आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 155/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2020-21)

Power Mech Projects Ltd., Hyderabad [PAN No. AACCP0818L]	Vs.	Deputy Commissioner of Income Tax, Central Circle-1(3), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Vinod, AR
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 31/08/2023
घोषणा की तारीख/Pronouncement on: 31/08/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 23/01/2023 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Power Mech Projects Limited ("the assessee") for the assessment year 2020-21, assessee preferred this appeal.

2. Brief facts of the case are that during the financial year 2019-20, the assessee, in discharge of their obligation towards Corporate Social Responsibility (CSR), contributed a sum of Rs. 44 lakhs to a trust (Power Mech Foundation) which is registered under section 12A of the Income Tax Act, 1961 (for short "the Act"). According to the assessee since the expenditure was not allowable under section 37 of the Act, the assessee suo moto disallowed the same while computing the income from business income plans with the requirement of proviso to section 37(1) of the Act. Later on, assessee claimed the contribution under section 80G of the Act. Assessee pleaded before the authorities below that in compliance with section 37(1) of the Act, assessee had suo moto disallowed the same while computing the business interest, but since there is no bar or restriction on deduction under section 80G of the Act, the assessee is entitled to claim such contribution as deduction under section 80G of the Act.

3. Both the authorities below rejected the contention of the assessee. According to them there is no element of voluntariness of this contribution, because it was paid under the compulsion of law under section 135 of the Companies Act, the assessee is not entitled to claim the contribution as a deduction under section 80G of the Act. According to the learned CIT(A) also the specific bar contained in the proviso to section 37(1) of the Act says that for the purpose of the section any expenditure incurred by the assessee on the activities relating to CSR 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 business or profession, and therefore once having with the obligation under section

135 of the Companies Act, the assessee cannot claim the very same amount as a deduction under section 80G of the Act.

4. Aggrieved, the assessee filed this appeal stating that the assessee is not claiming the contribution to the trust as business expenditure and in compliance with the proviso to section 37(1) of the Act, the assessee suomoto disallowed the same, but since there is no bar in the Act, from claiming this expenditure as deduction under section 80G of the same, such a claim cannot be denied.

5. Learned AR further argued that there is no bar on claiming CSR expenditure as deduction if it falls within the scope of section 30 to 36 of the Act or qualifies for deduction under Chapter VI-A. CBDT Circular No. 01/2015 dt. 21/01/2015 in fact supports the position of assessee inasmuch as it specifically provides that there is no estoppel to claim CSR expenditure as deduction if it is of the nature described in section 30 to 36 of the Act; that neither Explanation 2 nor the Circular cast any restriction qua allowability of CSR expenditure as deduction under section 80G of the Act; that Section 80G and section 37 of the Act are independent; that only in case of specific exclusion provided under clauses (iiihk) and (iiihl) of section 80G(2) of the Act stipulate that such contributions shall be other than the sums spent by the assessee in pursuance of CSR under section 135(5) of the Companies Act.

6. Learned AR placed reliance on FAQ No. 6 in the General Circular No. 01/2016 dated 12/01/2016 issued by Ministry of Corporate Affairs. Lastly, he placed reliance on the decisions of the Co-ordinate Benches of the

Tribunal in the cases of First American (India) Pvt. Ltd. vs. ACIT: ITA No. 1762/Bang/2019, Allegis services (India) Pvt. Ltd. vs. ACIT: ITA No. 1693/Bang/2019, FNF India Private Ltd. vs. ACIT: ITA No.1565/Bang/2019, JMS Mining (P.) Ltd. vs. Pr. CIT: [2021] 190 ITD 702 (Kolkata - Trib.), P.C. Chandra Holding Pvt. Ltd. vs. Pr. CIT-2: ITA No. 256/Kol/2022 and Naik Seafoods Pvt. Ltd. vs. Pr. CIT-2: ITA No. 490/Mum/2021 in support of his argument.

7. Per contra, learned DR vehemently opposed the argument advanced by the Learned AR and submitted that as rightly pointed out by the authorities below, when the assessee spends some amount in discharge of their CSR, such spending cannot be said as voluntary and it is only under the compulsion of law. Since the element of voluntariness is missing in this case, the said spending does not fall in the ambit of section 80G of the Act. He further submitted that the assessee cannot claim compliance of the provisions under section 135 of the Companies Act at the same time, when such payments are claimed as donations under section 80G of the Act. If such a plea is accepted, the purpose and philosophy behind the CSR under section 135 of the Companies Act will be defeated and every assessee will claim double benefit of the same amount spent, showing it under compliance with section 135 of the Companies Act and also claiming benefit under section 80G of the Act. Learned DR further submitted that when the letter of law is clear and does not warrant any interpretation, no aid need be sought from any other source.

8. We have gone through the record in the light of the submissions made on either side. Insofar as the payments made to the PM Relief Fund

and to the institutions enumerated by the learned AR are concerned, it is a matter of verification. Learned Assessing Officer disallowed such a deduction not on the ground of non-payments, but because the assessee claimed such spending incompliance with their legal obligation under section 135 of the Companies Act. According to the learned Assessing Officer, by showing such an amount as spending incompliance with section 135 of the Companies Act, the assessee had the benefit of compliance with such a provision and, therefore, the matter ends there insofar as such payments are concerned. Except the business expenditure covered by section 30 to 36 of the Act as stipulated under section 37(1) of the Act, no other expenditure is allowable and this position is made amply clear by insertion of Explanation-2 to section 37(1) of the Act. It says that any expenditure incurred towards the activities relating to CSR, shall not be deemed to be an expenditure incurred for the purpose of business.

9. It is, therefore, clear that the question that is relevant to be answered on this issue is whether the donations given for compliance with the provisions under section 135 of the Companies Act, to the institutions mentioned in section 80G(2) of the Act are qualified for deduction under section 80G of the Act also.

10. Explanation-2 to section 37(1) of the Act says that any expenditure relatable to the discharge of CSR, is not a business expenditure and cannot be allowed as such. On this aspect, there is no contradiction of the fact submitted by the learned AR that in compliance with this requirement, the assessee does not claim any deduction of such amount spent as CSR under any of the provisions between 30 and 36 of the Act, and sue moto

disallowed the same by adding it back to the P&L account. It is only thereafter the business income of the assessee is computed in accordance with the principles laid down for computation of the profits and gains of business or profession in sections 28 to 44DB of the Act. By this, the assessee seeks compliance with Explanation-2 of section 37 of the Act and, therefore, the Revenue shall not have any grievance. Whether or not the assessee sue moto disallowed the spend towards the CSR while computing the business income is a verifiable fact.

11. After computing the business income, while computing the total income of the assessee, the assessee is invoking the benefit under chapter-VIA by claiming deduction of the sums under section 80G of the Act. According to the Revenue, when once such sum went to satisfy the requirement of section 135 of the Companies Act, the benefit gets exhausted and such an amount is no more available for the purpose of claiming deduction under section 80G of the Act.

12. Coming to the Income Tax Act, 1961, there is no express provision to support the contention of Revenue. On the other hand, section 80G(2)(iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as a part of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar

embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G(2)(iiihk) and (iiihl) of the Act.

13. This aspect has been dealt with by successive Co-ordinate Benches in the cases relied upon by the assessee. While elaborately discussing this issue in the case of JMS Mining (P.) Ltd. (supra), the Kolkata Bench of the Tribunal discussed this issue in the following manner:

> *"22. From a bare reading of the section 80G of the Act we note that deduction under this section has to be made in accordance with and subject to the provisions of this section i.e. section 80G of the Act. As per this section i.e. section 80G of the Act, an amount equal to fifty percent (50%) of the aggregate of the sums specified in sub-section 2 [refer sub-clause (iv) of Clause (a) of Sub-section 2 of section 80G of the Act read with section 80G (1) (ii)] which allows the donation given to any other Fund or any institution to which this section applies and if it satisfies the requirement of sub-section (5) of section 80G of the Act, then 50% of the donation is allowable expenditure [refer section 80G (1) (ii)]even if the assessee has included the expenditure as CSR Expenditure because there is no prohibition or restriction placed by the Parliament on such a donation even if shown as CSR expenditure. The reason for saying so is that in section 80G of the Act certain restrictions in respect of deduction in respect of two (2) donations are expressly seen in this Section. So the Parliament has expressed its intention clearly by bringing in restriction in respect of expenditure classified by an assessee company while claiming deduction u/s. 80G of the Act i.e. CSR expenditure related to Swachh Bharat Kosh and Clean Ganga Fund. So if an assessee makes some donation to these projects and include/classify it as CSR expenditure while claiming deduction u/s. 80G of the Act then it will be allowed only the amount that is other than the sums spent by the assessee in pursuance*

of CSR u/s. 135 of the Companies Act. In other words, if an assessee company spends only the mandatory expenditure of 2% of net profit for CSR activity, which includes the amount of donation to Swach Bharat Kosh & Clean Ganga Fund (iiihk) and (iiihi) of clause (a) of sub-section (2) of section 80G of the Act, then deduction u/s. 80G of the Act is not allowable, which can be illustrated by giving certain examples (infra). However, in a case scenario, wherein the assessee expends the mandatory expenditure and gives donation to these two projects i.e. over and above the mandatory CSR expenditure u/s. 135 of Companies Act, that sum donated to Swach Bharat Kosh & Clean Ganga Fund will be eligible for 100% deduction u/s. 80G of the Act [refer section 80G (1)(i) and subject to section 80G (4)]. However, such a restriction in respect of expenditure made by an assessee to any other fund or institution as referred to in sub clause (iv) of clause (a) of sub-section 2 of section 80G of the Act had not been placed by the Legislature. And if the Parliament desired, it could have been made such kind of restriction or any restriction like in the case of donation to Swach Bharat Kosh & Clean Ganga Fund. So the assertion of Ld. PCIT that AO could not have allowed deduction u/s 80G of the Act to an assessee on the CSR expenditure/donation to an institution u/s 80G(2)(a)(iv) which is enjoying certificate 80G(5)(vi) of the Act, is erroneous and therefore cannot be accepted. For this, we rely on the interpretation maxim "Expressio Unius Esl Exclusio Alterius" which is a Latin phrase that means "express mention of one thing excludes all others. This is one of the rules used in interpretation of Statutes. The phrase indicates that items not on the list are assumed not to be covered by the Statute. When something is mentioned expressly in a Statute, it leads to the presumption that the things not mentioned are excluded. This is an aid to the construction of Statutes. Applying the legal maxim 'expressio unius est exclusio alterius', it can be safely inferred that when the Legislature in particular has provided for only the above referred two specific exceptions in Section 80G, then it is the implied intent of the Legislature to permit deduction u/s 80G in respect of CSR contributions made to funds/organizations referred to in all other sub-clauses of Section 80G [other than (iiihk) and (iiihl)] of the Act. The above analysis made by us, can be cumulatively illustrated by the following examples for ease of understanding purpose only and should not be cited for making claim which should be made subject to the facts and law involved in each case and also subject to section 80G(4) of the Act:

Example: A company has reported eligible net profit u/s 135 of Companies Act, 2013 at Rs.100 crores. The minimum CSR contribution of 2% under Section 135(5) of the Act works out to be Rs. 2 crores.

Situation 1 : The company has been spent the required minimum CSR contribution of Rs 2 crores towards construction of roads & schools in the vicinity of the backward area where the factory is located.

Tax Treatment: The entire CSR expenditure of Rs.2 crores is to be disallowed and added back in terms of Explanation 2 to Section 37(1) of the Act.

Situation 2 : The company has contributed Rs.3 crores to Swach Bharat Kosh.

Tax Treatment: The entire CSR expenditure of Rs.3 crores is to be disallowed and added back in terms of Explanation 2 to Section 37(1) of the Act. In terms of Section 135(5) of the Act read with Section 80G(iiihk) only the excess sum paid amounting to Rs. 1 crores [3 crores - 2% of 100 crores] can be availed as deduction u/s 80G of the Act.

Situation 3 : The company has contributed Rs.l crore to Swach Bharat Kosh and Rs.1 crore to any other charitable trust registered u/s 80G(5) of the Act.

Tax Treatment: The entire CSR expenditure of Rs.2 crores is to be disallowed and added back in terms of Explanation 2 to Section 37(1) of the Act. In terms of Section 135(5) of the Act read with Section 80G(iiihk) the donation of Rs.l crores made to Swach Bharat Kosh is not eligible for deduction u/s 80G of the Act. The company can claim deduction of fifty percent of the donation of Rs. 1 crores paid to any other registered charitable trust u/s 80G(2)(iv) read with Section 80G(1)(ii) of the Act.

Situation 4 : The company has contributed Rs.1 crore to Prime Minister's National Relief Fund and Rs. 1 crore to any other charitable trust registered u/s 80G(5) of the Act.

Tax Treatment: The entire CSR expenditure of Rs.2 crores is to be disallowed and added back in terms of Explanation 2 to Section 37(1) of the Act.

The company can claim deduction for hundred percent of the donation of Rs. 1 crores paid to Prime Minister's National Relief Fund u/s 80G(2)(iiia) read with Section 80G(1)(i) of the Act.

The company claim deduction to the extent of fifty percent of the donation of Rs. 1 crores paid to any other registered charitable trust u/s 80G(2)(iv) read with Section 80G(1)(ii) of the Act.

23. As discussed supra, we concur with the contention of the assessee that since Parliament intended certain restrictions to only CSR expenditure in respect of two donations included by an assessee as CSR expenditure i.e. [Swachh Bharat Kosh and Clean Ganga Fund] has impliedly not made any prohibition/restriction in respect of claim of CSR expenses in other cases if it is otherwise eligible under Section 80G of the Act. In this context we find that the assessee has made donation of Rs. 1.25 crores on 20.01.2016 by RTGS dated 19.01.2016 through UCO Bank which is evident from page 18 of PB which is received by Shree Charity Trust which was 80G(5)(vi) certificate of the Department dated 15.01.2009 placed at page 17 of PB. The assessee has also made payment of Rs. 10 Lakhs to Pt. Jashraj Music Academy Trust which is found placed at page 22 & 23 and the approval u/s 80G (5)(vi) of the Act in respect of Pt. Jashraj Music Academy Trust is found placed at page 19 of PB dated 30.03.2012 given by Director of Income Tax (Exemption). Therefore, since the assessee satisfies the condition u/s. 80G of the Act of the donees, the assessee's claim for deduction of CSR expenses/contribution u/s 80G of the Act was allowed after enquiry by the AO. Thus we are of the opinion that the action of the AO allowing the claim u/s. 80G of the Act is a plausible view and is in line with the ratio of the decision of Tribunal cited (supra). Therefore we find that the Ld. PCIT has not been able to make out a case that on this issue raised by him, the AO's order is erroneous as well as prejudicial to the revenue. So the jurisdictional fact as well as law is absent for invoking revisional jurisdiction. Therefore, the usurpation of jurisdiction by Ld. PCIT u/s 263 of the Act is bad in law and therefore need to be quashed and we order accordingly".

14. We are in agreement with such observations and findings of the Co-ordinate Bench of the Tribunal and while respectfully following the same, we hold that inasmuch as the assessee satisfied the conditions of section 80G of the Act, the assessee is entitled to claim deduction under section 80G of the Act in respect of such donations which formed part of the spend towards CSR. Accordingly, we hold this ground in favour of the assessee.

15. In view of the above, this appeal of assessee is allowed.

Order pronounced in the open court on this the 31st day of August, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad,
Dated: 31/08/2023

TNMM

Copy forwarded to:

1. Power Mech Projects Ltd., Plot No. 77, Jubilee Enclave, Opp; Hitex, Madhapur, Hyderabad.
2. Dy. Commissioner of Income Tax, Central Circle-1(3), Hyderabad.
3. Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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