

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3736/Del/2018
(Assessment Year: 2013-14)

WAPCOS Ltd, 5 th Floor, Kailash Building, 26, KG Marg, New Delhi PAN: AAACW0764A (Appellant)	Vs.	Addl. CIT, Ranage-27, New Delhi (Respondent)
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Assessee by :	Shri Satyajeet Goel, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	09/10/2018
Date of pronouncement	20/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-9, New Delhi dated 22.03.2018 for the Assessment Year 2013-14.
2. The assessee has raised the following grounds of appeal:-
 - "1. (i) *That on facts and circumstances of the case, the Id. CIT(A) was not justified in confirming disallowance of claim of CSR and SD expenses to the extent of Rs. 1,53,74,000/- and Rs. 25,62,000/- respectively by making reference to Explanation 2 to section 37 even though the same is allowable u/s 37(1) of the Income tax Act, 1961.*
 - (ii) *That Explanation 2 to section 37(1) inserted vide Finance Act(No.2), 2014 is prospective in nature and has no application to year under reference.*
 - (iii) *That in any case, the appellant being a government undertaking and expenditure on CSR and SD activities having been incurred in compliance with mandatory guidelines issued by Ministry of Heavy Industries, the claim is in accordance with provisions of section 37(1) of the Act.*
 - (iv) *That even otherwise, these expenses have direct nexus with business activities and there is no legal basis for any disallowance.*

2. *That the orders passed by lower authorities are not justified on facts and same are bad in law."*
3. The brief facts of the case is that the assessee is a company engaged in the business rendering technical consultancy services and turnkey contracts in respect of hydel power. The assessee filed its return of income on 29.09.2013 declaring total income of Rs. 88,87,97,810/-. Assessment u/s 143(3) of the Act was passed on 29.02.2016. The Id AO disallowed CSR expenses of Rs. 15374000/- and sustainable development expenses of Rs. 2562000/-. The total income after certain other disallowances of depreciation was assessed at Rs. 92966110/-. The assessee preferred an appeal before the Id CIT(A) challenging the above disallowance wherein, the Id CIT(A) upheld the disallowance of CSR and sustainable development expenses applying the explanation 2 to section 37(1) of the Act introduced vide Finance Act No. 2 of 2014 w.e.f 01.04.2015. The Id CIT(A) was of the view that CSR expenditure even prior to the amendment are disallowable. He held that the intention of the legislature not to allow such expenses as business expenses always existed and to be followed in later and spirit. He further confirmed the disallowance of the expenditure relating to sustainable development holding that these are also in the nature of expenditure of CSR. Accordingly, against the confirmation of the disallowance the assessee is in appeal.
4. Adverting to the only issue involved in this appeal with respect to the CSR expenditure and sustainable development expenditure disallowance, the Id AR submitted that above explanation was inserted w.e.f 01.04.2015 and therefore, same is not applicable to Assessment Year 2013-14. He submitted that the issue is squarely covered by the decision of the coordinate bench in ITA NO. 6794/Del/2014 for Assessment Year 2011-12 dated 02.04.2018 and ITA NO. 123/Del/Cochi/2017 for Assessment Year 2012-12 dated 11.06.2018. The Id AR submitted the paper book stating that nature and expenditure of CSR and sustainable development

activities undertaken. The CSR guidelines issued by Ministry of Heavy Industries and Public Enterprises dated 21.12.2010 were also submitted. The assessee also submitted the guidelines issued by the same Ministry for sustainable development dated 23.09.2011. He therefore, submitted that these expenditure have been incurred by the assessee for those specific project under the guidelines issued by the Govt. of India. Hence, same are allowable.

5. The Id DR vehemently supported the order of the lower authorities and submitted that CSR expenditure are disallowable by virtue of the explanation 2 to section 37(1) of the Act. He stated that though it has been introduced w.e.f 01.04.2015 but as same is explanatory and applicable for Assessment Year 2013-14 also.
6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The assessee is a Govt of India undertaking under Ministry of Water Resources, river development and Ganga rejuvenating and is engaged in providing concept to commissioning services in consultancy and engineering projects. It has incurred the CSR expenditure details of which are given at page 1 to 13 of the paper book. The nature of the activities include development of infrastructure facilities for providing electricity, solar lighting system in Rajasthan, adoption of backward village in Gujarat for making arrangement of drinking water facilities through hand pumps and water conservation awareness programme, promotion of education of water quality monitoring in certain village of Punjab and training and skill development in Chandigarh Area. Other activities include the harvesting structures in Meghalaya and educational and technical training in marginalized youth of slum area of New Delhi. Certain other similar activities were carried out by the assessee. The assessee carried out the expenses of CSR and sustainable development as per the government guidelines dated 21.12.2010 and 09.04.2010 for both these expenses. According to this guidelines the assessee was to incur these expenditure.

The Id AO disallowed the above expenditure applying the provision of explanation 2 to section 37(1) of the Act which has been introduced w.e.f. 01.04.2015. The decision cited by the Id AR clearly covers the issue in favour of the assessee that the explanation 2 introduced w.e.f. 01.04.2015 applies from Assessment Year 2015-16 only. The Id DR could not produced any contrary decision wherein, it has been held that above explanation applies with retrospective effect. Therefore, respectfully following the decision of the coordinate bench, we hold that for AY 2013-14 CSR expenditure cannot be disallowed by invoking the explanation 2 to section 37(1) of the Act. In view of this we reverse the order of the lower authorities and direct the Id AO to delete the disallowance of CSR expenses of Rs. 15374000/- and sustainable development expenses of Rs. 2562000/-. Accordingly, the solitary ground in appeal of the assessee is allowed.

7. Accordingly, the appeal of the assessee is allowed.

Order pronounced in the open court on 20/12/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:20/12/2018
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi