

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

**Before Shri Kul Bharat, Judicial Member
&**

Dr. B. R. R. Kumar, Accountant Member

ITA No. 789/Del/2022 : Asstt. Year: 2017-18

Agilent Technologies (International) Pvt. Ltd., Plot CP-11, Sector-8, IMT Manesar, Gurgaon, Haryana 122051 (APPELLANT)	Vs	The ACIT/NFAC, Delhi (RESPONDENT)
PAN No. AADCA 4115 C		

**Assessee by : Sh. Vishal Goel, CA
Revenue by : Sh. Rohit Anand, Sr. DR**

Date of Hearing: 21.12.2023	Date of Pronouncement: 22.12.2023
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ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the assessee against the order of Assessing Officer dated 26.02.2022 for the AY 2017-18.

2. The assessee has raised the following grounds of appeal are as under:-

1. On facts and circumstances of the case and in law, the Ld. AO has erred in assessing the total income of the Appellant at INR 28,43,51,922 as against the returned income of INR 27,26,74,780.

Addition of INR 52,87,150 considering the same as rental income

2. On facts and circumstances of the case and in law, the Ld. AO has erred in making an addition of NR 52,87,150 to taxable income in the hands of the Appellant alleging the same to be rental income not offered to tax by the Appellant. The above action of the Ld. AO has resulted in double taxation of rental income of INR 52,87,150 already offered to tax.

Rejecting deduction claim under section 80G of the Act - INR 63,89,992

3. On facts and circumstances of the case and in law the Ld. AO/DRP erred in rejecting the deduction of INR 63,89,992 claimed under section 80G of the Act. The Ld. AO/ Ld. DRP has grossly erred in:

3.1. interpreting the provisions of section 80G of the Act in light of provisions of section 37 read with section 135 of the Companies Act, 2013, thereby, ignoring that the provisions of section 37 and section 80G of the Act are laid down on a different footing.

3.2. travelling beyond the provision laid under the Act and wrongly interpreting the provisions of section 135 under Companies Act, 2013 as putting a restriction on the deduction available under section 80G of the Act.

3.3. facts and circumstances of the case and in law by holding that for the payment to constitute a donation it must satisfy the test of voluntariness by placing reliance on the Hon'ble Supreme Court decision in the case of Commissioner of Expenditure Tax, Andhra Pradesh v. PVG Raju, Rajah of Vizianagaram [1976 SCR (1)1017].

3.4. facts and circumstances of the case and in law by ignoring the manner in which the law has been laid under section 80G of the Act whereby express exclusions have been provided for specific donations from being considered for deduction.

3.5. in not appreciating that this issue is squarely covered in favour of the Appellant by the binding orders of Higher Appellate authorities.

Other Grounds

4. On the facts and circumstances of the case and in law, the Ld. AO has erred in charging interest under section 234A and 234D of the Act.

5. On the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 270A of the Act for misreporting of income.

3. The Agilent Technologies (International) Private Limited ("Agilent International" or "the assessee" or "the Company") is a 100% subsidiary of Agilent Technologies International Europe, BV which in turn is a wholly owned subsidiary of Agilent Technologies Inc. The assessee is engaged in the provision of IT services & ITeS to its AEs. In the ITeS segment, the assessee

renders finance back office support services in the nature of internal financial transaction processing, sales accounting processing and vendor payables management. In the IT segment, the assessee undertakes development of modules as well as parts of modules for software being used by its overseas group entities in their products. The Company also undertakes testing of modules developed by it and renders maintenance support services.

Rental Receipt:

4. This ground relates to the addition of Rs. 2,84,09,050/- on account of rental receipt from house property as reported in form 26AS of the assessee. A questionnaire in this regard was issued by the AO through u/s 142(1) dated 03.02.2021. After considering the response of the assessee the AO observed as under;

"On perusal of Form 26AS it is found that assessee has received rental income of Rs. 6,34,45,795/- on account of "Rent on other than plant and machinery" and rental income of Rs. 2,64,35,750/- on account of "Rent on hiring of plant and machinery". But in ITR filed by the assessee, the assessee has offered rental income of Rs. 6,14,72,495/- only for taxation. Therefore, assessee has not offered balance rental receipts of Rs. 2,84,09,050/- for taxation hence, the same is added to the total income of assessee. To sum up Rs. 2,84,09,050/- is added to the total income of the assessee."

5. During Id.DRP proceedings the assessee has submitted that out of total addition of INR 2,84,09,050 a sum of INR 2,64,25,750 is attributable to erroneous reporting in the e-TDS return for the year under consideration by Keysight India which resulted in erroneous Form 26AS forming the basis of the said addition. It has further been stated that the Form 26AS has been revised in his case and the assessee has received revised

Form 16A duly reflecting the correct income accrued to the assessee.

6. Further, the assessee has submitted that INR 19,73,300/- is attributable to reconciliation of amount reported in form 26AS vis-à-vis audited financials in respect of the lease rental income which has already been offered to tax in the earlier year. The assessee has further submitted a reconciliation of lease rental reflected in the audited financials of the assessee vis-à-vis the revise form 26AS as under:

Particulars	Amount (in INR)
Amount as offered to tax and reported in the audited financials of the assessee for the subject year AY 2017-18	6,14,72,495
Less: Amount reflecting in revised form 26AS for AY 2017-18	6,34,45,795
Balance amount allegedly not offered to tax	(19,73,300)

7. The Id.DRP has considered the submissions of the assessee. The entire basis of addition on the above account is the facts reported in Form 26AS which the assessee claims to have been revised and corrected. The Id.DRP is directed to verify the factual claim of the assessee including revised form 26AS as well as a portion of the rental income as claimed to have been already offered to tax in the earlier year from the facts brought on record and pass a speaking order. Since the order of Id. DRP is reasonable and logical, we hereby direct the Assessing Officer to verify and give effect to the order of Id. DRP immediately.

Section 80G/CSR:

8. The assessee contributed Rs.65,73,742/- on account of CSR funds and paid to charitable trust for which it has claimed deduction u/s 80G of Rs. 63,89,992/-. The Amount of donations out of CSR funds and deduction claimed u/s 80G is as under:

Nature of deduction	Amount of contribution	Amount of deduction available
Contribution to prime minister's national relief fund	62,06,242	62,06,242
Contribution to united way of Mumbai	3,67,500	3,83,750

9. It was argued that while the amendment restricts the disallowability of CSR from business expenditure, it is allowed as deduction u/s 80G if paid to any charitable institution. Reliance in this regard is placed on Goldman Sachs Services Pvt Ltd v JCIT, special Range, Bangalore IT(TP)A/No. 2355/Bang/2019 dated 15/06/2020, FNF Indin Pot Ltd vs. ACIT (ITA No. 1565/Bang/2019) and First American (India) Pvt Ltd o ACIT, Bangalore ITA No. 1762/Bang/2019 dated 29/04/2020 as well as on the Memorandum to Finance Bill and Circular 01/2016 issued by the MCA.

10. The Id. DRP held that, as per section 80G(2) of the Income Tax Act, a 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.

11. The Id. DRP held as under:

"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. While the term donation has not been defined in the Act, its meaning will have to be construed from common parlance and legal dictionaries. According to Corpus Juris Secundum, donation means '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; a gift or grant in gratuity ... (Corpus Juris Secundum, vol. 28, page 53). Thus, to constitute a donation, the payment must be voluntary and not forced or by coercion or operation of law as a part of mandatory legal requirement. This aspect of law came to be expounded by the Hon'ble Andhra Pradesh High Court in PVG Raju, Rajn of Vizianagaram 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 5(j) are or are not donations within the meaning of Section 5(j) of the Act. The term "donation" has not been denned 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 by which the owner of a thing voluntarily 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 by the following passage 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 a gift. Thus a gift must be without a consideration, but a donation may be for a consideration; and a 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, vol. 38, page 783). "

[Emphasis Supplied]

4.5.4 The aforesaid view of the High Court was ratified by the Hon'ble Supreme Court in Commissioner of Expenditure-Tax 0 PVG Raju, Raja of Vizianagaram [1976 SCR (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 he 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 no 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. 5(j) applies to these donations which earn exemption from the expenditure tax."

[Emphasis Supplied]

4.5.5 Thus, according to the law explained by the Supreme Court and the Hon'ble Andhra Pradesh High Court in PVG Raju cited supra, for a payment to constitute a donation, it must satisfy the test of voluntariness. In the case at 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 a voluntary payment so as to constitute a donation for the purposes of granting deduction under section 80G.

4.5.6 Following the law laid down by the Apex Court in PVG cited supra, the Hon'ble Bombay 53 ITAT, in DCIT v Hindustan Dorr Oliver Ltd(1994) 4S TTJ Mumbai 552, negatived the claim of deduction under section 80G where payment made to 'Academy of General

Education, Manipal' failed the test of voluntariness as under the scheme introduced, each donor who donated Rs. 1,00,000 could nominate one student for admission to the Manipal Institute of Technology in Karnataka, every alternative year and a donor who paid Rs. 2,00,000 could nominate one student for admission every year. The Assessing Officer took a view that it was not a voluntary contribution but rather a scheme for mutual benefit in present of future, and, therefore, the contribution cannot be treated as a donation. Ratifying the action of the AO, the ITAT held as follows:

"28. Coming now to the provisions of S. 80G, this section is included under Chapter VIA of the IT Act, 1961 with a heading "Deductions to be made in computing total income". Clause (2) to 5. 80G lays down that the sums in relation to which deduction shall be allowed are, inter alia, any sum paid by the assessee as "donation" to any fund or institution to which S. 80G applies. The assessee has furnished a copy of certificate from the concerned CIT, that exemption under S. 80G is applicable to "donation" made to the Manipal Institute of Technology. We have now to see further, whether the amount of Rs. 2 lakhs given by the assessee to Manipal Institute of Technology can be called as "donation".

29. The word "donation" has not been defined in the IT Act. It was not defined under the Expenditure-tax Act, 1958 either, but the Supreme Court has explained its meaning in Commr. Of Expenditure-tax vs. P. V. G. Raju (supra). The Act levied tax on expenditure of an assessee but certain exemption was provided in respect of any expenditure incurred by the assessee by way of a donation. The relevant part of S. 5 of the Expenditure-tax Act, 1958 is reproduced below:

'5. No expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee -

(a) any expenditure, whether in the nature of revenue expenditure or capital expenditure, incurred by the assessee wholly and exclusively for the purpose of the business, profession, vocation or occupation carried on by him or for the purpose of earning income from any other source....

(i) any expenditure incurred by the assessee by way or, or in respect of, any gift, donation or settlement on trust or otherwise for the benefit of any other person...'

30. The Supreme Court described the meaning of the word "donation" in the following words :

'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. 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.' Indeed, many rich people out of diverse motives make donations to political parties. The hope of spiritual benefit or political goodwill, the spontaneous affection that benefaction brings, the popularization of a good cause or the prestige that publicized bounty fetches -these and other myriad consequences or feelings may not mar a donation to make it a grant for a quid pro quo. Wholly motiveless donation is rare, but material return alone negates a gift or donation.'

31. The essence of the matter, therefore, is whether the assessee gave Rs. 2 lakhs to Manipal Institute of Technology without any material return and without any consideration and whether it was a grant for quid pro quo. The letter from the Registrar of the Academy of General Education makes it clear that each benefactor who donates Rs. 2 lakhs can nominate one student for admission to the Manipal Institute of Technology every alternate year and the benefactor who had paid Rs. 2 lakhs or more can nominate one student for admission every year. This sponsored student was not required to pay any capitation fee and had to pay only the tuition and other special fees. The enclosed brochure also mentioned the following privileges:

'1. They can refer any of their engineering problems to the Manipal Institutes of Technology to find a solution. The engineering college will charge the actual cost thereof and the development work done in this regard will be the exclusive property of the industry which has sponsored the project.

2. The Manipal Institute of Technology will provide all the testing facilities at a very nominal cost.

3. *The Manipal Institute of Technology will conduct short courses in continuing education for the benefit of the engineers and the personnel of the benefactor industries.*

4. *They can recommend first class students who have aptitude for admission to engineering course.'*

32. *In view of the above, we are of the opinion that the sum of Rs. 2 lakhs does not qualify as a "donation" at all, and was only a grant for a quid pro quo for a material return. In view of this, even if the Manipal Institute of Technology holds a certificate of exemption under S. 80G, the sum of Rs. 2 lakhs will not be entitled to a benefit under S. 80G, since it is not a "donation"."*

[Emphasis Supplied]

4.5.7 *In view of the test of voluntariness laid down by the Apex Court in PVG cited supra, the Panel, therefore, is of the considered view that the payment made under corporate social responsibility requirements of the Companies Act 2013 is only a mandatory, statutory compliance and not 'donation' as it fails the test of voluntariness.*

4.5.8 *Coming to the decisions in Goldman Sachs Services Put Ltd v JCIT, special Range, Bangalore [IT(TP)A/No. 2355/Bang/2019 dated 15/06/2020] and First American (India) Put Ltd v ACIT, Bangalore ITA No. 1762/Bang/2019 dated 29/04/2020 relied upon by the assessee, in none of these cases the Hon'ble ITAT has considered the test of voluntariness in assessing the deductibility of donation under section 80G and the judgment of Supreme Court in PVG Raju cited supra. These decisions are, therefore, in conflict with PVG Raju cited supra.*

4.5.9 *Coming to the Memorandum to Finance Bill, the said Memorandum only clarifies that no deduction will be allowed for CSR expenditure as a business expenditure and was not in the context of deductions under section 80G. The Memorandum deals only with business expenditure and, therefore, its extension to other areas stands expressly excluded in terms of the settled principle of interpretation that the explicit mention of one (thing) is the exclusion of another. Expressio unius est exclusio alterius, goes the Latin maxim, which has been judicially recognized by the Apex Court in many cases. [See Justice K.S. Puttaswamy v UOI [2018] 97 taxmann.com 585 (SC), A.B.C Laminart (P.) Ltd. v AP Agencies 11989 | 44 Taxman 442 (SC), Rojer Mathew o South Indian Bank Ltd. 12019 | 111 taxman.com 208 (SC), GVK Industries Ltd. v ITO /2011) 197 Taxman 337 (SC), and SEBI v Kanaiya Lal 2017185 taxman.com 267 (SC)]. The Memorandum expressly mentioned business expenditure under section 37 and, thus, the application of provision*

cannot be extended to section 80G because if something is not allowed in a situation given by the Act, there is no presumption in law that it is allowed in other situations.

4.5.10 Coming to Circular 01/2016 issued by MCA, on which copious reliance has been placed, the Ministry of Corporate Affairs (MCA") has issued Frequently Asked Questions (FAQ) through General circular no. 01/2016 dated January 12, 2016 (FAQ No. 6), which reads as follows:

*"Question No. 6: What tax benefits can be availed under CSR?
Answer: No specific tax exemptions have been extended to CSR expenditure per se. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemptions have been extended to expenditure incurred on CSR, spending on several activities like Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agriculture extension projects etc, which fund place in Schedule VII, already enjoys exemptions under different sections of the Income-tax Act, 1961."*

4.5.11 The Panel, however, is of the opinion that the aforesaid circular of the Ministry of Corporate Affairs, even though cognizant of the fact that no specific tax exemptions are extended to CSR expenditure, only illustrates the tax benefits and cannot be taken as the pronouncement of law on the subject of same being treated as donation in terms of section 80G, more so when it runs afoul of the dicta laid down by the Apex Court in PVR cited Supra.

12. Heard the arguments of both the parties and perused the material available on record.

13. The provisions of Section 37(1) of Income Tax Act 1961, as under:

Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of

business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (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 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

14. As per the Companies Act 2013, it is mandatory for certain specified companies to spend 2 percent of their average profits to CSR. The CSR expenses incurred by companies are now specifically treated as for non business purposes and hence are disallowed for Income tax purposes.

15. Finance Act 2014 mandated that "CSR Expenditure" shall not be allowed as "Business Expenditure" under section 37 of Income Tax Act 1961. The 'Memorandum of Finance Bill 2014' had also clarified that this initiative is primarily to ensure that companies share the burden of providing social services and granting deduction for CSR expenditure would amount to the Government effectively bearing one third of that expenditure. This same Memorandum also added that if CSR expenditure is of the nature which is covered by specific deductions contained in Sections 30 to 36, the expenditure by virtue of being governed by a specific provision (of Income tax) shall be granted a deduction if the conditions prescribed are satisfied. No specific tax exemptions have been extended to CSR expenditure. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure.

16. Thus keeping in view the provisions of Act, we hold that no deduction u/s. 80G is allowable on the amount incurred for the purpose of Corporate Social Responsibility.

17. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 22/12/2023.

Sd/-
(Kul Bharat)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 22/12/2023

NV, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, DELHI