

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI  
BEFORE SHRI. PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA NO.1870/MUM/2022 (A.Y.2018-19)

Agappe Diagnostics Limited,  
401. 402, Jaisingh Business Centre,  
Sahar Road,  
Andheri East, Mumbai 400099  
PAN: AACCA3940Q

...Appellant

Vs.

Deputy Commissioner of Income Tax-  
Circle – 1(1)(1), Mumbai,  
Room No.533, 5<sup>th</sup> Floor,  
Aayakar Bhavan M.K. Road  
Mumbai – 400 020

...Respondent

Appellant by	:	Shri.Heera Ram.AR
Respondent by	:	Shri.Manoj Sinha.DR
Date of hearing	:	12/09/2022
Date of pronouncement	:	19/09/2022

ORDER

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed an appeal against the order of CIT(A)- National Faceless Appeal Centre (NFAC) Delhi, dated 15.06.2022 for the A. Y. 2018-19 passed under section 143(3) and 250 of the Income Tax Act 1961. The assessee has raised following grounds of appeal.

- 1. The order of the Learned AO to the extent appealed against is against law, equity and justice.*

2. *The learned CIT (A) grossly erred in dismissing the grounds of appeal, without giving the appellant an opportunity to of being heard.*
3. *The Learned CIT (A) grossly erred in confirming the disallowance of the claim of business expenditure made under Section 31 (1) of the Act. The Learned CIT (A) ought to have noted that what is covered in Explanation 2 to Sec. 37 (1) of the Act is the CSR expenditure incurred in terms of sec. 135 of the Companies Act 2013 only and not the expenses incurred for the purpose of business. The Learned AO/ CIT (A) did not appreciate that the said expenses claimed were incurred wholly and exclusively for the purpose of the business of the appellant and the expenditure is supported by invoices and vouchers.*
4. *The Learned AO grossly erred in disallowing certain claims of deduction under Section. 80JJAA of the Act stating that the said claim is covered in appeal filed against the intimation order under Section. 134(1) of the Act. The statement of the Learned AO is factually not correct and the said claim of allowed in the intimation issued under Section. 143(1) of the Act by the Learned AO. The Learned CIT (A) omitted to appreciate this fact. The Learned CIT (A) also omitted to appreciate the fact that the claim originally made in the earlier assessment year (being 1st year out of the 3 years), was allowed by the Learned AO. As the quantum was determined and allowed in the previous year, the current year installment (being the 2<sup>nd</sup> Year) as specified under Section. 80JJAA of the Act, ought to have been allowed. The CIT (A) did not appreciate that the claim of deduction was made in the return of income and the Learned AO denied the claim while completing the assessment, without recording any reasons in the assessment order. The CIT (A) did not appreciate that even in the draft assessment issued to the appellant, proposal to disallow the said expenses was not mentioned and no discussion/reason for such adjustment/disallowance is made in the draft/final assessment order. Hence, the disallowance of the claim of deduction under*

*Section. 80JJAA made in the assessment order is against natural justice and hence the disallowance may kindly be deleted.*

*5. For these and other ground that may be further adduced at the time of hearing the order of the Assessing Officer requires to be modified.*

2. The brief facts of case are that, the assessee company is engaged the business of development, manufacturing, sale and distribution of in-vitro diagnostic reagents and equipment and rendering of maintenance services. The assessee has filed the return of income on 30-11-2018 for the A. Y. 2018-19 disclosing a total income of ₹14,26,34,740/-. The assessee has filed the revised return of income dated on 28.03.2019 with a total income of ₹ 14,12,33,870/-. Subsequently, the return of income was selected for complete scrutiny under E- Assessment scheme 2019 on following issues.

i) Reduction of income in revised return of & claim of refund. ii) Duty drawbacks  
iii) ICDS compliance and adjustment and (iv) Deduction on account of donation for scientific research.

Subsequently the assessing officer has issued notice under Section 143(2) & U/sec 142(1) of the Income-tax Act, 1961 along with the questionnaire. In compliance to the notice, the assessee company has submitted the details and information through ITBA portal. The assessing officer(A.O.) on perusal of financial statements found that the assessee has debited a sum of ₹

20,52,044/- under the CSR expenditure in the Profit & loss Account. Further, the assessee has disallowed a sum of ₹ 18,42,830/- in the computation of income. The A.O. required the clarification for claiming ₹ 2,90,214/- as deduction, and in compliance the assessee has submitted the details on 07.02.2021 dealt at page 2 Para 5.2 of the order explaining the reasons and nature of expenditure incurred for business activities. whereas, the A.O. was not satisfied with the submissions and is of the view that the assessee has not incurred the expenditure wholly and exclusively for the purpose of carrying on the business or profession and disallowed ₹ 2,90,214/- as incurred in relation to CSR disallowance under section 37(1) of the Act. Further the A.O has disallowed education cess claimed of ₹ 14,00,871/- and finally assessed the total income of ₹ 14,63,91,798/- and passed the order u/s.143(3) read with section 143(3A) and 143(3B) of the income tax act dated 06.03.21.

3. Aggrieved by the A.O. order, the assessee has filed an appeal with the CIT (A). Whereas, the appellate authority has considered the grounds of appeal, submissions of the assessee, findings of the scrutiny assessment and concurred with the action of the assessing officer and dismissed the assessee appeal. Aggrieved by the CIT(A) order the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR of the assessee submitted that the CIT(A) has erred in confirming in addition of claim of expenditure overlooking the fact that the expenditure was incurred over and above the CSR expenditure and doesn't qualified for claim under CSR and form part of business expenditure incurred wholly and exclusively for the business. The Ld. AR explained that an amount of ₹ 2,09,214/- was claimed as deduction in the return of income filed. The Ld. AR further emphasized that the assessee has made detailed submissions before the lower authorities explaining the nature of expenditure and substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We have heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld. AR that the CIT(A) has overlooked the various factors, nature of the business operations of the assessee and assumed that the expenditure claimed is part of the CSR expenditure. The Ld. AR has emphatically submitted that the claim was incurred considering the welfare measures of the company employees at the manufacturing facilities and the social and economic facilities in the locality around the units and business activities. Further as per section 135 of the

companies Act 2013, the assessee company is mandatorily required to spend at least 2% of the average net profits of the company made during three immediately preceding financial years in pursuance to its corporate social responsibility (CSR policy) and the assessee has mandatorily spent ₹ 18,43,813/- and was disallowed in the computation of income. whereas the remaining amount of ₹ 2,09,214/- is spent voluntarily and was claimed as deduction of business expenditure in the return of income tax filed which was incurred wholly and exclusively for the purpose of business. The Ld. AR demonstrated that the expenses are duly supported with the information at page 27 to 32 of the paper book. We find Hon'ble ITAT Raipur Bench in the case on ACIT Vs. Jindal Power Ltd. (179 TTJ 736) has held in terms of explanation 2 to Section 37(1) of the Act, the disallowance is restricted to expenses incurred by assessee under the statutory obligation u/s.135 of the companies Act 2013 and it doesn't apply to the expenditure incurred in discharge of corporate social responsibility(CSR) on voluntarily basis. We considering the facts, submissions, provisions of the Act and the judicial decisions relied by the Ld. AR find the action of the assessee incurring the expenditure voluntarily to maintain harmony at the vicinity of the factory area and is not a personal expenditure, further the assessing officer has not doubted genuineness of the expenditure but only on the nature of the

expenditure was not incurred for the purpose of business. The assessee has filed the details of CSR expenditure which cannot be overlooked and the AO has accepted such claim and the assessee has made a voluntarily disallowance of CSR expenditure under section 37(1) of the Act in restricting expenses under the statutory obligations of CSR policy. Accordingly, we set-aside the order of the CIT(A) on this disputed issue and direct the Assessing officer to delete the addition and allow this ground of appeal in favour of the assessee.

6. The assessee has also raised ground of appeal on disallowance of claim under 80JJAA of the Act. We found that this ground of appeal does not emanates from the order of the assessing officer u/s.143(3) of the Act. Whereas the CIT(A) findings are that the disallowance was under 143 (1)of the Act and the assessee has filed a separate appeal and the order was passed on 26.08.2021. Therefore, these grounds of appeal raised by the assessee are dismissed.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on the 19<sup>th</sup> day of September, 2022.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, Dated 19/09/2022

M.Sonavane

**opy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)ITAT, Mumbai