

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA Nos.3685 & 3686/Del/2017
Asstt. Years: 2012-13 & 2013-14

Security Printing & Minting Corporation of India Limited 16 th Floor, Jawahar Vyapar Bhawan, Janpath, New Delhi. PAN AAJCS6111J	Vs.	Addl.CIT, Range-8 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Y.K. Madan, CA Shri Yogesh Kumar, CA
Department by :	Shri Prakash Dubey, Sr. DR

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeals have been filed by the assessee against separate impugned order dated 24.3.2017, for the assessment year 2012-13; and order dated 30.1.2017 for assessment year 2013-14 for the quantum of assessment passed u/s 143(3). Since the issues involved in both the appeals are common arising out of identical set of facts, therefore, the same were heard together and are being disposed of by way of this consolidated order. We will first take up appeal for the AY 2013-14.

ASSESSMENT YEAR 2013-14

2. The grounds of appeal as raised in the appeal for the assessment year 2013-14 read as under :-

1. *“ That the order of the learned Commissioner of Income Tax (Appeals) is bad both on law and facts.*
2. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining disallowance of a sum of Rs. 3,55,43,004/-, debited under the expense head “Corporate Social Responsibilities” under the mistaken belief that the above expenditure is incurred by the appellant under any statute which is non-existence, in complete disregard of the details provided regarding the nature and justification of such expenditure incurred by the appellant.*

It has been reiterated time and again in the submissions made to the learned authority that the appellant is a Public Sector Enterprise and is governed by the guidelines passed by the Department of Public Enterprises (DPE). As per DPE guideline no. O.M. No.3(10)/2008-DPE(MOU) dated 26/12/2008, it is mandatory for every Central Public Sector Enterprise (CPSE) to sign Memorandum of understanding (MoU) with its respective Ministry/ Department of Govt, of India.

The MoU guidelines define Corporate Social Responsibility (CSR) as a philosophy wherein organizations serve the interest of the society by taking responsibility for the impact of their activities on customers, employees, shareholders, communities and the environment in all the aspects of their operations.

As per the guidelines, the thrust of CSR is clearly on capacity building, empowerment of communities, inclusive socio-economic growth, environment protection, promotion of green and energy

efficient technologies, development of backward regions, and upliftment of the under-privileged sections of the society.

In MoU guidelines, CSR was included as a compulsory element and require every CPSE to make a budgetary allocation for CSR activities, being some specified percentage of Profit after Tax of previous year, with the approval of its Board of Directors.

The learned authority has erred in taking the view that expense under the head 'Corporate Social responsibility' is not incurred by the appellant in connection with the business of the appellant and thus cannot be treated as revenue expenditure u/s 37 of the Income Tax Act. The action of the learned authority is not based on finding the facts, but is based merely on hypothecation, conjectures and surmises.

3. That the appellant craves leave and prays that the relief claimed above or any other relief, to which the appellant is entitled, may kindly be allowed.

3. In the AY 2012-13 exactly similar grounds have been raised. Besides this, in assessment year 2012-13, assessee has also challenged the addition of Rs. 49,82,319/- u/s 14A. We will take up the appeal for the assessment year 2013-14. The main issue is disallowance of Corporate Social Responsibility (CSR) expenses which is also common to the assessment year 2012-13 as raised vide ground No. 2.

4. Brief facts and background of the case are that assessee is a Central Public Sector Undertaking under the aegis of Ministry of Finance, Government of India is engaged in the manufacture/production of Currency and Bank Notes, Security Paper, Non-Judicial Stamp Papers. Postal Stamps & Stationary, Travel Documents viz.

Passport and Visa,. Security certificates, Cheques, Bonds, Warrant, Special Certificates with security features, Security Inks, Circulation & Commemorative Coins, Medallions, Refining of Gold & Silver, and Assay of Precious Metals.

- The Appellant has following units in different states as under:
 - Currency Note Press (CNP) at Nashik. Maharashtra
 - Bank Note Press (BNP) at Dew as. Madhya Pradesh
 - India Government Mints (IGM) at Mumbai (Maharashtra). Hyderabad (Telangana). Kolkata (West Bengal) and Noida (Uttar Pradesh)
 - Security Printing Press (SPP). Hyderabad. Telangana
 - India Security Press (ISP). Nashik. Maharashtra
 - Security Paper Mill (SPM). Hoshangabad. Madhya Pradesh
 - The Ink Factory. Dew as. Madhya Pradesh

5. Ld. AO noted that the assessee has shown expenses on account of corporate social responsibility of Rs. 4.36 crore which otherwise is incorrect figure because the actual amount of CSR expenditure debited to the profit and loss account is Rs. 3.55 crore whereas it was in the assessment year 2012-13, the assessee has debited sum of Rs. 4,36 crore. Thus, it appears to be a typographical mistake. The details of CSR expenditure as given by the assessee before the authorities below are as under :-

Sr. No.	Project	Amount
1.	Construction of 10 Nos Primary School at Murshidabad (WB).	102.25
2.	Beautification and widening of the road leading from ISP, main gate to U.S. Gymkhana, Nashik Road (Additional work).	19.00
3.	Proposal for Providing Mobile VAN for rendering of 1 lea 1 th Service in the rural area through Indian Red Cross Society, Mumbai.	7.50

4.	Providing Ultra Sound Scanner to Rama Krishna Mission Rajahmundry Past Godavari District of (AP).	27.00
5.	Expenditure on MSMP Training at Ni-MSME Hyderabad.	2.63
6.	Providing Ultra Sound Scanner to Rama Krishna Mission Rajahmundry Past Godavari District of (AP).	1.23
7.	Expenditure on MSME Training at Ni-MSME Hyderabad.	4.62
8.	Providing Solar Lamp at Mallupura at Hoshangabad.	1.85
9.	Providing Ultra Sound Scanner to Rama Krishna Mission Rajahmundry Past Godavari District of (AP).	5.47
10.	Comprehensive repair of approach road from Radhaganj Gate to Bhopal Chouraha along with road side amenities including landscaping.	59.71
11.	Providing drinking water supply facility to Adhartimth Adharashram near Trambkashwar District Nashik Maharashtra.	10.83
12.	Providing 16 Sealer School Bus for visually impaired children to Sahyog Vishesh Aawasiya Vidyalaya I Hoshangabad (MP)	9.15
13.	Providing drinking water facility in Kesals Block of District Hoshangabad (MP).	16.00
14.	Project regarding Plantation of trees Near Narmada belt for Environment Protection at Hoshangabad (MP).	50.00
15.	Project regarding construction of 10 Nos girls toilet in Sagar & Gosaba and one toilet in girls Hostel at Kakdwip West Bengal.	23.00
16.	Payment to Jadavpur University and IIM Lucknow on account of independent third party evaluation.	15.25

6. The AO had made the disallowance on the ground that same is for enduring for long term benefits for communities, cultures and societies in which the assessee company operates. The relevant observations and findings of the Assessing Officer read as under :-

“4.1 I have gone through the submissions of the assessee and find the same untenable. Corporate Social Responsibilities expenditure is made for enduring long term benefits for

communities, cultures and societies in which the assessee company operates. These include establishments of medical facilities, sanitation, building of schools and houses, building vocational training centre etc. The expenditure has to come out of the permanent corpus of the assessee company and cannot be debited as revenue expenditure at par with other expenses like commission, hospitality, entertainment, advertisement etc. For these reasons, the expenditure on account of social responsibilities is being treated as capital expenditure and added back to the total income of the assessee. It is noted here that in the earlier years similar disallowance have been confirmed by the Appellate Authorities.”

7. Ld. CIT(A) has confirmed the disallowance after observing and holding as under :-

“5.6 During the course of hearing the appellant dwelt on the said expenditure as under the Corporate Social Responsibility as per the guidelines laid down by DFE, MCA GOI. While at the assessment stage it had given details of the CSR expenditure which were held to be capital expenditure, on the decision of ITAT Raipur relied upon by the appellant for its expenditure on CSR, it is important to note that the facts of the case there is different In that case, the expenditure was voluntary while in the present case, it is not so. Secondly, the Tribunal observed .- at disabling provisions of Explanation 2 are not triggered as long as the discharge of CSR on voluntary basis can be said to be wholly and exclusively for the purpose of business. Thirdly, the principle behind the CSR expenditure in India is application of profits and not only incurring social scientific expenditure 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. 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."

8. Before us it has been submitted that from the details of the nature of expenditure it can be seen that primarily expenses were incurred on providing educational facilities, development of infrastructure such as road, rain water harvesting, training to MSMF workers, etc.

- The brief details of CSR is also reported in audited annual accounts at page 21 OF CONSOLIDATED ANNUAL A/CS.
- The nature & objectives of expenses are the same as were in earlier years i.e. AY 2010-11 & AY 2011-12. The management of the Corporation considered it BUSINESS necessity to incur these expenses. The Corporation has a well framed CSR policy which is controlled and monitored by a CSR committee formed by corp. to frame & advise on these exp. THESE, EXPS. ARE INCURRED . VOLUNTARILY BY APPELLANT .

- These expenses were incurred as a business necessity and have been incurred wholly and exclusively for business purposes during the previous year.
- In fact, in FY 2016-17 Annual Report, the Chairman underlying the importance of such expenses has commented that corporate social responsibility has been the cornerstone of success for your company right from its inception.
- In AY 2010-11 which is the base year for CSR expense, on the identical facts, the co-ordinate Bench of this tribunal vide order dated 21.03.2018 has remanded the matter vide order no ita 5102/del/2017 to the Ld. AO with a specific direction to examine the nature of expenses and to decide whether the same are allowable u/s 37(1) of the Income-tax Act. 1961 [Refer Paper Book Page No. xx |.
- The Ld. AO vide remand assessment order dated 30-12-2019, has allowed expenses of Rs. 53,29,551/- u/s 37(1) against total CSR expenses of Rs. 72,28,051/-. The appellant has filed appeal before CIT (A) with respect to CSR expenses of Rs. 18,9,500 disallowed by the ld. AO |Refer Paper Book Page No. xx1

9. Thus, he submitted that issue is squarely covered by the order of the Tribunal in assessee's own case for the earlier assessment years 2010-11 & 2011-12.

10. On the other hand, Ld. DR relied upon the order of the AO and Ld. CIT (A).

11. After considering the aforesaid submissions and on perusal of the impugned order as well as the order of the Tribunal, we find that this Tribunal vide order dated 21.3.2018 for the assessment year

2010-11 had remanded the case to the AO with specific direction to examine the nature of expenses to decide whether the same is allowable u/s 37(1) of the Income Tax Act 1961. The relevant observation and the finding of the Tribunal is as under :-

“According to us these expenditure are required to be examined firstly from the fact that whether these expenditure have been laid out or expended by the assessee wholly and exclusively for purposes of its business or not. Neither Ld. Assessing Officer nor Ld. CIT(Appeals) has examined the expenses from this angle. Furthermore, Explanation (2) of section 37(1) of the Act introduced by the Finance No. 2 of 2014 is stated to be effective from 01.04.2015 i.e. from A.Y. 2015-16 only. Therefore for present A.Y. 2010-11 no disallowance this explanation to section 37(1) can be made. In view of the above facts the whole issue is set aside to the file of Ld. Assessing Officer with direction to examine the nature of these expenditure and decide whether same are allowable u/s 37(1) of the Act or not.”

11. It has been informed by the Ld. Counsel that the matter got resolved in the remand proceedings in the favour the assessee. First of all, we find that there is no dispute that these CSR expenses which have been incurred for the purpose of business has not been disputed by the AO and Ld. CIT(A) except for that was treated it as capital expenditure. The amendment which has been brought in the **Explanation 2 of section 37(1)** is also not applicable either in the assessment year 2012-13 or 2013-14 as it has come with effect from assessment year 2015-16. The allowability of expenditure section 37 (1) are otherwise fully applicable, once the *Explanation 2* is not applicable for the impugned assessment year. Viewing from the nature of business activities of the assessee which is dealing in highly

sensitive commodity i.e., currency, coins, security stationery, etc. Expenditure incurred is voluntarily as per board approval. Accordingly, such expenditure cannot be held to be capital as accepted by the authorities in the earlier years and it is not in the nature of personal expenditure or for any violation of law.

ASSESSMENT YEAR 2012-13

12. In so far as appeal for the assessment year 2012-13 is concerned, first ground relates to disallowance of a sum of Rs. 4,36,40,497/-. Since in this year also, similar findings are there in the appellate order, therefore, our aforesaid decision will apply mutatis mutandis. This expenditure of Rs. 4,36,40,497/- is allowed.

13. Coming to the disallowance u/s 14A of Rs. 49,82,319/-, we find that in assessment year 2013-14, the Ld. CIT(A) has deleted the said addition on merits. In this year, the Ld. AO noted that assessee has made substantial investment in mutual fund dividend on which income is exempt. In response to the show cause notice, it was submitted that the dividend income earned during the year was Rs.4,31,79,170/- from the investment in the units of mutual fund and no specific or any special effort was made nor any direct or indirect expenditure was incurred. Further assessee has not taken any loan for making any investment as same has been made out of surplus fund. Ld. AO without examining the assessee's explanation having regard to the nature of expenditure debited has simply proceeded to make the disallowance u/s 14A read with Rule 8D of Rs. 49,82,310/- which was worked out under rule 8D by deducting 0.5% of the average investment. Ld. CIT (A) after detailed reasoning and analysis has confirmed the said disallowance.

13. After hearing both the parties, we find that while invoking the disallowance u/s 14A read with Rule 8D, nowhere the AO has

recorded his satisfaction as to why the assessee 's explanation is not tenable, The relevant observation of the Ld. AO reads as under :-

“The assessee’s contention is not acceptable, section 14A is very clear that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which does not form part of total income under this ‘Act’, Dividend income arising out of these investments is exempt u/s 10 and docs not form part of total income Considering the facts of the assessee’s case as common expenditure incurred and debited in the P&L a/c for both the activities i.e. for investment as well as business, I hold that disallowance of expenditure u/s 14A r. w. Rule 8D is warranted in this case, which is worked out at Rs. 49,82,310/- (being 0.5% of the average investment of Rs. 99,64,63,755/-) as under and added to the total income of the assessee:-

<i>Opening Investment</i>	<i>:</i>	<i>Rs. 99,18,92,595/-</i>
<i>Closing Investment</i>	<i>:</i>	<i>Rs 1,00,10,34,915/-</i>
<i>Average Investment</i>	<i>:</i>	<i>Rs. 99,64,63,755/-</i>
<i>0.5% of average</i>	<i>:</i>	<i>Rs. 49,82,319/-</i>

(Addition of Rs. 49,82,319/-)

14. From the bare reading of the aforesaid observation, it is seen that nowhere AO has noticed the nature of expenditure debited nor he has examined the books of accounts as to what are the expenditure which can be said to be attributable for opening of the dividend income. The conditions laid down in u/s 14A (2) is not being satisfied and accordingly in view of the decision of Hon’ble Supreme Court in

the case of **Godrej & Boyce Manufacturing vs. DCIT 328 ITR 81** disallowance made u/s 14A is allowed.

15. In the result both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 16th September, 2021.

sd/-

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 16/09/2021

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Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi