

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1762/Bang/2019
Assessment Years : 2016 - 17

First American (India) Pvt. Ltd., Aveda Meta Building, Ground to 7 th Floor, Old Madras Road, Indiranagar, Bangalore-560 038. PAN – AABCF 3186 E	Vs.	The Asst. Commissioner of Income Tax, Circle-3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Tanmayee Rajkumar, Advocate
Respondent by	:	Shri Rajendra Chandekar, JCIT - DR

Date of Hearing	:	11-03-2020
Date of Pronouncement	:	29-04-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 11/06/2019 passed by Ld.CIT(A)-3, Bangalore for assessment year 2016-17 on following grounds of appeal:

"1. That the impugned order passed by the Commissioner of Income- tax (Appeals) ("CIT(A")), is bad in law and is liable to be set aside.

2. That the Assessing Officer ("AO")/CIT(A) erred in denying the deduction of Rs. 90,81,516/- claimed by the Appellant under Section 80G of the Income-tax Act ("the Act").

3 That the AO/CIT(A) failed to appreciate the fact that no restriction is imposed on claiming deduction under Section 80G of the Act provided the payment is made to eligible entities listed in Section 80G of the Act.

4. That the AO/CIT(A) failed to appreciate the fact that the obligations to incur expenditure on CSR activities flows from the Companies Act, 2013 which has no linkage with Section 80G of the Act.

5. That the AO erred in levying interest under Section 234C of the Act.

6. That the AO erred in initiating penalty proceedings under Section 271(1)(c) of the Act.

The Appellant submits that the above grounds are independent of and without prejudice to one another.

The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, the above grounds of appeal, at any time before or during the hearing of the appeal."

Brief facts of the case are as under:

2. Assessee is a company engaged in the business of BPO operations, software services and developing, designing and selling of IT infrastructure. Assessee filed its return of income on 15/10/2016 declaring income of Rs.61,10,73,110/-. Subsequently return was revised on 30/03/2018 declaring income of Rs.58,67,90,780/-. The case was selected for scrutiny and notice under section 143 (2) and 142 (1) along with questionnaire was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details as called for.

3. Ld.AO from details furnished by assessee observed that assessee claimed deduction amounting to Rs.90,81,516/- under section 80 G of the Act towards donation paid. Ld.AO was of the

opinion that claim made under section 80 G of the Act, was not allowable as amount was forming part of CSR expenses debited to profit and loss account. Ld.AO was of the opinion that donation made outside CSR expenses was only eligible to be claimed under section 80 G of the Act.

4. Ld.AO thus disallowed the deduction claimed u/s 80G of the Act.

5. Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld.CIT (A). Ld.CIT (A) was of the opinion that sum paid need to be donation for the purpose of being eligible for deduction under section 80 G of the Act. He was of the opinion that, sum paid by assessee was not voluntary, which is an essential element to treat the amount to be donation. The disallowance made by Ld.AO was thus upheld.

6. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

7. Ld.AR submitted that all grounds raised are in connection to disallowing donation under section 80 G of the Act by holding it to be CSR expenses.

8. She submitted that sum of Rs.1,81,63,031/- is debited to profit and loss account under schedule 24, as expenditure towards CSR responsibility. He submitted that out of the total expenditure a sum of Rs.90,81,516/- is eligible for deduction under section 80 G of the Act. She submitted that donation are in the nature of donation under section 80G of the Act and therefore is eligible for deduction under Chapter VI-A for purpose of computing taxable income in the hands of assessee.

9. Referring to section 80G(2) (iihk) and (iihl) she submitted that there is specific exclusion of certain payments which are listed under section 80G(1) of the Act, that are part of CSR responsibility not eligible for deduction u/s 80G. She submitted that except for contribution under section 80G towards such Bharat Kosh and clean Ganga fund, all other payments are eligible for 80 G deductions.

10. On the contrary, Ld.Sr.DR submitted that Finance Bill, 2014 inserted *Explanation 2* in Section 37(1) to clarify that any expenditure incurred by an assessee on activities relating to CSR referred to in section 135 of Companies Act, 2013 shall not be deemed to be an expenditure incurred by assessee for purpose of business or profession and, therefore, no deduction would be allowed for such expenditure. He submitted that expenditure incurred by assessee is towards fulfilment of CSR responsibility and therefore has been rightly denied by authorities below.

We have perused submissions advanced by both sides in light of records placed before us.

11. Section 135 of Companies Act, 2013 requires companies with CSR obligations, with effect from 01/04/2014.

Finance (No.2) Act, 2014 inserted new *Explanation 2* to sub-section (1) of section 37, so as to clarify that for purposes of sub-section (1) of section 37, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

12. This amendment will take effect from 1/04/2015 and will, accordingly, apply to assessment year 2015-16 and subsequent years.

13. Thus, CSR expenditure is to be disallowed by new *Explanation 2* to section 37(1), while computing Income under the Head 'Income from Business and Profession'. Further, clarification regarding impact of *Explanation 2* to section 37(1) of the Income Tax Act in *Explanatory Memorandum* to The Finance (No.2) Bill, 2014 is as under:

"The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditure cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and, hence, shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein."

14. From the above it is clear that under Income tax Act, certain provisions explicitly state that deductions for expenditure would be allowed while computing income under the head, 'Income from Business and Profession' to those, who pursue corporate social responsibility projects under following sections.

- Section 30 provides deduction on repairs, municipal tax and insurance premiums.

- Section 31, provides deduction on repairs and insurance of plant, machinery and furniture
- Section 32 provides for depreciation on tangible assets like building, machinery, plant, furniture and also on intangible assets like know-how, patents, trademarks, licenses.
- Section 33 allows development rebate on machinery, plants and ships.
- Section 34 states conditions for depreciation and development rebate.
- Section 35 grants deduction on expenditure for scientific research and knowledge extension in natural and applied sciences under agriculture, animal husbandry and fisheries. Payment to approved universities/research institutions or company also qualifies for deduction. In-house R&D is eligible for deduction, under this section.
- Section 35CCD provides deduction for skill development projects, which constitute the flagship mission of the present Government.
- Section 36 provides deduction regarding insurance premium on stock, health of employees, loans or commission for employees, interest on borrowed capital, employer contribution to provident fund, gratuity and payment of security transaction tax.

Income Tax Act, under section 80G, forming part of Chapter VIA, provides for deductions for computing taxable income as under:

- Section 80G(2) provides for sums expended by an assessee as donations against which deduction is available.

- a) Certain donations, give 100% deduction, without any qualifying limit like Prime Minister's National Relief Fund, National Defence Fund, National Illness Assistance Fund etc., specified under section 80G(1)(i)
- b) Donations with 50% deduction are also available under Section 80G for all those sums that do not fall under section 80G(1)(i).

Under Section 80G(2) (iiihk) and (iiihl) there are specific exclusion of certain payments, that are part of CSR responsibility, not eligible for deduction u/s80G.

15. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, '*Income form Business and Profession*', where as monies spent under section 80G are claimed while computing "*Total Taxable income*" in the hands of assessee. The point of claim under these provisions are different.

16. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from *Explanation 2* to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 of the Act, for computing income under the head, "*Income from Business and Profession*".

17. For claiming benefit under section 80G, deductions are considered at the stage of computing "*Total taxable income*". Even if any payments under section 80G forms part of CSR payments(keeping in mind ineligible deduction expressly provided

u/s.80G), the same would already stand excluded while computing, Income under the head, "*Income form Business and Profession*". The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "*Total Taxable Income*" cannot be denied to assessee, subject to fulfillment of necessary conditions therein.

18. We therefore do not agree with arguments advanced by Ld.Sr.DR.

19. In present facts of case, Ld.AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "*Income from Business and Profession*". It has been submitted that some payments forming part of CSR were claimed as deduction under section 80G of the Act, for computing "*Total taxable income*", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing "*Total Taxable Income*". If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

20. On the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G(1) of the Act.

21. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its claim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility.

Accordingly grounds raised by assessee stands allowed for statistical purposes.

In the result, appeal by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 29th April, 2020.

Sd/-
(B. R. BASKARAN)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th April, 2020
/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income-Tax Appellate Tribunal.
Bangalore