facts, for proper adjudication, matter should be remitted back for verification - Held, yes [Para 6][Matter remanded]**

**II Section [37\(1\)](#) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Legal expenses) - Assessment year 2011-12 - Whether where assessee had failed to demonstrate that payment had been made for seeking legal opinions/consultations in connection with business carried out by assessee, expenditure could not be allowed merely for reason that payments had been made through cheque and TDS had been deducted on such payments - Held, yes - Whether in absence of any documentary evidence connecting expenditure incurred for business auxiliary service with business of assessee, payments made by assessee had to be disallowed - Held, yes [Para 7][In favour of assessee]**

**A.K. Ghosh *for the Appellant.* Dr. Vivek Agrawal *for the Respondent.***

**ORDER**

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**Vikas Awasthy, Judicial Member** - This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 23-11-2015 for the assessment year 2011-12.

2. The Revenue in appeal has raised following grounds :

- "(1) The learned Commissioner of Income-tax (Appeals) erred in allowing the deduction u/s. 80GGC of the Act, without appreciating the fact that the assessee has not given donation to any Political Party registered u/s. 29 of the Representative People Act, 1951.
- (2) The learned Commissioner of Income-tax (Appeals) erred in allowing the expenses even though the assessee failed to explain the genuineness of expenses recorded in books of accounts and also without appreciating the fact that the onus to prove lies on the person who claims the expenses.
- (3) The appellant craves leave to add, alter or amend any or all the grounds of appeal."

3. Dr. Vivek Agrawal representing the Department submitted that the assessee in its return of income has claimed deduction of Rs.10,50,000/- u/s. 80GGC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). During the course of scrutiny assessment proceedings, it transpired that the assessee has made payment of Rs.10,50,000/- on various dates to newsletter/local newspaper 'Rashtrawadi' for publication of advertisement in the new letter/news paper. The assessee has claimed deduction u/s. 80GGC on the ground that the aforesaid newsletter/newspaper is being run by a political party registered u/s. 29 of the Representative People Act, 1951. The Id. DR submitted that the provisions of section 80GGC clearly states that the donation should be made to a political party registered u/s. 29 of the Representative People Act, 1951 or to an electoral trust. The newsletter 'Rashtrawadi' is neither a political party nor it is an electoral trust. The Id. DR submitted that as per assessee's own contention the payment has been made for publication of advertisement in the newsletter. Therefore, the payments of Rs.10,50,000/- is not a donation to political party, hence assessee is not eligible for claiming deduction u/s. 80GGC of the Act.

3.1 In respect of ground No. 2 the Id. DR submitted that the assessee has made payment of Rs.1 crore for seeking legal opinions/consultations from Shri Y.K. Sabharwal and has also made payment of Rs.1.1 crore to one Shri Sham Chopra for 'Business Auxiliary Service'. However, the assessee has failed to substantiate from records the purpose of legal opinion and the Business Auxiliary Service provide by Shri Sham Chopra. The Commissioner of Income Tax (Appeals) in the absence of any evidence has accepted bald assertions of assessee and has granted relief.

4. On the other hand Shri A.K. Ghosh appearing on behalf of the assessee vehemently supported the order of Commissioner of Income Tax (Appeals). The Id. AR in support of deduction claimed u/s. 80GGC of the Act, referred to invoices at pages 42 to 53 of the paper book. The Id. AR contended that the payments were made to 'Rashtrawadi' newsletter run by a political party registered u/s. 29 of the Representative People Act, 1951. Thus, the assessee is eligible for claiming deduction u/s. 80GGC of the Act.

4.1 In respect of ground No. 2 raised by Revenue, the Id. AR submitted that the assessee has made payment of Rs.1 crore towards legal consultancy charges and Rs.1.1 crore for Business Auxiliary Service. The Id. AR referred to bill amounting to Rs.1 crore at page 58 of the paper book raised for providing legal consultations and opinions and the invoice raised by Sham Chopra at page 59 of the paper book for providing Business Auxiliary Service. The Id. AR submitted that the Assessing Officer has not raised any doubt over the payments made. The payments were made by assessee to above

mentioned persons through cheque after deducting tax at source. Thus, the above mentioned expenditures have been wrongly disallowed by Assessing Officer. The Commissioner of Income Tax (Appeals) has given a categorical finding that the expenditure is not related to personal expenses of assessee. The Id. AR prayed for upholding the order of Commissioner of Income Tax (Appeals) and dismissing the appeal of Revenue.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Revenue in appeal has assailed the order of Commissioner of Income Tax (Appeals) on two counts :

- i. Allowing deduction u/s. 80GGC of the Act.
- ii. Allowing expenditure of Rs.2.10 crores without ascertaining the genuineness of expenditures.

6. A perusal of records reveal that the assessee is an individual and derives income from salary, business, Capital Gains and income from other sources. The assessee is purportedly engaged in the business of execution of sub-contract work and passing on the same to other sub-contractors mainly related to road repairing work. The assessee filed her return of income for the impugned assessment year on 22-03-2012 declaring total income of Rs.1,04,19,660/-. During the course of scrutiny assessment proceedings, the Assessing Officer disallowed assessee's claim of deduction u/s. 80GGC on the ground that the payment has been made to a newspaper for advertisement and not to a political party or an electoral trust as envisaged u/s. 80GGC of the Act. An explanation to section 80GGC defines 'political party' as under :

'For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).'

In the present case, the payment has been made to a newspaper being run by a political party for insertion of some advertisements in the said newsletter/newspaper. The assessee has made payment of Rs.10,50,000/- to the newsletter/newspaper during April, 2010 to March, 2011. The Commissioner of Income Tax (Appeals) while allowing the assessee's claim of deduction u/s. 80GGC has observed that, : "The receipt issued by the newsletter has acknowledge donation received by the Rashtrawadi Congress Party and, therefore, the payment clearly falls under the purview of section 80GGC". This findings given by the Commissioner of Income Tax (Appeals) appears to be contrary to the documents on record before us. The receipts issued by 'Rashtrawadi' are at pages 42 to 53 of the paper book. On perusal of same we find that none of the receipts mention that the amount received is donation. However, for proper adjudication of this issue we deem it appropriate to restore the issue back to Assessing Officer for verification. If the assessee has made donation to a political party as defined u/s. 80GGC, the assessee is eligible to claim deduction under the provisions of aforesaid section. The Assessing Officer shall decide this issue after examining the documents on record and after affording opportunity of hearing to the assessee, in accordance with law. Accordingly, ground No. 1 raised in appeal by the Revenue is allowed for statistical purpose.

7. In ground No. 2 of appeal, the Revenue has assailed the action of Commissioner of Income Tax (Appeals) in allowing expenditure of Rs.2.10 crores. The assessee has made payment of Rs.1 crore for seeking legal opinions and consultations from an eminent jurist. Further, the assessee has made payment of Rs.1.10 crore to Shri Sham Chopra for Business Auxiliary Service. However, the assessee has failed to substantiate that legal opinions/consultations were in connection with business. The assessee has not furnished any cogent evidence whatsoever, either before the authorities below or before us to show the nature of Business Auxiliary Service allegedly received by assessee from Shri Sham Chopra. The Commissioner of Income Tax (Appeals) has allowed the expenditure merely on the ground that the payments have been made against receipts from concerned parties and TDS has been deducted on such

payments.

One of the vital condition for an expenditure to be allowable u/s. 37(1) of the Act is, that the expenditure must have been laid out or expended "wholly and exclusively" for the purpose of business or profession. In the instant case, the assessee has failed to demonstrate that the payment of Rs.1 crore has been made for seeking legal opinions / consultations in connection with the business carried out by the assessee. The expenditure cannot be allowed merely for the reason that the payments have been made through cheque and TDS has been deducted on such payments. The onus is on the assessee to prove that the expenditure has been incurred "wholly and exclusively" for the purpose of business. The assessee has failed to discharge this onus. Similar is the position in respect of payment made for Business Auxiliary Services allegedly received by assessee from Shri Sham Chopra. The Commissioner of Income Tax (Appeals) in the impugned order has not referred to any document to come to a conclusion that the expenditure is not personal in nature. In the absence of any documentary evidence connecting expenditure with the business of assessee, the payments made by the assessee towards legal fee Rs.1 crore and Business Auxiliary Service Rs.1.10 crore have to be disallowed. Accordingly, ground No. 2 raised in appeal by the Revenue is allowed.

**8.** In the result, the appeal of Revenue is partly allowed in the terms aforesaid.

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\*Partly in favour of assessee.