आयकर अपीलीय अधीकरण, न्यायपीठ – "B" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
(समक्ष)Before **श्री जे. सुधाकर रेड्डी**, लेखा सदस्य **एवं/and श्री ऐ. टी. वर्की,** न्यायीक सदस्य)
[Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 2231/Kol/2017
Assessment Year: 2014-15

Bengal NRI Complex Ltd. (PAN: AABCB8119M)	Vs.	Deputy Commissioner of Income-tax, Circle-6(1), Kolkata.
Appellant		Respondent

Date of Hearing	14.11.2018
Date of Pronouncement	30.11.2018
For the Appellant	Shri Amitava Bose, Advocate
For the Respondent	Shri Robin Choudhury, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-2, Kolkata dated 25.08.2017 for AY 2014-15.

2. The sole issue of assessee's appeal is against the action of the Ld. CIT(A) in confirming the disallowance of expenditure claimed by the assessee company as CSR u/s. 37(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") to the tune of Rs.39,06,724/-.

3. Briefly stated facts are that on perusal of accounts submitted by the assessee, during the course of assessment proceedings, the AO observed that an amount of Rs 39,06,724/- have been debited under the head 'Corporate Social Responsibility' (CSR). On a specific query raised by AO on it, the assessee in its submission dated 24.08.2016, submitted that "*It may be noted that these expenses were incurred for the purpose of business as well as social responsibility of the company. It is an allowable business expenses u/s 37(1) of the Act in as*

much as explanation 2 to the Section 36(1) of the Act has been added w.e.f 01.04.2015, i.e. w.e.f from A.Y 2015-16." From the ledger submitted by the assessee, the AO observed that the payments under this head were made primarily to an institute for the purpose of vocational training provided to some individuals who are neither related nor in the payroll of the assessee company. According to AO, section 37(1) of the Act provides that the deduction shall be allowed for the expenses which are *"wholly and exclusively for the purpose of assessee's business*". And since the assessee is in the business of development of housing projects, according to AO, the vocational training expenses cannot be said to be incurred for the purpose of assessee's business and the AO observed that the assessee could not substantiate the commercial benefits derived by incurring these expenses. Thereafter, the AO, was of the opinion that the 'CSR' expenditure is not allowable as deduction u/s 37(1) of the Act. The AO further observed that Explanation 2 to section 37(1) of the Act is applicable from AY 2015-16 onwards in respect of CSR expenditure made by the assessee as per section 135 of Companies Act, 2013. According to AO, however, in the present case, since the vocational training expenses paid to institute is not incurred "wholly and exclusively" for the purpose of assessee's business, it cannot be allowed as deduction u/s 37(1) of the Act. In view of above, Rs 39,06,724/ - have been disallowed and added back by the AO to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who confirmed the action of AO and dismissed the appeal of assessee. Aggrieved, assessee is in appeal before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO after taking note that the assessee had debited under the head 'CSR' an amount of Rs.39,06,724/-, asked the assessee as to why the amount should not be disallowed because, according to him, this expenditure is not wholly and exclusively for the purpose of the assessee's business. Pursuant to this query of the AO, the assessee explained that the payments under the head 'CSR' were made primarily to an institute for the purpose of vocational training provided to some individuals who are neither related nor in the payroll of the assessee company and the expenditure was part of the 'CSR' expenditure as envisaged u/s. 135 of the Companies Act, 2013. However, the AO did not agree to the

claim of expenditure and disallowed the same. On appeal, the Ld. CIT(A) also concurred with the AO. We note that the genuineness of the expenditure made by assessee on account of 'CSR' which is mandatory as per sec. 135 of the Companies Act, 2013 was not doubted by the AO/Ld. CIT(A). However, the claim was disallowed only on the ground that the expenditure is not wholly and exclusively incurred for the purpose of the business the expenditure. The Ld. AR drew our attention to the coordinate Bench decision in ACIT Vs. Jindal Power Ltd. (ITAT Raipur) in ITA No.99/BLPR/2012 for AY 2008-09 dated 23.06.2016 wherein on similar facts and law, the Tribunal while allowing the expenditure under 'CSR' held as under:

> *"ii) The concept of business is not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the locality in which business is located in particular. Being a good corporate citizen brings goodwill of the local community as also with the regulatory agencies and society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill (CIT v. Madras Refineries Ltd. [2004]266 ITR 170, Sri Venkata Satyanarayna Rice Mill Contractors Co. v. CIT [1997] 223 ITR 101, Hindustan Petroleum Corporation Ltd Vs DCIT [(2005) 96 ITO 186 (Bom)]*
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> *(iii) The amendment in the scheme of Section 37(1), which has been introduced with effect from 1st April 2015, cannot be construed as to disadvantage to the assessee in the period prior to this amendment. This disabling provision, as set out in Explanation 2 to Section 37(1), refers only to such corporate social responsibility expenses as under Section 135 of the Companies Act, 2013, and, as such, it cannot have any application for the period not covered by this 'statutory provision which itself came into existence in 2013. Explanation 2 to Section 37(1) is, therefore, inherently incapable of retrospective application any further. In any event, as held by Hon'ble Supreme Court's five judge constitutional bench's landmark judgment, in the case of CIT Vs Vatika Townships Pvt Ltd [(2014) 367 ITR 466 (SC)], the legal position in this regard has been very succinctly summed up by observing that "Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by rely on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward*
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> *(iv) It may appear to be some kind of a dichotomy in the tax legislation but the well settled legal position is that when a legislation confers a benefit on the taxpayer by relaxing the rigour of pre-amendment law, and when such a benefit appears to have been the objective pursued by the legislature, it would a purposive interpretation giving it a retrospective effect but when a tax legislation imposes a liability or a burden, the effect of such a legislative provision can only be prospective. We have also noted that the amendment in the scheme of Section 37(1) is not specifically stated to be retrospective and the said Explanation is inserted only with effect from 1st April 2015. In this view of the matter also, there is no reason to hold*

this provision to be retrospective in application. As a matter of fact, the amendment in law, which was accompanied by the statutory requirement with regard to discharging the corporate social responsibility, is a disabling provision which puts an additional tax burden on the assessee in the sense that the expenses that the assessee is required to incur, under a statutory obligation, in the course of his business are not allowed deduction in the computation of income. This disallowance is restricted to the expenses incurred by the assessee under a statutory obligation under section 135 of Companies Act 2013, and there is thus now a line of demarcation between the expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation, and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to Section 37(1) comes into play, but, as for latter, there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be "wholly and exclusively for the purposes of business". There is no dispute that the expenses in question are not incurred under the aforesaid statutory obligation. For this reason also, as also for the basic reason that the Explanation 2 to Section 37(1) comes into play with effect from 1st April 2015, we hold that the disabling provision of Explanation 2 to Section 37(1) does not apply on the facts of this case."

5. Respectfully following the ratio laid by the Coordinate bench of this Tribunal, we note that since the 'CSR' expenses are mandatory for companies incorporated as per the Companies Act, 2013 and the expenditure have been incurred by the assessee as envisaged under the Companies Act, 2013. So we are of the opinion that it has to be allowed and we take note that the Tribunal in Jindal Power Ltd., (supra), has already held that the introduction of explanation 2 to sec. 37(1) of the Act w.e.f. from 1st August, 2015 cannot be held to be retrospective in operation. Therefore, the expenditure incurred by assessee on account of 'CSR' as envisaged u/s. 135 of the Companies Act, 2013 need to be allowed as deduction. Therefore, the 'CSR' expenditure which the assessee company was obliged to discharge because it was a statutory obligation upon the assessee company so, the deduction should have been allowed as per the law in force for this assessment year and we direct the AO to allow the expenditure. Therefore, the appeal of assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 30/11/2018

Sd/-	Sd/-
(J. Sudhakar Reddy)	(A. T. Varkey)
Accountant Member	Judicial Member

Dated: 30th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1 Appellant – Bengal NRI Complex Ltd., 783, Anandapur, East Kolkata Towns, HIP Project, Kolkata-700107

2 Respondent – DCIT, Circle-6(1), Kolkata.

3 CIT(A)-2, Kolkata. (sent through e-mail)

4 CIT , Kolkata

5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy, By order,

Sr. Pvt. Secretary