

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 6504/Del/2018
(Assessment Year : 2015-16)

Aksh Optifibre Ltd. C/o. Kapil Goel, Advocate F-26/124, Sector-7, Rohini, New Delhi-85 PAN No. AAACA 0062 F (APPELLANT)	Vs.	JCIT Special Range – 1, New Delhi (RESPONDENT)
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Assessee by	Shri Kapil Goel, Adv.
Revenue by	Ms. Kirti Sankartyan, Sr. D.R.

Date of hearing:	18.11.2021
Date of Pronouncement:	29.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 31.07.2018 of the Commissioner of Income Tax (Appeals) – 32, New Delhi relating to Assessment Year 2015-16.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacturing of optical fibers. Assessee filed its return of income for A.Y. 2015-16 on 30.11.2015 declaring Nil income. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 30.11.2017 and the total income was determined at Rs.97,48,890/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 31.07.2018 in Appeal No.351/2017-18 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds :

Impugned order is void ab initio: Jurisdictional Challenge

1. *That on the facts and in the circumstances of the case and in law, the order passed by Ld AO dated 30/11/2017 is void ab initio as same is passed on basis of notice u/s 143(2) dated 27/09/2016 issued on purported basis of “ ...on the basis of parameter at para l(i) of Manual compulsory guidelines of CBDT issued vide instruction no 4/2016 dated 13/07/2016” whereas said criteria is shown to be totally inapplicable and misapplied by Ld AO while issuing notice u/s 143(2) (as on 27/09/2016) and accordingly order passed u/s 143(3) by Ld AO and further order passed by Ld CIT-A are invalid in eyes of law ;*

2. *That on the facts and in the circumstances of the case and in law, the order passed by Ld AO dated 30/11/2017 is void ab initio as same is passed on basis of notice u/s 143(2) dated 27/09/2016 issued on purported basis of “ ...on the basis of parameter at para 1(i) of Manual compulsory guidelines of CBDT issued vide instruction no 4/2016 dated 13/07/2016” where as said criteria is shown to be totally inapplicable and misapplied by Ld AO while issuing notice u/s 143(2) as notice u/s 143(2) could not be issued to merely disobey and disregard binding Jurisdictional high court decision on section 14A (no tax free income no disallowance u/s 14A) as has been done in present case in pretext/guise of CBDT instruction , which action needs to be seriously reprimanded and condemned.*

Addition of Rs 33,80,000 on a/c disallowance of CSR Expenses

3. *That on the facts and in the circumstances of the case and in law, the orders passed by Ld AO and Ld CIT-A in so far as sustenance of addition amounting to Rs 33,80,000 needs to be reversed as firstly same is not within purview of scrutiny selection u/s 143(2) and secondly addition is made/sustained in gross neglect to cited Jurisdictional Delhi high court in case of GAIL India Limited which squarely covered the. issue in hand and thirdly assessee has successfully discharged its onus under the law to establish said expenditure actually augments and enhance business interests/goodwill etc.*

That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”

4. Before us, at the outset, Learned AR submitted that assessee does not wish to press Ground Nos.1 & 2 and the only ground which needs adjudication is with respect to Ground No.3. In view of the aforesaid submission of the Learned AR, **Ground Nos.1 & 2 are dismissed as not pressed.**

5. Ground No.3 is with respect to the addition of Rs.33,80,000/- on account of CSR expenses.

6. During the course of assessment proceedings and on perusing the Audited Financial Report, AO noticed that assessee has debited Rs.33,80,000/- on account of CSR expenditure. AO was of the view that in view of the Explanation to Section 37 of the Act inserted by Finance (No.2) Act, 2014, expenditure on account of CSR was not an allowable expenditure u/s 37(1) of the

Act. He accordingly disallowed the expenses and made addition of Rs.33,80,000/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the action of AO. Aggrieved by the order of CIT(A), assessee is now before us.

7. Before us, Learned AR pointed to the Ground No.9 raised before the CIT(A) and submitted that assessee has raised a ground wherein it was stated that AO has ignored the assessee's reply and the binding jurisdiction of Delhi High Court decision in the case of **CIT vs. Gail (India) Ltd. order dated 03.07.2017**. Learned AR pointing to para-11 of the decision in the case of Gail (India) Ltd. submitted that Hon'ble High Court has observed that Explanation - 2 only states that CSR expenditure shall not be deemed to be an expenditure for the business of assessee which does not mean that the claim of CSR expenses as a deduction is not allowable *per se* and initial onus is placed on the assessee to show that the CSR expenses were for business purpose. He submitted that during the course of appellate proceedings also assessee had made submissions and placed before CIT(A) the decision rendered by Hon'ble Delhi High Court in the case of Gail (India) Ltd. (supra) but CIT(A) in his order has not dealt it and by relying on the decision of Karnataka High Court in the case of **CIT vs. Wipro Ltd. reported in 360 ITR 658 (Kar)** upheld the order of AO. Learned AR submitted that the expenses claimed by the assessee are for the purpose of business but however he fairly submitted that since there is no finding of the lower authorities

about the expenses being for the purpose of business, the issue may be remitted back with necessary directions.

8. Learned DR did not object to the prayer made by Learned AR for restoring the issue but however supported the order of lower authorities.

9. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the disallowance made on account of CSR expenses. Assessee had claimed Rs.33,80,000/- under the head "CSR Expenditure" which was disallowed by AO in view of Explanation - 2 to Section 37 which was introduced by Finance (No.2) Act 2014. We find that while deciding the issue neither the AO nor the CIT(A) has given any finding about the nature of the expenses that as to whether the expenses incurred by the assessee are for the purposes of business or not. We find that Hon'ble Delhi High Court in the case of Gail (India) Ltd. (supra) after considering Explanation - 2 to Section 37 has observed that Explanation - 2 only states that CSR expenses shall not be deemed to be on expenditure for the business of assessee which however does not mean that claim of CSR expenses as a deduction as *per se* is not allowable and the onus is placed on the assessee to show that the CSR expenses were for business purposes. In view of the aforesaid ratio of the decision of Hon'ble Delhi High Court, we are of the view that the issue needs re-examination at the end of AO. We therefore restore the matter

back to the file of the AO to examine the issue afresh in line with the decision of Hon'ble Delhi High Court rendered in the case of Gail (India) Ltd. (supra) and in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish all the details called for by the AO. **Thus, the ground of assessee is allowed for statistical purposes.**

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.11.2021

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 29.11.2021
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI