

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 495/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2020-21

Supreme Buildestates Pvt. Ltd. Makranaq Road Madanganj, Kishangarh.	बनाम Vs.	DCIT, Circle-2, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCS 1129 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C.M. Agarwal (C.A.)  
राजस्व की ओर से / Revenue by : Sh. Anup Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 20/09/2023  
उदघोषणा की तारीख / Date of Pronouncement : 30/10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2020-21 dated 27.07.2023, which in turn arises from the order passed by the AO, passed under Section 143(3) read with section 144B of the Income tax Act, 1961 (in short 'the Act') dated 16.09.2022.

2. The assessee has marched this appeal on the following grounds:-

“1. On the facts and circumstances of the case, impugned order passed by the NaFAC is bad in law and is liable to be set aside.

2. On the facts and circumstances of the case, NaFC has erred in law in confirming the action of the Ld Assessing Officer in denying the claim of deduction of Rs 17,16,540/ u/s 80G of the Income Tax Act.

3. On the facts and circumstances of the case, impugned order passed by the NaFC is subversive of judicial discipline in as much as the same is contrary to the binding precedents that were cited before him and have been noted in the impugned order without distinguishing the same and assigning any reason for deviating from the precedents.

4. On the facts and circumstances of the case, Ld AO and NaFC failed in appreciating that under the Income Tax Act, no restriction has been imposed for claiming deduction under Section 80G of the Act when payment has been made to the eligible entities listed in Section 80G of the Act.

5. On the facts and circumstances of the case, LD AO and NaFC erred in law in applying the fetters of voluntary and involuntary nature of payments to section 80G of the income tax act when no such fetters have been imposed by the legislature.

6. On the facts and circumstances of the case, Ld AO and NaFC failed in appreciating that obligations to incur expenditure on CSR activities flows from the Companies Act, and has no linkage what so ever with Section 80G of the Act except to the extent provided in clause (a) (iiihk) and (a) (iiihl) of Sub Section 2 to Section 80G of the Income Tax Act.

7. On the facts and circumstances of the case NaFC has erred in not allowing relief from interest under Section 234B & 234C of the Act.”

3. The fact as culled out from the records is that the assessee company is a closely held company, having interest income from funds available to the company, which is being assessed under the

head 'income from other sources'. The assessee company has filed its return of income for the assessment year 2020-21 on 09.10.2020 declaring total income at Rs. 22,43,54,110/- and income u/s 115JB of Rs. 24,45,44,184/-. The case was selected for complete scrutiny assessment under the E-assessment Scheme on the issue "1. As per new schedule AL-1, the company has invested substantial part of its funds in assets like Residential House, land or building, capital contribution to other entities, loans and advances, motor vehicles, aircrafts etc." Accordingly, notice u/s 143(2) of the Income Tax Act, 1961 dated 29.06.2021 was issued electronically through ITBA and duly served upon the assessee company on the registered e mail on E-filing portal. Subsequently, the case was transferred to faceless assessment scheme and notice u/s 142(1) of the Act dated 25.10.2021 and 13.12.2021. In response, the assessee company furnished the required submission from time to time. After considering the submission of the assessee company, assessment was completed on 16.09.2022. On perusal of the computation of total income submitted by the assessee, it is found that the assessee has spent an amount of Rs. 7,50,00,000/- towards CSR expenditure and added back the same in the statement of total Income u/s 37 of the

Act while computing the taxable income for the year ended 31.03.2020. On the other hand, out of above CSR expenses the assessee has claimed 50% of CSR expenses of Rs. 17,16,540/ out of Rs.34,33,080 i.e. 10% of adjusted Gross total income other than Long term Capital- Rs. 3,43,30,803/- as donations to Shri Ratanlal Kanwar Lal Patni Foundation under section 80 G of the Act. The Id. AO noticed that the assessee has claimed the donations under Corporate Social Responsibility and u/s. 80G of the Act. Accordingly, vide notice u/s 142(1) of the I.T. Act, 1961, dated 25.10.2021 the assessee was asked to explain as to why deduction u/s 80G on CSR expenditure of Rs. 17,16,540/- should not disallowed since CSR expenses is legal obligation of the company and not a voluntary donation In this regard, assessee vide letter dated 11.11.2021 has submitted its submission. Based on the detailed finding recorded in the order of the assessment the Id. AO rejected the claim of deduction u/s. 80G claimed by the assessee for an amount of Rs. 17,16,540/-.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“ 6. I have considered the facts of the case and submissions of the appellant. I have also perused the Assessment Order passed by the AO u/s 143(3) rws 1448 of the Income-tax Act, 1961 dated 23.09.2022

6.1 As per the facts culled out from the record and reproduced earlier, the appellant is a closely held company. For AY 2020-21, the appellant filed the return of income on 09.10.2020 declaring total income at Rs. 22,43,54,110/- and income u/s 115JB of Rs.24,45,44,184/- The return was processed under section 143(1) of the Income-tax Act, 1961 and the case was subsequently selected for Complete Scrutiny. While assessing the case under consideration, the AO has disallowed the claim of deduction u/s 80G to the tune of Rs. 17,16,540/- and issued order u/s 143(3) tune of r.w.s. 144B of the Act on 16.09.2022 assessing the total income at Rs.22,60,70,650/-

6.2 Feeling aggrieved and dissatisfied with the aforesaid decision and order of the AO, the appellant has preferred the instant appeal.

7. It is contended by the appellant that being a closely held company having income from funds available to the company which is being assessed under the head "Income from Other Source". During the FY 2019-20 relevant to AY 2020-21, the appellant had made donation to the tune of Rs.7,50,00,000/- to Shri Ratanlal Kanwarlal Patni Foundation which was qualified as Corporate Social Responsibility (CSR) expenditure under section 135 of the Companies Act, 2013. The appellant had added back the amount of Rs.7,50,00,000/- as per Explanation 2 to section 37(1) of the Income-tax Act, 1961 at the time of filing return of income. Further, the appellant had claimed a deduction of Rs.17,16,540/- (50% of 10% of Adjusted Gross Total Income other than Long Term Capital Gain) u/s 80G(5) of the Income-tax Act, 1961 as the CSR donation was made to approved charitable trust. In order to buttress its arguments, the appellant has placed reliance upon the following decisions/case laws:

Judgment of ITAT Kolkata in the case of JMS Mining Pvt Ltd vs. PCIT (ITA/146/Kol/2021 dated 22.07.2021)

Malabar Industries Ltd vs. CIT (Civil Appeal No. 3646 of 1993)

Goldman Sachs Services Pvt. Ltd. vs. JCIT in IT(TP) A No. 2355/Bang/2019

Allegis Services (India) vs CIT in ITA No. 1693/Bang/2019

FNF India Pvt. Ltd. vs. ACIT (ITA No. 1565/Bang/2019) American (India) Pvt Ltd vs. ACIT (ITA No. 1762/Bang/2019)

8. Apropos the above, the ground no. 1 is whether the appellant as a closely held company is entitled to claim deduction u/s 80G of Income-tax Act. It is observed that the AO has disallowed the appellant's claim for deduction u/s 80G on the ground that donation in general involves a voluntary act without there being any legal obligation. It may incidentally provide tax benefits. CSR, on the other hand, imposes an obligation on the part of corporate entity to incur expenditure out of profits by way of appropriation of profits as compliance expenditure and this cannot be allowed as deduction u/s.80G. This gains better currency with the denial of deduction for contribution to Swachh Bharat Kosh and Clean Ganga Fund set up by the Central Government which excludes expenditure by way of CSR and if there is anything above the required obligation under Companies Act, that alone is eligible for deduction u/s.80G. The other expenditures by way of specified activities constituting CSR are not eligible for claim under section 80G. The intention of the legislature was never to allow deduction for CSR expenditure, else it would result in subsidizing the expenditure by one third of such expenses by the Government by way of tax expenditure. Furthermore, CSR expenditure is not 'voluntary' but "mandatory" in nature. In the case on hand, the deduction is admissible in respect of any sums, which is paid by the assessee in the previous year as donations to various bodies/institutions indicated in that section. Thus, from a bare reading of the provision, it is clear that the primary requisite of admissibility of deduction under section 80G is that the sums paid must be a donation. This aspect of law came to be expounded, by the Hon'ble Andhra Pradesh High Court in PVG Raju, Raja of Vizianagaran v Commissioner of Expenditure-Tax 1972 86 ITR 267 AP in the following words:

"5. We shall, therefore, first advert to the question whether the items of expenditure sought to be exempted under Section 50) are or are not donations within the meaning of Section 50) of the Act. The term "donation" has not been defined in the Act. Hence, we may refer to the meaning of "donation" as given in the Concise Oxford Dictionary and Corpus Juris Secundum.

'Donation/thing presented, gift, esp. of money given to institution....'  
(The Concise Oxford Dictionary, page 357),

6. Donation means' an act which the owner of a thing voluntary transfers the title and possession of the same from himself to another without any consideration; a gift or grant in gratuity...' (Corpus Juris Secundum, Vol.28, page 53).

7. However, the expression "donation" is not equivalent to gift and it is of wider import. The distinction between donation and gift has been succinctly brought out only the following passages in Corpus Juris Secundum:

"The term 'donation... is often used as equivalent in meaning to gift, but a donation.... Need not have all of the essentials of gift. Thus, a gift must be without a consideration, but a donation may be for a consideration; and gift must be entirely executed, while a donation need not be. The term donation is more aptly used to describe that which is given to a public cause or charity than to indicate a bounty to an individual."(Corpus Juris Secundum, vii, 38 page 783)."

The above view is also fortified by the decision of the Hon'ble Supreme Court in Commissioner of Expenditure-Tax PVG Raju Raja of Vizianaram [1967SCR (1) 1017], wherein VR Krishnaiyer J speaking for the Court, observed, thus:

"When a person gives money to another without any material return, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. A gift or gratuitous payment is, in simple English, a donation. We do not require lexicographic learning nor precedential erudition to understand the meaning of what many people do every day, viz., giving donations to some fund or other, or to some person or other. Political donations are not only common, but are assuming deleterious dimensions in the public life of our country. It is therefore clear that when this Raja assessee, gave money to the candidates-of his Party for them to meet their election expenses, he made donations. Even if the met their election expenditure, it was money gratuitously given on their behalf and therefore amounted to donation. Without straining language, we reach the natural conclusion that what the respondent expended for the other candidates during the elections was 'donation' in the language of the law. There is neither suggestion nor evidence that any material return was in contemplation when he spent these sums. Being a politically important man with plenty of money and vitally interested in boosting his Party's standing in the State, he donated liberally for candidates set up by the party. In this

view s. 50) applies to these donations which earn exemption from the expenditure tax."

From the foregoing discussion, it is observed that a payment to constitute a donation, it must satisfy the test of voluntariness. In the case on hand, the payment made as a part of legal compliance of Corporate Social Responsibility requirements under the Companies Act 2013, cannot be said to be payment on for the purpose of granting a voluntary payment so as to constitute a donation deduction under section 80G."

9. For what has been outlined above and for the reasons stated above, it is held that on the pertaining facts and circumstances of the case, the appellant would not be entitled to claim deduction of Rs.17,16,540/- u/s 80G of the Act. In short, the sum of Rs.17,16,540/- does not qualify as a "donation" at all and even if the Shri Ratanlal Kanwarlal Patni Foundation holds a certificate of exemption under section 80G of the Income-tax Act, 1961, the sum to the tune of Rs.17,16,540/- has not been entitled to a benefit under section 80G of the Income-tax Act, 1961 since it is not a donation. The action of the AO is, therefore, confirmed and the appeal raised by the appellant is dismissed.

10. The ground no. 2 is general as well as consequential in nature. Accordingly, no further adjudication is required. TAX DEPAR In the result, the appeal of the appellant is dismissed.

11. In the result, the appeal of the appellant is dismissed."

5. As the assessee did not receive any favor from the appeal so filed before the Id. CIT(A), prefers the present appeal. The Id. AR appearing on behalf of the assessee has placed their written submission on record and the same is extracted here in below:-

**Submissions of the appellant-**

**Observations of lower authorities to the effect that the donations made under CSR were not voluntary are perverse on fact;**

At the outset, without prejudice to the legal submissions as to the admissibility of the claim of deduction u/s 80G of the Income Tax Act, it is submitted that both the lower authorities failed to appreciate that the claim of deduction was made at Rs 17, 16,540/ which constitute 50% of 10% of adjusted gross total income whereas, undisputedly the donation was paid to the tune of Rs 7, 50, 00,000/. The entire expenditure was disallowed by the appellant company itself in computing the total income. As such no deduction of the expenditure was claimed u/s 37 of the Income Tax Act. Mandatory CSR liability under companies Act is only to the extent of 2% of the average net profit whereas, donations given by the appellant to Shri Ratanlal Kanwarlal Patn Foundation is evidently more than one third of its net profits. Therefore observations of both the lower authorities suffer from gross perversity of facts. The donations made under the CSR by the assessee company were absolutely voluntary and several times of its legal obligations under the Companies Act. In the circumstances, the valid claim of deduction u/s 80G of the Income Tax Act made by the appellant at Rs 17,16,540/ against the eligible donations made at Rs 7,50,00,000/ cannot be denied.

**Observations of lower authorities to the effect that the donations made under CSR are not eligible for deduction u/s 80G of the Income Tax Act suffer from gross perversity in law:**

The appellant submits that the orders of the lower authorities are erroneous for the following reasons;

- i. Impugned order passed by the NAFC is subversive of judicial discipline in as much as the same is contrary to the binding precedents that were cited before him and have been noted in the impugned order without distinguishing the same and assigning any reason for deviating from the precedents.
- ii. Ld AO and NAFC have not appreciated that under the Income Tax Act, no restriction has been imposed for claiming deduction under Section 80G of the Act when payment has been made to the eligible entities listed in Section 80G of the Act.
- iii. Fetters of voluntary and involuntary nature of payments to section 80G of the income tax Act applied by the lower authorities are without sanction of law and gross abuse of executive powers when no such fetters have been imposed by the legislature.
- iv Obligations to incur expenditure on CSR activities flows from the Companies Act, and has no linkage what so ever with Section 80G of the Act except to the extent provided in clause (a)(iihk) and (a) (iihl) of Sub Section 2 to Section 80G of the Income Tax Act.

It is also submitted that the disputed issue is no more res integra and various Benches of the Hon'ble Tribunal have decided the issue in unequivocal terms. The appellant places reliance on the following decisions in this regard:

**Decision of the Hon'ble ITAT Bangalore in the case of First American (India) Pvt Ltd Vs ACIT ITA 1762/Bang/2019 dated 29.04.2020.** The Hon'ble Bench held as under;

"15. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, 'Income from Business and Profession', where as monies spent under section 80G are claimed while computing "Total Taxable income" in the hands of assessee. The point of claim under these provisions is different.

16. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 of the Act, for computing income under the head, "Income from Business and Profession".

17. for claiming benefit under section 80G, deductions are considered at the stage of computing "Total taxable income". Even if any payments under section 80G forms part of CSR payments (keeping in mind ineligible deduction expressly provided u/s.80G), the same would already stand excluded while computing, Income under the head, "Income from Business and Profession". The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "Total Taxable Income" cannot be denied to assessee, subject to fulfilment of necessary conditions therein

18. We therefore do not agree with arguments advanced by Ld. Sr. DR.

19. In present facts of case, Ld.AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Profession". It has been submitted that some payments forming part of CSR were claimed as deduction under section 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing 'Total Taxable Income'. If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

20. on the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act

**Bangalore Tribunal in the case of Goldman Sachs Services Pvt. Ltd. vs. JCIT in IT (TP) A No. 2355/Bang/2019 held as under:**

"16. The last ground of appeal argued by the learned Authorized Representative in respect of disallowance of deduction under Section 80G of the Act In the financial year 2014-15, the assessee has incurred expenditure of Rs.4,72,00,024/- to meet the CSR (Corporate Social Responsibility) as per Policy formulated under Section 135 of the Companies Act, 2013. Out of the said amount, a sum of Rs.2,25,21,500 qualified for deduction under Section 80G of the Act and therefore the assessee claimed of 50% of amount being Rs.1,12,60,750/- as deduction under Section 80G of the Act. The TPO/A.O. has disallowed substantial portion of donation under Section 80G of the Act on the ground that donations were not in the nature of voluntary contribution as required under CSR Policy. Further the Assessing Officer has allowed the contribution to PM National Relief Fund under Section 80G of the Act as it was a direct contribution to the Government. No other inferences were raised by the TPO/A.O. in respect of other donations which are equally eligible for deduction under Section 80G of the Act. The learned Authorized Representative submitted that the donations or expenditure has been incurred wholly and exclusively for the purpose of business and eligible for deduction under Section 37 of the Act and alternatively under Section 80G of the IT (TP) A No.2355/Bang/2019 Act. We found the DRP has dealt at page 81 of the order and observed that, the claims are in the nature of CSR Policy expenditure and hence does not qualify for deduction under Section 80G of the Act. The learned Authorized Representative demonstrated in Paper Book Vol.II at pages 882 & 883 the list of deductions claimed under Section 80G of the Act with a statement of donees along with PAN and address and donation receipts. Further the donation receipts are self- explanatory and are eligible for deduction under Section 80G of the Act. We find that the CSR expenses are required to be incurred by companies as per Section 135 of the Companies Act and the deduction u/s. 37(1) of the Act, is not available from Assessment Year 2015-16 as per the Explanation 2 to Section 37(1) of the Act inserted by the Finance Act No.2. 2014. Whereas, the assessee company has made a claim for deduction of CSR expenses u/s. 80G of the Income Tax Act,1961. But the assessing officer has rejected the assessee's claim without verifying the nature of contributions and observed that it is not a donation, and was not spent voluntarily for the eligibility of claim u/s.80G of the Act but due to legal obligation prescribed u/s. 135 r.w. Schedule VII of Companies Act, 2013. We find that the A.O has allowed deduction u/s.80G of the Act in respect of contribution made to PM Relief Fund which is not disputed. We are of the opinion that the A.O. has not made his observations clear that no CSR expenses are eligible for deduction u/s. 80G of the IT (TP) A No.2355/Bang/2019 Act. We consider it appropriate to refer to the Clauses (iiihk) & (iiihl) of sub- section 2 of Section 80G of the Act which

are read as under : "(iihk) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of Section 135 of the Companies Act, 2013 (18 of 2013); or (iihl) the Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of Section 135 of the Companies Act, 2013 (18 of 2013)." Where these two exceptions are provided in Section 80G of the Act, it can be inferred that the other contributions made u/s. 135(5) of the Companies Act are also eligible for deduction u/s. 80G of Income Tax Act subject to assessee satisfying the requisite conditions prescribed for deduction u/s.80G of the Act. In the present case the A.O. has not dealt on these aspects, prima facie, considered the contributions as not voluntary but a legal obligation and has accepted the genuineness of the contributions. We are of the opinion that the matter has to be considered for examination and verification of facts subject to the assessee satisfying the requirements of claim u/s.80G of the Act. Accordingly, we restore the entire disputed issues to the file of A.O. for fresh examination and verification as discussed above and the assessee should be provided adequate opportunity of IT(TP)A No.2355/Bang/2019 hearing and shall co-operate in submitting the information and we allow the ground of appeal of the assessee for statistical purposes."

**Bangalore Bench of the Hon'ble Tribunal in the case of Allegis Services (India) vs. CIT in ITA No. 1693/Bang/2019 pronounced on 29.04.2020 has held as under:**

“. In present facts of case, Ld.AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Profession". It has been submitted that some payments forming part of CSR were claimed as deduction under section ITA No.1693/Bang/2019 A. Y : 2016 - 17 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing "Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

19. on the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G (1) of the Act."

**The Bangalore Tribunal in the case of FNF India Pvt. Ltd. vs. ACIT (ITA No. 1565/Bang/2019) reported in 2021-TIOL-319-ITAT-BANG pronounced on January, 05, 2021 held as under:**

“Similar issue came up for consideration before this Tribunal in the case of Allegis Services (India) Pvt. Ltd. wherein it was held that “For claiming benefit under Section 80G, deductions are considered at the stage of computing “Total Taxable income”. Even if any payments under Section 80G forms part of CSR payments (keeping in mind ineligible deduction expressly provided u/s 80G), the same would already stand excluded while computing, income under the held “income from Business and Profession”. The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing “Total Taxable income” cannot be denied to assessee, subject to fulfilment of necessary conditions therein..... authorities below have erred in denying claim of assessee under section 80G of the Act.....”

**Mumbai Bench of the Hon’ble Tribunal in Synergia Lifesciences Pvt. Ltd.Vs DCIT Assessment Unit ITA no.938/Mum./2023 Dated 20.06.2023 held as under;**

“9. We have considered the submissions of both sides and perused the material available on record. The only grievance of the assessee is against the denial of deduction under section 80G of the Act in respect of CSR expenditure. In the present case, it is undisputed that the assessee has not claimed the CSR expenditure under section 37(1) of the Act, and its claim is only restricted to section 80G of the Act. We find that a similar issue has come up for consideration before various coordinate benches of the Tribunal. We find that in Allegis Services (India) Private Ltd. V/s ACIT, in ITA No. 1693/Bang./2019, the deduction in respect of CSR expenditure under section 80G of the Act was denied by the Revenue on a similar basis as in the present case. While deciding the issue in favour of the taxpayer, the coordinate bench of the Tribunal, vide order dated 29/04/2020, observed as under:-

“We have perused submissions advanced by both sides in light of records placed before us.

10. Section 135 of Companies Act, 2013 requires companies with CSR obligations, with effect from 01/04/2014. Finance (No.2) Act, 2014 inserted new Explanation 2 to sub- section (1) of section 37, so as to clarify that for purposes of sub- section (1) of section 37, any expenditure incurred by an assessee on the activities relating to corporate social responsibility 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 the business or profession.

11. This amendment will take effect from 1/04/2015 and will, accordingly, apply to assessment year 2015-16 and subsequent years.

12. Thus, CSR expenditure is to be disallowed by new Explanation 2 to section 37(1), while computing Income under the Head Income from Business and Profession'. Further, clarification regarding impact of Explanation 2 to section 37(1) of the Income Tax Act in Explanatory Memorandum to The Finance (No.2) Bill, 2014 is as under: "The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditure cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clear that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and, hence, shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein."

13. From the above it is clear that under Income tax Act, certain provisions explicitly state that deductions for expenditure would be allowed while computing income under the head, 'Income from Business and Profession' to those, who pursue corporate social responsibility projects under following sections.

Section 30 provides deduction on repairs, municipal tax and insurance premiums.

Section 31, provides deduction on repairs and insurance of plant, machinery and furniture.

Section 32 provides for depreciation on tangible assets like building machinery, plant, and furniture and also on intangible assets like know-how, patents, trademarks, licenses.

Section 33 allows development rebate on machinery, plants and ships.

Section 34 states conditions for depreciation and development rebate.

Section 35 grants deduction on expenditure for scientific research and knowledge extension in natural and applied sciences under agriculture, animal husbandry and fisheries. Payment to approved universities/

research institutions or company also qualifies for deduction. In-house R&D is eligible for deduction, under this section.

Section 35CCD provides deduction for skill development projects, which constitute the flagship mission of the present Government.

Section 36 provides deduction regarding insurance premium on stock, health of employees, loans or commission for employees, interest on borrowed capital, and employer contribution to provident fund, gratuity and payment of security transaction tax.

Income Tax Act, under section 80G, forming part of Chapter VIA, provides for deductions for computing taxable income as under:

Section 80G (2) provides for sums expended by an assessee as donations against which deduction is available. a) Certain donations, give 100% deduction, without any qualifying limit like Prime Minister's National Relief Fund, National Defence Fund, National Illness Assistance Fund etc., specified under section 80G(1)(i).

b) Donations with 50% deduction are also available under Section 80G for all those sums that do not fall under section 80G(1)(i).

Under Section 80G (2) (iihk) and (iihl) there are specific exclusion of certain payments, that are part of CSR responsibility, not eligible for deduction u/s80G.

14. In our view, expenditure incurred under section 30 to 36 is claimed while computing income under the head, 'Income from Business and Profession', where as monies spent under section 80G are claimed while computing "Total Taxable income" in the hands of assessee. The points of claim under these provisions are different.

15. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 of the Act, for computing income under the head, "Income from Business and Profession".

16. for claiming benefit under section 80G, deductions are considered at the stage of computing "Total taxable income". Even if any payments under section 80G forms part of CSR payments (keeping in mind ineligible deduction expressly provided u/s.80G), the same would already stand excluded while computing, Income under the head, "Income from Business and Profession". The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "Total Taxable Income" cannot be denied to assessee, subject to fulfilment of necessary conditions therein.

17. We therefore do not agree with arguments advanced by Ld. Sr.DR.

18. In present facts of case, Ld. AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Profession". It has been submitted that some payments forming part of CSR were claimed as deduction under section 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

19. on the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G (1) of the Act. 20. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its claim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility”

10. Thus, in view of the above, the claim for deduction under section 80G of the Act in respect of CSR expenses cannot be denied. In the present case, the lower authorities denied the deduction claimed by the assessee under section 80G of the Act without verifying the conditions as laid down in the said section. Therefore, respectfully following the aforesaid decision rendered by the coordinate bench of the Tribunal, we remit this issue to the file of the AO to verify the conditions necessary for claiming deduction under the said section. The assessee is also directed to file all the details for the purpose of claiming deduction under section 80G of the Act. We further direct that if the conditions as laid down in section 80G are found to be satisfied then deduction be granted to the assessee to that extent. With the above directions, the impugned order is set aside. Accordingly, ground no. A (1) raised in assessee”s appeal is allowed for statistical purposes

In view of the settled legal position it is submitted that the appeal of the assessee be allowed by directing the Assessing Officer to allow the claim of deduction u/s 80G of the Income Tax Act made by the appellants. It is prayed accordingly.”

5.1 The Id. AR of the assessee to drive home to the contentions so raised has also relied upon the following decisions:-

- First American (India) Pvt. Ltd. vs. ACIT in ITA No. 1762/Bang/2019 dated 29.04.2020.
- M/s Goldman Sachs Services Pvt. Ltd. vs. JCIT in IT(IT)A No. 2355/Bang/2019 dated 15.06.2020.
- Allegis Services (India) Pvt. Ltd. vs. ACIT in ITA No. 1693/Bang/2019 dated 29.04.2020.
- M/s FNF India Private Ltd. vs. ACIT in ITA No. 1565/Bang/2019 dated 05.01.2021.
- Synergia Lifesciences Pvt. Ltd. vs. DCIT in ITA No. 938/Mum/2023 dated 20.06.2023.

6. Per contra, the Id DR relied upon the order of the Id. CIT(A). He also relied on the order of Hon'ble Supreme Court in the case of Securities and Exchange Board of India vs. Kishore R. Ajmera [2016 66 taxmann.com 288 (SC) ] and submitted that the deduction is not allowable. The Id. DR also submitted that Finance Bill, 2014 inserted Explanation 2 in section 37(1) to clarify that any expenditure incurred by the assessee on CSR as referred to in the section 135 of the Companies Act, 2013. Thus, once the expenditure incurred is prohibited u/s. 37(1) cannot be considered for further deduction u/s. 80G of the Act.

7. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. Admittedly the assessee has made donation of Rs. 7,50,00,000/- to Shri Ratan Lal Kanwar Lal Patni Foundation. Since the said trust is registered with the Income Tax Department donation made to the said trust was considered as eligible u/s. 80G of the Act to the extent of Rs. 17,16,540/-. The lower authorities are of the view that a payment to constitute a donation, it must satisfy the test of voluntariness. In the case on hand, the payment made as a part of legal compliance of Corporate Social Responsibility requirements under the Companies Act 2013, cannot be said to be payment on for the purpose of granting a voluntary payment so as to constitute a donation deduction under section 80G. Therefore, the assessee denied the benefit of deduction of Rs.17,16,540/- u/s 80G of the Act. The lower authority thus, held that a sum of Rs.17,16,540/- does not qualify as a "donation" at all and even if the Shri Ratanial Kanwar Lal Patni Foundation holds a certificate of exemption under section 80G of the Income-tax Act, 1961, the sum to the tune of Rs.17,16,540/- has not been entitled to a benefit under section 80G of the Income-tax Act, 1961 since it is not a donation.

7.1 Thus, the issue before us is limited to the fact that donation made by the assessee out of the CSR obligations as per provision of section 135 of the Companies Act, 2013 can be considered for deduction under chapter VIA u/s. 80G of the Act or not. The amendment made in the section 37(1) restricting the deduction of CSR expenditure is applicable from assessment year 2015-16 and the year under consideration is A. Y. 2020-21.

7.2 The ground no. 2 to 6 raised by the assessee all are related to disallowance of donation u/s. 80G by holding it be CSR expenses prohibited by provision of section 37(1) of the Act. Thus, is not under dispute that the assessee has paid a sum of Rs. 7,50,00,000/ to Shri Ratan Lal Kanwar Lal Patni Foundation. Since the said trust is registered with the Income Tax Department and therefore contributions/ donations made to the said trust were considered eligible for deduction u/s 80G of the Income Tax Act by the assessee. As the deduction allowable to the assessee company u/s 80G of the Income Tax Act was computed at Rs 17,16,540/ and the same was claimed as deduction from the total income in accordance with the provisions of chapter VI of the Income Tax Act, as the payee was recognized to accept the donations which is eligible for deduction u/s. 80G of the Act.

7.2 Moving further, whether the deduction restricted u/s. 37(1) for an expenditure while computing the income of the assessee is also restricted u/s. 80G of the Act. Under the Income Tax once the Gross total income is computed the assessee is allowed deduction under chapter VIA of the Act of the certain payments and section 80G comes under that Chapter. Thus, the deduction is allowed after the income is computed under chapter VIA. Thus, the point of disallowance u/s. 37(1) and donation is considered as deduction even if the same is disallowed while computing the total income of the assessee and the same is the case here. Thus, the point of disallowance and deduction are different. Thus, for claiming deduction u/s. 80G of the Act even if the payment is not considering while computing the income of the as per provision of section 37(1) of the Act in this case. The bench notes that section 80G(2)(iiihk) and (iiihl) specific excluded as it is evident from the extract of section 80G of the Act;

**Deduction in respect of donations to certain funds, charitable institutions, etc.**

<sup>65</sup>**80G.** (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

- (i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) or in sub-clause (iiia) or in sub-clause (iiiaa) or in sub-clause (iiiab) or in sub-clause (iiib) or in sub-clause (iiie) or in sub-clause (iiif) or in sub-clause

- (iii) or in sub-clause (iiiiga) or sub-clause (iiih) or sub-clause (iiihha) or sub-clause (iiihb) or sub-clause (iiihc) or sub-clause (iiihd) or sub-clause (iiihe) or sub-clause (iiihf) or sub-clause (iiihg) or sub-clause (iiihh) or sub-clause (iiihj) or sub-clause (iiihk) or sub-clause (iiihl) or sub-clause (iiihm) or in sub-clause (vii) of clause (a) or in clause (c) or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature *plus* fifty per cent of the balance of such aggregate; and
- (ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).

Thus, except for contribution u/s. 80G towards Bharat Kosh and Clean Ganga fund, all other payments are eligible for donation u/s. 80G as it clear from the provision of the Act. Therefore, we are of the considered view that the deduction cannot be denied to the assessee based on the provision of the Act. Similar view is taken by the coordinate bench in the case of First American (India) Private Limited in ITA no. 1762/Bang/2019 wherein the coordinate bench held as under:-

18. We therefore do not agree with arguments advanced by Ld.Sr.DR.

19. In present facts of case, Ld.AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Profession". It has been submitted that some payments forming part of CSR were claimed as deduction under section 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing "Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR,

would lead to double disallowance, which is not the intention of Legislature. 20. On the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G(1) of the Act.

21. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its claim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility.”

Based on the above discussion and on being consistent the ground no. 2 to 6 raised by the assessee are allowed. Ground no. 1 being general and ground no. 7 being consequential the same is not require any adjudication.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 30/10/2023.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/10/2023

\*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Supreme Buildestates Pvt. Ltd., Kishangarh.

2. प्रत्यर्थी / The Respondent- DCIT, Circle-2, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 495/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar