

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2146/Del/2017
(Assessment Year: 2013-14)**

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|---------------------------------------------------------------------------------------------------|-------------------------|---------------------------------------------------------|
| NTPC-SAIL Power Co. Pvt. Ltd., 4 th Floor, NBCC Tower 15 Bhikaji Cama Place, New Delhi | Vs | Dy. Commissioner of Income Tax, Circle-18(2), New Delhi |
| PAN-AABCN5467A | | |
| APPELLANT | | RESPONDENT |
| Appellant by | Sh. M.P. Rastogi, Adv | |
| Respondent by | Ms. Rakhi Vimal, Sr. DR | |

ORDER

PER ANADEE NATH MISSHRA, AM

[A] This appeal has been filed by the assessee against impugned appellate order dated 16.01.2017 of learned Commissioner of Income Tax (Appeals)-39, New Delhi. The grounds of appeal are as under:-

1. *The learned CIT(A) has erred in confirming the disallowance of Rs. 237.81 lacs on Corporate Social Responsibility (CSR for Short) by AO, the CSR expenses incurred under the directions of BPE Govt. of India requiring Companies to spend a prescribed percentage of its profits on CSR and now also made mandatory under the Companies Act.*
2. *That the above grounds are independent and without prejudice to each other.*

[B]. The only issue in dispute in this present appeal is regarding the allowability of the claim of the assessee for expenditure

amounting to Rs. 237.80,958/- on account of Corporate Social Responsibility ("CSR for short"). During appellate proceedings in Income Tax Appellate Tribunal ('ITAT, for short'), the following particulars were filed from the assessee's side:

1. *Tribunal Order dated 29.11.2018 in ITA No. 4733/Del/2015, for 1-6 AY 2012-13 holding CSR expenditure are allowable till AY 2014-15 (inclusive) and allowing Bank Guarantee Commission.*
2. *Tribunal Order dated 27.04.2018 in ITA No. 5687/Del/2014, for 7-19 AY 2011-12 holding CSR expenditure are allowable till AY 2014-15 (Inclusive) and allowing Bank Guarantee Commission.*
3. *DPE Guidelines for CSR Expenditure to be mandatory by CPSUs.*

[C]. At the time of hearing before us, both sides (representatives of the assessee as well as Revenue) agreed that the issue in dispute regarding allowability of CSR expenses is squarely covered in favour of the assessee, in identical facts and circumstances, by aforesaid orders dated 27.4.2018 and 29.11.2018 passed by co-ordinate Benches of ITAT in assessee's own case in ITA Nos. 5687/Del/2014 & 4733/Del/2015 respectively for Assessment Years 2011-12 and 2012-13 respectively.

[D]. We have heard both sides and we have perused the materials on record. We have considered the precedents brought to our attention or referred to in the records. We find from the perusal of the assessment order that the aforesaid amount of Rs. 237.80,958/- claimed by the assessee as CSR expenses were

disallowed by the AO vide assessment order dated 18.3.2016 under section 143(3) of the Income Tax Act, holding as under

“4. Disallowance of expenses incurred on account of Corporate Social Responsibility :

4.1 During the course of assessment proceedings, it was observed that the assessee had claimed expenses on account of community development and welfare expenses amounting to Rs. 2,37,80,958/- and the same had been debited to Profit and Loss account for the year under consideration. Accordingly, the AR of the assessee was asked to show cause as to why Corporate Social Responsibility expenses amounting to Rs. 2,37,80,958/- may not be disallowed.

4.2 The AR of the assessee furnished reply on 03.12.2015, which is summarized as under:

“It is a Public knowledge that the Government of India-through BPE(Bureau of Public Enterprises) had issued guidelines to the effect that companies should spend certain percentage of their profits(linked to quantum of profits) to discharge their) Corporate Social responsibility(CSR) towards fulfillment of the National Plan goals and objectives as well as the Millennium Development Goals adopted by the country to ensure gender sensitivity, skill enhancement, entrepreneurship development and employment generation by co-operating value with local intuitions/people and community Development etc. In fact the same has since been made a part of the Companies Act 2013 and extended to all companies. Accordingly, the company had incurred expenditure for development of area surrounding plants of the company and it indirectly adding to business of the company, since developed area in and business place always contribute to business of company.”

4.3 The reply of the assessee has been duly considered, but it was not found to be acceptable. The assessee company is engaged in the business of production of thermal power. The contention of the assessee is that expenditure incurred in respect of community development and corporate social responsibility expenditure were covered u/s 37(1) of the Income Tax Act, 1961. However, the main requirement of the provision of section 37(1) is that expenditure should have been laid out wholly and exclusively for the purpose of

the business. The nexus between the expenditure and the business, in connection which expenditure has been incurred, has to be established before the assessee gets entitled to deduction under section 37(1) of the Act. It is duty of the assessee to discharge its onus in respect of expenditure incurred but the assessee failed to establish that these expenses have been incurred for business purpose.

4.4 Further, the assessee admitted that these expenses have been incurred as per guidelines issued by the Bureau of Public Enterprises that companies should spend certain percentage of their profits to discharge their corporate social responsibility. The intention behind these guidelines issued by Bureau of Public Enterprises can be met by the company by spending certain amount out of its surplus profit after tax and it need to claim these expenses in the books of account as expenditure before determining of taxable profit. On the other hand, if the intention is to be claim tax deduction, the Income Tax Act also provides deductions such as under section 35 AC and section 80G on certain expenditure on account of social activities after fulfillment of certain conditions.

4.5 In view of the above discussion, the expenditure claimed in the Profit and Loss account amounting of Rs. 2,37,80,958/- on account of corporate social responsibility is hereby disallowed and the same is added to assessee's total income."

[D.1] The learned CIT(A), vide the aforesaid impugned Appellate Tribunal order dated 16.01.2017 upheld the aforesaid disallowance holding as under:-

"It is clear from the submission of the appellant and the reason mentioned in the impugned order that the abovementioned expenses have been incurred as per the guidelines issued by the Bureau of Public Enterprises, an offshoot of the GOI- companies should spend certain percentage of their 'profits' to discharge their corporate social responsibility, and not voluntary. The principle behind the CSR expenditure in India is application of profits and not incurring social /scientific expenditure only which is otherwise deductible under various other provisions of the Act. Hence, the intention of legislature to put in place a transparent process where 'on the ground demonstration of CSR expenditure' has now been clarified. It is not prejudicial to the taxpayer, in my opinion, as the

broad basis has travelled down from philanthropy to corporate sustainability. Secondly, under the Income tax Act, the expenditure has to be covered within the ambit of the provisions of Section 37 (1) thereof. The court decisions relied upon by the appellant deals with instances where expenditures have been incurred specifically based on the principle of commercial expediency. Thirdly, existing provisions of the Act (for e.g. Section 35AC, Section 80G, etc.) provide for allowing such expenditures as deduction, subject to fulfillment of conditions therein. Finally, it is observed from the nature of the expenditures claimed above that the requirement u/s 37(1) is hardly fulfilled in respect of the aforementioned expenditures. Accordingly, as the expenditure is claimed to be under CSR and yet there is a claim of deduction thereof in the P&L account as any other expenditure incurred to be wholly and exclusively for the purpose of business (except capital and personal expenses), I am inclined to uphold the disallowance made on this issue in the impugned order. The appeal on this point fails.”

[E] As mentioned earlier, both sides have agreed before us at the time of hearing that the dispute regarding allowability of CSR expenses is covered in favour of the assessee by aforesaid orders dated 27.4.2018 and 29.11.2018 in assessee’s own case, in identical facts and circumstances, in assessee’s favour. Neither side has brought any distinguishable facts nor circumstances to our attention to persuade us to take a view different from the view take in the aforesaid orders dated 27.4.2018 and 29.11.2018 of co-ordinate Benches of ITAT, Delhi. The relevant portions from the aforesaid ITA Nos. 5687/Del/2014 & 4733/Del/2015 of Coordinate Benches of ITAT Delhi are reproduced as under:-

ITA No. 5687/Del/2014

“7.1 Coming to ground no. 2 of the assessee’s appeal which challenges the expenses incurred towards corporate social responsibility, we find that the Raipur Bench of ITAT in the case of ACIT vs. Jindal Power Ltd. In ITA No. 99/Del/2012 has allowed CSR expenses in assessment year 2008-09. The Raipur Bench has further held that Explanation (2) to section 37 of the Act, inserted by Finance Act, 2012 has been brought into the Statute w.e.f. 1.4.2013 and this amendment is prospective in nature and accordingly prior to 1.4.2013, CSR expenses are revenue in nature and allowable. We have gone through the details of CSR expenditure incurred by the assessee during the year under consideration i.e. assessment year 2011-12 and we find that the expenses have been incurred in respect of tree plantation/environment protection, construction of Zoology Lab in Rourkela, construction of Special Wings for cerebral palsy children in Rourkela, medical camps in Sirsa village in Bhilai, development of Dongia Pond in a village near Bhilai, construction of Bus stop shed in the city of Rourkela, creating awareness against drug abuse in Bhilai, construction of road in Durgapur etc. besides other expenses incurred under the head. It is not in dispute that these expenses have been incurred and the only reason they were disallowed by the Assessing Officer and so confirmed by the Ld. Commissioner of Income Tax (A) was that this expenditure was not expended wholly or exclusively for the purpose of business of the assessee. Although, it is undisputed that the assessee had incurred this expenditure on the basis of guidelines issued by Bureau of Public Enterprises, Govt. of India, the department was of the view that since the expenditure was not mandatory in nature, the same could not be allowed. However, we are unable to concur with the findings of the lower authorities on this issue and we hold that the disallowance under Explanation (2) to section 37(1) will not come into play and there is no such disabling provision even if the expenses in discharge of corporate social responsibility are incurred on voluntary basis. Explanation (2) to section 37(1) comes into play only w.e.f. 1.4.2015 allowable as revenue expenditure. Accordingly, we set aside the order of the Ld. Commissioner of Income Tax (A) on this issue and direct the Assessing Officer to allow the expenses incurred towards corporate social responsibility and accordingly, expenses incurred towards corporate social responsibility incurred prior to this date will necessarily be.”

ITA No. 4733/Del/2015

“2. Coming to ground no. 2 of the assessee’s appeal which challenges the expenses incurred towards corporate social

responsibility, we find that the Raipur Bench of ITAT in the case of AC1T vs. Jindal Power Ltd. In ITA No. 99/Del/2012 has allowed CSR expenses in assessment year 2008-09. The Raipur Bench has further held that Explanation (2) to section 37 of the Act, inserted by Finance Act, 2012 has been brought into the Statute w.e.f. 1.4.2013 and this amendment is prospective in nature and accordingly prior to 1.4.2013, CSR expenses are revenue in nature and allowable. We have gone through the details of CSR expenditure incurred by the assessee during the year under consideration i.e. assessment year 2011-12 and we find that the expenses have been incurred in respect of tree plantation/environment protection, construction of Zoology Lab in Rourkela, construction of Special Wings for cerebral palsy children in Rourkela, medical camps in Sirsa village in Bhilai, development of Dongia Pond in a village near Bhilai, construction of Bus stop shed in the city of Rourkela, creating awareness against drug abuse in Bhilai, construction of road in Durgapur etc. besides other expenses incurred under the head. It is not in dispute that these expenses have been incurred and the only reason they were disallowed by the Assessing Officer and so confirmed by the Ld. Commissioner of Income Tax (A) was that this expenditure was not expended wholly or exclusively for the purpose of business of the assessee. Although, it is undisputed that the assessee had incurred this expenditure on the basis of guidelines issued by Bureau of Public Enterprises, Govt, of India, the department was of the view that since the expenditure was not mandatory in nature, the same could not be allowed. However, we are unable to concur with the findings of the lower authorities on this issue and we hold that the disallowance under Explanation (2) to section 37(1) will not come into play and there is no such disabling provision even if the expenses in discharge of corporate social responsibility are incurred on voluntary basis. Explanation (2) to section 37(1) comes into play only w.e.f. 1.4.2015 and accordingly, expenses incurred towards corporate social responsibility incurred prior to this date will necessarily be allowable as revenue expenditure. Accordingly, we set aside the order of the ld. CIT(A) on this issue and direct the Assessing Officer to allow the expenses incurred towards corporate social responsibility.”

[F] Respectfully following the aforesaid precedents vide orders dated 27.4.2018 and 29.11.2018 of Coordinate Benches of ITAT, Delhi; in assessee's own case; in identical facts and circumstances; and further considering that both sides agree that the issue in dispute is squarely covered in favour of the assessee by aforesaid

orders dated orders dated 27.4.2018 and 29.11.2018, we set aside the aforesaid impugned Appellate order dated 16.01.2017 of the learned CIT(A) and direct the Assessing Officer to allow the assessee's claim for expenditure amounting to Rs. Rs. 237.80,958/- on account of Corporate Social Responsibility. The appeal is allowed.

[G] In the result, the appeal of the assessee is allowed.

Order pronounced in Open Court on 04/10/19

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 04.10.2019
SH

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Draft placed before author | |
| Approved Draft comes to the Sr.PS/PS | |
| Order signed and pronounced on | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |
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