

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.1073/Mum/2022
(Assessment Year: 2016-17)

HSBC Professional Services (India) Pvt. Ltd. 1 st Floor, Hongkong Bank Building, M. G. Road, Mumbai-400 001	Vs.	The Pr. CIT Mumbai
PAN/GIR No. AABCH 0705 R		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Niraj Sheth
Revenue by	:	Shri Vinay Sinha
Date of Hearing	:	20.12.2022
Date of Pronouncement	:	16.03.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Principal Commissioner of Income Tax (‘PCIT’ for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.263 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2016-17.

2. The assessee has challenged the order u/s. 263 of the Act as being bad in law on the ground that the assessment order passed by the Assessing Officer (A.O. for short) was not erroneous insofar as it is prejudicial to the interest of the Revenue.

3. The brief facts are that the assessee has filed its return of income for the impugned year dated 30.11.2017, declaring total income at Rs.3,41,37,600/-. The assessee’s case

was selected for scrutiny through CASS for the purpose of limited scrutiny and the same was referred to the Transfer Pricing Officer (TPO for short) as there was transfer pricing issue involved in the assessee's case. The TPO passed an order u/s. 92CA(3) of the Act vide order dated 27.06.2019 and the A.O. subsequently passed the assessment order u/s. 143(3) dated 18.10.2019, thereby accepting the returned income at Rs.3,41,37,600/- computed under the normal provisions of the Act. The assessee's case was selected for limited scrutiny on the issue (whether sales turnover/receipts has been correctly offered for tax). The Pr.CIT invoked the provisions of section 263 and set aside the assessment order dated 18.10.2019 for the reason that the assessment order was erroneous insofar as it is prejudicial to the interest of the Revenue. The Id. Pr.CIT has invoked the said provision for the reason that the A.O. has failed to examine the correct amount of TDS allowable and that which is actually allowed in view of section 199 of the Act read with Rule 37BA, thereby holding the assessment order as erroneous and prejudicial to the interest of the Revenue. The Id. PCIT has also stated that the A.O. has not examined Form No. 3CD in relation to bonus and gratuity and whether or not the same has been paid before the due date of filing of the return, was not verified by the A.O. The Id. PCIT further held that the A.O. has allowed the deduction u/s.80G of the Act, pertaining to CSR expenses amounting to Rs.9,36,530/- without verification of the receipts and whether or not the donation to such organization was eligible for claiming deduction u/s. 80G. The Id. PCIT directed the A.O. to reframe the assessment order denova after enquiring and verifying the above mentioned issues namely:

1. TDS credit
2. Deduction for bonus and gratuity
3. Deduction u/s. 80G in respect of CSR expenses

and directed the A.O. to conduct de novo assessment upon considering the mentioned issues.

4. The assessee is in appeal before us, challenging the order of the Id. PCIT.

5. Ground no. 1 and 5 raised by the assessee is general in nature and requires no separate adjudication.

6. Ground no.2 pertains to the credit of tax deducted at source amounting to Rs.4,35,546/-. The assessee contended that a credit of Rs.4,35,546/- has been claimed by the assessee in A.Y. 2015-16 out of Rs.20,93,520/- as per 26AS which corresponds to income of Rs.43,55,453/-. The assessee further stated that during the impugned year, the assessee has claimed credit of Rs.16,57,973/- only and that there was no mismatch in the TDS credit as per section 199 read with Rule 37BA of the Act. The Id.PCIT held that the A.O. has not examined the credit amount of TDS allowable u/s. 199 read with Rule 37BA and for that reason has justified the invocation of provision of section 263 of the Act.

7. The assessee has contended that the receipt u/s. 194J amounting to Rs.43,15,453/- on which TDS was deducted was offered in A.Y. 2015-16 and, hence, the said amount was not considered for computing the total income for the impugned year. The Id. PCIT had observed that the assessee has claimed and allowed TDS credit on the said receipt u/s. 194J during the impugned year as per the computation sheet filed by the assessee. The Id. PCIT further stated that the assessee though has offered the receipt in A.Y. 2015-16, the TDS credit for the said receipt has been allowed during the impugned year, which was said to be not in accordance with section 199 read with Rule 37BA(3)(i) of the

Rules. The Id. PCIT further stated that the reconciliation of return of income filed by the assessee as per Form 26AS for A.Y. 2016-17, the amount of Rs.43,55,453/- was offered to tax in A.Y. 2015-16 and that the said amount was not considered while computing the total income for A.Y. 2016-17 and was offered to tax in A.Y. 2015-16. The assessee contended that the withholding tax credit of Rs.4,35,546/- was not claimed in the return of income of A.Y. 2016-17. The assessee has stated that Rs.20,93,520/- which was reflected in Form 26AS, the assessee has claimed credit of Rs.4,35,546/- in A.Y. 2015-16 corresponding to income of Rs.43,55,453/- and that during the impugned year, credit of Rs.16,57,973/- only was claimed by the assessee. The assessee contends that there is no mismatch in the TDS credit as per Rule 37BA read with 199 of the Act. The Id. PCIT in its order u/s. 263 has stated that the A.O. has failed to examine the credit amount of TDS which are allowable and actually allowed as per the provisions of the Act and held that the assessment order is erroneous and prejudicial to the interest of the Revenue.

8. Having heard the rival submissions and perused the materials on record. It is observed that the assessee has filed the reconciliation of the return of income and the amounts reflected in Form 26AS for the impugned year as Annexure 1, according to which the A.O. has granted withholding tax credit of Rs.16,57,973/- as per Form 26AS for A.Y. 2016-17 and Rs.4,35,546/- being the withholding tax credit pertaining to A.Y. 2015-16 was neither claimed by the assessee nor was it granted during the impugned year. As we do not find any discrepancy in the TDS credit claimed by the assessee, we find no justification in upholding the order u/s. 263 of the Act on this issue as being erroneous and prejudicial to the interest of the Revenue.

9. Ground no. 3 is on the claim of deduction of bonus u/s. 43B of the Act and gratuity u/s.37(1) of the Act. The Id. PCIT has held that the assessment order was erroneous and prejudicial to the interest of Revenue on the ground that the A.O. has not examined Form No. 3CD to verify whether the bonus and gratuity has been paid before the due date of filing of the return. The assessee has filed the Tax Audit Report during the hearing of section 263 proceeding where it is observed that the assessee has stated that the unpaid amount of bonus of Rs.18,81,718/- has been disallowed in the computation. The assessee further stated that the gratuity amount was paid on 23.03.2016 before the due date for filing of the returns for which disallowance was not warranted. The assessee has also stated that an amount of Rs.9,36,513/- was debited under the head 'CSR expenses' and had claimed deduction u/s.80G of the Act for the same.

10. The Id. PCIT has held that the A.O. has allowed the said deduction without verification of the receipts or whether or not the said donation was eligible for deduction u/s. 80G. On this note, the Id. PCIT held that the assessment order was erroneous insofar as it is prejudicial to the interest of the Revenue. The assessee contends that the provisions for bonus debited to P & L account was paid before the due date of filing of the return of income. The assessee further stated that the proof of payment of bonus and gratuity paid before the due date of return was very much available with the assessee and the same was paid on 23.03.2016 before the due date and further stated that the relevant extract of the ledger along with the bank statement was enclosed with Annexure 6 filed by the assessee with the Id. PCIT. The assessee has also furnished the ledger account along with the bank statement reflecting payment of above mentioned gratuity amount as per Annexure 7 of the assessee's submission before the Id. PCIT.

11. Having heard the rival submissions and perused the material on record. It is evident that the A.O. has allowed the deduction on bonus and gratuity for the reason that the same was filed before the due date of filing of the returns as warranted u/s. 46B of the Act and section 37(1) of the Act. For this reason, we hold that the order u/s. 263 passed by the Id. Pr.CIT does not hold good on this ground.

12. Ground no. 4 is on the non granting of deduction u/s. 80G of the Act where the Id. PCIT has held that the claim for deduction u/s. 80G of the Act in respect of CSR expenses of Rs.9,36,530/- was allowed by the A.O. without verification of the receipts and without verifying the fact that the said donation was eligible for deduction u/s. 80G of the Act. The assessee submits that an amount of Rs.9,36,530/- was debited in its profit and loss account towards CSR expenditure and the same was disallowed in the computation of income. The assessee further stated that the assessee had claimed deduction of Rs.4,68,265/- u/s. 80G for which deduction has been granted by the A.O. while computing the total income of the assessee, whereas in the IT computation form which was annexure with the assessment order, the A.O. has not granted the impugned deduction. It is observed that the assessee has furnished the receipt of the donation payment amounting to Rs.9,36,530/- which was enclosed as Annexure 8 before the Id. PCIT. The assessee further stated that it had filed rectification application before the A.O., requesting to rectify the mistake which was apparent from the record and to grant deduction of donation u/s. 80G of the Act. The Id. PCIT has held that the A.O. is said to have allowed the deduction without verification of the receipts and without verification of the fact that the said donation was eligible for deduction u/s. 80G and thereby invoked the provision of section 263 of the Act as the assessment order being erroneous and

prejudicial to the interest of the Revenue. The assessee relied on the provision of section 35AC and section 80G which provide for allowability of CSR expenses which is subject to fulfillment of conditions mentioned in the said provision. The assessee further stated that the intention of the legislature was not to deny the deduction of expenses towards CSR activities and that there was no explicit provision under the Act for denial of deduction u/s. 80G of the Act. The assessee further stated that the A.O. has rightly allowed the claim of deduction u/s. 80G and relied on various judicial precedence for allowing the said claim.

13. We have heard the rival submissions and perused the materials available on record. We find that the A.O. has allowed the impugned deduction on CSR expenses to the assessee under the provisions of the Act. The A.O. has rightly granted the benefit of claim of Chapter VIA which cannot be denied merely because such payments forms part of CSR and that the same would lead to double disallowance, was not justifiable in our view.

14. From the above observation, we are of the considered view that the Id. PCIT has invoked the provision of section 263 of the Act on the ground that the assessment order was prejudicial to the interest of the Revenue. We find no justification in holding the same. We are also of the considered opinion that the A.O. has rightly assessed the total income of the assessee on the above mentioned grounds specified by the Id. PCIT in his order u/s. 263 of the Act and has taken one of the plausible view. We hold that the order passed by the Id. PCIT u/s. 263 has to be quashed as the assessment order was not erroneous insofar as it is prejudicial to the interest of the Revenue.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16.03.2023

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 16.03.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai