

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

Before Shri Mahavir Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.201/Mum/2017
(Assessment year: 2012-13)

M/s Technosoft Engineering Projects Ltd , A-25, MIDC, Marol Indl. Area, Road No.3, Andheri (E), Mumbai-93 PAN : AABCT0886H	vs	ACIT-OAS, 8(3), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Rakesh Mohan
Respondent by	Shri D.G. Pansari

Date of hearing	06 -08-2018
Date of pronouncement	10-08-2018

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against order of the CIT(A)-18, Mumbai dated 14-10-2016 and it pertains to AY 2012-13.

The assessee has raised the following grounds of appeal:-

"I. The Learned Commissioner of Income Tax (Appeals) - 18 , Mumbai (hereinafter referred to as the "CIT (A)") erred in law and on facts in upholding the disallowance of Rs.50,00,000/- (Rupees. Fifty Lacs only) made by the Assessing Officer, claimed by your Appellant u/s 37(1) in respect of amount given to Shanti Seva Nidhi providing vocational training at Murbad.

II. The Learned CIT (A) further erred on facts and in law in not appreciating the fact and submission of your appellant that

the amount given of Rs. 50,00,000/- (Rupees Fifty Lacs only) fell within the purview of "Commercial Expediency".”

2. The brief facts of the case are that the assessee company is engaged in the business of manufacture and export of software including engineering design and other related information technology enabled products and services, filed its return of income for AY 2012-13 declaring total income at Rs.1,69,20,396. The case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act, were issued. In response to notices, authorized representative of the assessee appeared from time to time and filed various details, as called for. During the course of assessment proceedings, the AO noticed that the assessee has debited an amount of Rs.50 lakhs under the head ‘other expenses’ on account of spending on corporate social responsibility. Therefore, called upon the assessee to furnish necessary details and also how it is having nexus with assessee’s business activity. In response to show cause notice, the assessee submitted that it has paid an amount of Rs.50 lakhs to M/s Shanti Seva Nidhi Trust, engaged in the activity of carrying out educational / training activities (running technical college called as Netur Technical Training Institute). The assessee further submitted that the trust is involved in providing education to local poor children, where the factories of assessee’s parent company are situated and children of

employees of assessee and its parent company were beneficiaries of the trust. Therefore, there is a direct nexus between amount given to trust and business activity of the assessee and hence, the same is deductible u/s 37(1) of the Income-tax Act, 1961.

3. The AO, after considering relevant submissions of the assessee held that the assessee has failed to file any evidence to prove nexus between expenditure incurred under the head 'coporate social responsibility' and business activity of the assessee. The AO further observed that in order to be eligible for deduction of any expenditure, the onus is on the assessee to prove that the same had been laid out wholly and exclusively for the purpose of business. Expenditure incurred in the nature of donation, being voluntary, cannot be held to be fulfilling the criteria of business exigency / commercial expediency, therefore, held that the assessee failed to discharge its onus by filing necessary evidence and accordingly made addition of Rs.50 lakhs to the total income of the assessee. However, the AO has allowed alternative claim of the assessee towards donation paid to trust u/s 80G of the Income-tax Act, 1961.

4. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the CIT(A), assessee has filed elaborate written submissions on the issue of disallowance of donation paid to

Shanti Seva Nidhi which has been extracted by the Ld.CIT(A) in his order at para 3.3 on pages 5 to 25. The assessee has filed elaborate written submissions on the activity of the assessee and also the activities carried out by Shanti Seva Nidhi at Murbad, the beneficiary of donation given by the assessee. The assessee also relied upon various judicial precedents to support its case. The sum and substance of the arguments of the assessee are that expenditure incurred under the head 'corporate social responsibility' being donation given to Shanti Seva Nidhi at Murbad is having direct nexus with its business activity as the trust is carrying out various educational activities by offering various technical courses to poor students of local residents where the factories of assessee and its parent companies are located. The beneficiaries of the trust includes children of assessee company and its parent company. Therefore, there is no reason for the AO to disallow expenditure incurred wholly and exclusively for the purpose of business of the assessee merely for the reason that the expenditure incurred is in the nature of donation being voluntary contribution to a trust. The Ld.CIT(A), after considering relevant submissions of the assessee held that the assessee failed to discharge its onus to prove the impugned expenses incurred wholly and exclusively for the purposes of business of the assessee. There is no nexus between business activity of the assessee and sum

spent under the head 'corporate responsibility'. The impugned expenditure is in the nature of voluntary contribution to a trust. Therefore the claim of the assessee that the same is incurred wholly and exclusively for the purpose of business does not have any merit. Accordingly, upheld addition made by the AO and rejected ground taken by the assessee. Aggrieved by the order of CIT(A), assessee is in appeal before us.

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in upholding the disallowance of Rs.50 lakhs made by the AO without appreciating the fact that there is no need of direct nexus between expenditure incurred by the assessee and business activity of the assessee. What is relevant is whether the assessee is deriving any benefit out of expenditure incurred or not has to be seen. In this case, the assessee has paid donation to a trust which is involved in providing educational activities under various subjects which is directly benefitted to the assessee as employees of assessee and their children are getting education from the trust. The Ld. AR further submitted that the assessee has paid donation to set up a technical training institute in collaboration with NTTF, a renowned skill development institute which involved in providing technical education. The trust is conducting various technical courses which directly beneficial to the assessee and hence, there is a

direct nexus between expenditure incurred under the head 'corporate social responsibility' and business activity of the assessee. The lower authorities, without appreciating the fact has made addition towards donation given to Shanti Seva Nidhi at Murbad.

6. On the other hand, the Ld.DR strongly supported order of the Ld.CIT(A).

7. We have heard both the parties and perused material available on record. The factual matrix which leads to the impugned dispute are that the assessee had given donation of Rs.50 lakhs to to Shanti Seva Nidhi at Murbad, a trust involved in providing vocational training course at Murbad. The assessee never disputed the fact that the expenditure incurred under the head 'corporate social responsibility' is a donation given to a trust. But claims that expenditure incurred under the head 'corporate social responsibility' is having direct nexus with its business activity. The assessee has given various reasons to establish nexus between expenditure incurred under the head 'corporate social responsibility' and business activity of the assessee. According to the assessee, the trust is providing various technical courses which has directly benefited its employees and their children. The AO has disallowed expenditure incurred under the head 'corporate social responsibility' on the ground that it is in the nature of voluntary

contribution which cannot be considered as incurred wholly and exclusively for the purpose of business of the assessee.

8. Having heard both the sides, we find that expenditure incurred by the assessee under the head 'corporate social responsibility' is in the nature of donation being voluntary contribution given to a trust which is involved in providing vocational training course. The assessee has not filed any evidence to prove that the impugned expenses are incurred wholly and exclusively for the purpose of business of the assessee. In order to be eligible for deduction of any expenditure, the onus is on the assessee to prove that the same had been laid out wholly and exclusively for the purposes of business. In this case, there is no nexus between impugned expenditure and business activity of the assessee. The sum given to a trust, viz. Shanti Seva Nidhi at Murbad is a voluntary contribution does not partake the character of expenditure incurred wholly and exclusively for the purpose of business and which is having business exigency / commercial expediency. Since, the assessee has failed to discharge the onus to prove nexus between impugned expenditure and its business activity, the AO was right in disallowing said expenditure u/s 37(1) of the Income-tax Act, 1961. The Ld.CIT(A), after considering relevant facts has rightly upheld addition made by the AO. We do not find any error or infirmity in the order of the Ld.CIT(A). Hence,

we are inclined to uphold the findings of Ld.CIT(A) and dismiss appeal filed by the assessee.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th August, 2018.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 10th August, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai