IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

IT(TP)A No.298/Bang/2024
Assessment Year: 2016-17

Goldman Sachs Services Pvt. Ltd. Wing A, Wing B & Wing C (Ground Floor to 6th Floor) Helios Business Park 150 Outer Ring Road Kadubeesanahalli Bangalore 560 103 Karnataka **PAN NO : AACCG2435N**	**Vs.**	DCIT Circle-3(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Madhur Agarwal, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	25.04.2024
Date of Pronouncement	:	25.04.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of DCIT-3(1)(1), Bangalore dated 30.4.2021. The assessee has raised following grounds of appeal:

"Adjustment under section 92CA of the Act

1.1Against the order of 143(3) rws 144C of the Act

1 .1 .1 Based on the facts and circumstances of the present case and in law, the Final Order passed by learned AO being passed not in conformity with the directions issued by the Hon'ble DRP, is bad in law as per provisions of section 144C(10) r.w.s. 144C(13) of the Act and hence liable to be quashed.

1.2 Complete effect not given to the DRP's direction

1.2.1 The learned AO has made the following apparent error while giving effect of the order of the Hon'ble DRP:

- *The learned AO/TPO erred in not considering Microland Limited and Exilant Technologies Private Limited in the final set of comparable companies of Information technology enabled service ("ITES") and Information Technology ("IT") segment respectively and thus erred in determining the ALP.*

1.3 Rejection of the transfer pricing documentation of the Appellant

1.3.1 The Hon'ble DRP/ learned AO / TPO has erred in law and on facts by rejecting the Transfer Pricing ("TP") documentation which has been prepared by the Appellant with respect to IT & ITES segment, in the manner contemplated under the relevant provisions of the Act and the Income-tax Rules, 1962 ("the €ules").

1.3.2 The Hon'ble DRP/ learned AO / TPO has erred in law in rejecting the TP Study of the Appellant as "not reliable or correct", under Section 92C(3) of the Act, merely because the learned TPO did not agree with the positions and filters adopted by the Assessee in its TP Study.and adopted certain additional filters / modified filters in selecting the comparable companies by -using non contemporaneous data of the said companies.

1.4 Rejection of the comparability analysis undertaken by the Assessee

The Hon'ble DRP/ learned AO has erred in law in confirmation actions of learned TPO in conducting a fresh search for comparable companies and by rejecting the search process carried out by the Appellant, without giving justifiable reasons. The Hon'ble DRP and learned TPO / AO did not consider that the T PO can proceed to determine the ALP for the international transactions of the Appellant on its own only upon satisfaction of the conditions mentioned in Section 92C(3) of the Act, which were not satisfied in the impugned case. Further, the learned TPO did not consider the requirement of Rule IOD(4) of the Rules when undertaking a fresh search for comparable companies.

The Hon'ble DRP and the learned AO/TPO have erred in not providing the Assessee an opportunity of undertaking a fresh search for comparable companies at the time of TP assessment, considering the updated data available in public domain at the time of TP assessment which was used by the learned TPO in undertaking the fresh search.

1.5 Non-availability of data for FY 2015-16

The Hon'ble DRP/ learned AO / TPO has erred in selecting the companies only if the data pertaining to FY 2015-16 is available in the public databases.

1.6 Companies with different FY ending

The Hon'ble DRP/ learned AO / T PO has erred in law and on facts in rejecting certain comparable companies on the basis that their year ending dates does not coincide with the Appellant's year ending date. By doing so, the learned AO / TPO erred in disregarding various judicial pronouncements in this regard

1.7 Application of export earning filter of 75%

The Hon'ble DRP/ learned AO / TPO has erred in law and facts in applying the export earning filter with a threshold limit of 75% in finalizing the comparable companies.

1.8 Application of employee cost filter

The Hon'ble DRP/ learned AO / T PO has erred in law and on facts in applying the employee cost filter with a threshold limit of 25% in finalizing the comparable companies.

1 .9 Modification f Dersistent loss filter

The Hon'ble DRP/ learned AO / TPO has erred in law and facts in modifying persistent loss filter applied by the Appellant in TP documentation and thereby rejecting comparable companies having losses two out of three years.

1.10 Companies selected for exclusion by the Appellant during the course of assessment proceedings in respect of IT service segment.

The Hon'ble DRP/ learned AO / TPO have erred in considering the following companies as comparable to the Appellant, despite the same not being comparable to that of the Assessee due to various factors such as functional comparability, product / intangible led revenues, inadequate financial information, use of unreliable segment financials, extra ordinary events / business restructuring, abnormal year, judicial precedents etc.

(i) Larsen & Toubro Infotech Limited
(ii) Infobeans Technologies Limited
(iii)Inteq Software Private Limited
(iv)Nihilent Limited
(v) Persistent Systems Limited
(vi)Aspire Systems (India) Private Limited
(vii)Infosys Limited
(viii)Thirdware Solutions Limited
(ix) Cybage Software Private Limited

1.11 Companies sought for inclusion by the Appellant during the course of assessment proceedings in respect to IT service segment

The Hon'ble DRP/ learned AO / TPO have erred in law and on facts in rejecting the following comparable companies requested for inclusion by the Appellant during• the course of TP assessment proceedings:

(i) *Akshay Software Technologies Limited*
(ii) *Sagar Soft India Limited*
(iii) *Sasken Communication Technologies Limited (Segmental)*
(iv) *Maveric Systems Limited*
(v) *InfoMile Technologies Limited*
(vi) *Mudunuru Limited*
(vii) *Isummation Technologies Private Limited*
(viii) *Batchmaster Software Private Limited*
(ix) *DCIS Dot Com Solutions Private Limited*
(x) *Evoke Technologies Limited*
(xi) *Eluminous Technologies Private Limited*
(xii) *ACE Software Exports Limited*
(xiii) *12T2 India Limited*
(xiv) *Agilisys IT Services India Private Limited*
(xv) *MinJesta Infotech Limited*
(xvi) *Exhilant Technologies Private Limited*
(xvii) *R Systems International Limited (Segmental)*

1.12 Companies selected for exclusion by the Appellant during the course of assessment proceedings in respect of ITES segment.

Without prejudice to our appeal in ground 1.1 and 1.2 where the learned AO/TPO erred in not giving complete effect to the Hon'ble DRP direction of inclusion of Microland Limited in the final comparable set and thereby not deleting the TP adjustment in entirety, the Hon'ble DRP/ learned AO / TPO have erred in considering following companies as comparable to the Appellant, despite the same not being comparable to that of the Assessee due to various factors such as functional comparability, product / intangible led revenues, inadequate financial information, use of unreliable segment financials, extra ordinary events / business restructuring, abnormal year, judicial precedents etc.

(i) Infosys BPM Limited
(ii) *SPI Technologies India Private Limited*
(iii) *Eclerx Services Limited*

1.13 Companies sought for inclusion by the Appellant during the course of assessment proceedings in respect to ITES segment

Without prejudice to our appeal in ground 1.1 and 1.2 where the learned AO/TPO erred in not giving complete effect to the Hon'ble DRP direction of inclusion of Microland Limited in the final comparable set and thereby not deleting the TP adjustment in entirety, the Hon'ble DRP/ learned AO / TPO

have erred in law and on facts in rejecting the following comparable companies requested for inclusion by the Appellant during the course of TP assessment proceedings:

(i) *Informed Technologies India Limited*
(ii) *R Systems International Limited (Segmental)*
(iii) *Jindal Intellicom Limited*
(iv) *Microland Limited*
(v) *Ace BPO Services Private Limited*
(vi) *Crystal Voxx Limited*
(vii) *Microgenetic Systems Limited*

1.14 Computation of operating profit margins of comparable companies

The Hon'ble DRP and learned AO / TPO have erred in considering provision for bad and doubtful debts as operating in nature while computing the operating profit margins of comparable companies.

1.15 Use of information obtained under Section 133(6) of the Act

1.15.1 The Hon'ble DRP/ learned AO / TPO have erred in law and on facts by gathering information from various companies under Section 133(6) of the Act, which were not available with the Appellant at the time of preparing its TP documentation.

1.15.2 The Hon'ble DRP/ learned AO / TPO have erred in law by relying upon the information not available in public domain while carrying out the benchmarking analysis under the Act.

1.16 Not granting working capital adjustment

1.16.1 The Hon'ble DRP/ learned AO / T PO have erred in law by disregarding the Section 92C of the Act and Rule 10B of the Rules by not considering the working capital adjustment while computing the net profit margin which constitutes difference if any, between the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market as per 10B(3) of the Rules.

1.16.2 The Hon'ble DRP/ learned AO / TPO have erred in law by disregarding the guidance's prescribed in TP guidelines issued by the Institute of Chartered Accountants of India, Revised — 2017 ("ICAI Guidelines"), OECD TP guidelines for Multinational Enterprises and Tax Administration issued by Organization for Economic Cooperation and Development ("OECD Guidelines") in July 2017, United Nations Practice Manual on Transfer Pricing for Developing Countries (2017) ("UN TP Manual") and also a plethora of judicial pronouncements of Indian revenue authorities granting working capital adjustment while computing the arm's length price / net margin of comparable companies to remove any material differences on

account of different working capital condition that exist between the comparable companies and the Appellant.

1.17 Risk adjustment

1.17.1 The Hon'ble DRP/ learned AO / TPO have erred in not appreciating that the Appellant operates at less than normal risks as compared to comparable companies, which carry higher risks and accordingly erred in not granting appropriate risk adjustments.

1.17.2 The Hon'ble DRP/ learned AO / TPO have erred in concluding that there exists a single customer risk and that such a risk nullifies any risk adjustment that could be provided. Further, the Hon'ble DRP/ learned AO / TPO have erred in concluding that there is no reliable method to compute the risk adjustment.

1.17.3 The Hon'ble DRP/ learned AO / TPO have erred in law and on facts by not providing reasons for rejecting the methodology/ workings provided by the Appellant for computing the risk adjustment.

1.18 Other TP related grounds

1.18.1 The Hon'ble DRP/ learned AO/ TPO have failed to appreciate the Appellant's commercial judgment about the application of arm's length principle which is tied to the business realities.

1.18.2 The Hon'ble DRP/ learned AO/ T PO have erred in law and on facts, in making several observations and findings, which are based on incorrect interpretation of law and contrary to facts of the case.

1.18.3 The Hon'ble DRP/ learned AO/ T PO have erred by not carrying out the determination of arm's length price as required under section 92C of the Act read with Rule IOD of the Rules.

1.18.4 The Hon'ble DRP/ learned AO/ TPO have erred in making a transfer pricing adjustment at the entity level instead of restricting the adjustment to the cost of international transaction.

2. Disallowance under section 14A of the Act

2.1 The Honorable DRP and the Learned AO have erred in law and on facts in upholding the disallowance of INR 37,250 under section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 ("the Rules") in connection with the investment of funds largely in its group companies.

2.2 The Honorable DRP and the Learned AO have erred in law and on facts in disallowing an amount of INR 37,250 under section 14A of the Äct by mechanically applying Rule 8D when there is no basis to reject the Appellant's claim that no expenditure was incurred for earning exempt income.

2.3 The Honorable DRP and the Learned AO have erred in law and on facts in not considering the contention of the Appellant that there was no exempt income earned in the first place and consequently no expenditure could have been incurred for earning exempt income during the relevant AY and hence the applicability of section 14A of the Act does not arise.

2.4 The Honorable DRP and the Learned AO have erred in not considering the decision of the Honorable Bangalore ITAT in Appellant's own case for AY 2009-10, AY 2010-11, AY 2011-2012, AY 2014-15, AY 2015-16 and the judgement of Commissioner of Income Tax (Appeals) [CIT(A)] for AY 2013-14, wherein the disallowance made under section 14A of the Act, on similar facts has been deleted.

3. Disallowance under section 40(a)(i) of the Act towards reimbursement of salary cost:

3.1 The Honorable DRP and the Learned AO have erred in law and on facts in treating the reimbursement of salary costs of INR 105,56,43,624, as constituting 'consideration' for the alleged services being provided by the Appellant's overseas associated enterprise i.e., Goldman Sachs & Co ("GS & Co"), a resident of United States of America ("USA").

3.2 The Honorable DRP and the Learned AO have erred on facts by not taking into cognizance the information Fmitted by the Appellant during the course of subject proceedings and further erred in concludin4that the Appellant has failed to establish the employer-employee relationship with the expatriate employees.

3.3 The Honorable DRP and the Learned AO have erred on facts in holding that the Appellant had entered into a Secondment Agreement with GS & Co, whereas no such agreement exists between the Appellant and GS & Co.

3.4 The Honorable DRP and the Learned AO have erred on facts by not appreciating that the payment was not towards rendition of any service but represents mere reimbursement of salary and other related costs on a 'cost-to-cost' basis.

3.5 The Honorable DRP and the Learned AO have erred in law and on facts in concluding that the reimbursement of salary costs to GS & Co amounted to payment towards Fees for Technical Services ("FTS") under explanation 2 to section 9(1)(vii) of the Act.

3.6 The Honorable DRP and the Learned AO have erred in law and on facts in concluding that the aforesaid reimbursements paid by the Appellant to GS & Co are also taxable as FTS or as Fees for Included Services ("FIS") under the double taxation avoidance agreement between India and USA and consequently holding the Appellant liable to deduct tax at source under section 195 of the Act, from the said payments.

3.7 The Honorable DRP and the Learned AO have erred in law and on facts in upholding the requirement of TDS under section 195 of the Act despite the salary payments having already suffered TDS under section 192 of the Act, giving rise to double taxation on the same transaction.

4. Disallowance of corporate social responsibility expenses claimed as deduction under section 80G of the Act

4.1 The Honorable DRP and the learned AO have erred in law and on facts in disallowing an amount of INR 2,81 ,50,000 claimed as deduction under section 80G of the Act, holding that the deductions were in respect of contributions towards Corporate Social Responsibility ("CSR") of the Appellant.

4.2 The Honorable DRP and the learned AO have erred in law by concluding that the deduction under section 80G of the Act is available only for the payments grouped as donations and not for CSR contributions.

4.3 The Honorable DRP and the learned AO have erred by concluding that the deduction under section 80G of the Act is only with respect to donations and not with respect to CSR contributions wherein there is no explicit provisions under the law to disallow the claim under section 80G of the Act, in respect of CSR contributions.

4.4 The Honorable DRP and the learned AO have erred in law by disregarding the fact that the deductions availed under section 80G of the Act pertained to eligible payments specified under section 80G of the Act.

4.5 The Honorable DRP and the learned AO have erred in law and on facts in stating that the amount grouped under CSR contributions has not been paid by the Appellant on a voluntary basis, and hence the same is not eligible to be claimed as deduction under section 80G of the Act.

4.6 Without prejudice to the above, the Honorable DRP and learned AO have erred in law in disallowing an amount of INR 2,81 ,50,000 under section 80G of the Act, however in the computation sheet, annexed to the order the total amount of disallowance under section 80G is INR 3,01,02,815.

As a result, the total income computed as per the computation sheet is reflected at INR 6,28,91,24,614 instead of INR 6,28,71,71,804. Since, there is an additional disallowance of amount of INR 19,52,815 (i.e. INR 3,01,02,815 less INR 2,81,50,000) the relief of the said amount shall be granted to the Appellant.

4.7 The Honorable DRP and learned AO erred in not appreciating the fact that the Honorable Income tax Appellate Tribunal (lTAT) in Assessee's own case [M/S Goldman Sachs Services Private Limited v. JCIT (Special Range 3) [2020] (IT (TP)A No 2355/Bang/2019) (Bangalore ITAT)] has decided the issue with respect to deduction under section 80G in Assessee's favour for AY 201516.

4.8 The learned AO has erred in levying consequential interest under section 234B of the Act by considering the disallowance under section 80G of the Act amounting to INR 3,01,02,815 vis-a-vis actual amount of disallowance under section 80G amounting to INR 2,81,50,000

5. Non-allowability of additional claim filed by the Appellant pertaining to deduction of education cess amounting to INR 3.10.24.528

*5.1 The Honorable DRP and learned AO have erred in law and on facts in not allowing the additional claim filed by the Appellant pertaining to deduction of education cess paid on income-tax amounting to INR*3.10.24

5.2 Without prejudice to the above, upon adjudication, where your Honours decide the aforesaid Ground No. 7 in favour of the Assessee and any other grounds of against the Assessee,, then the Assessee humbly request your Honour to allow the deduction of total education cess on income-tax after considering the additional education cess payable on the tax effect relating to such ground(s) of objections which is/ are so decided against the Assessee.

6. Rectification of mistakes apparent from record in the final assessment order

6.1 The learned AO erred in not considering the fact that GSSPL has incurred long term capital losses during th year under consideration amounting to INR 4,68,13,487 on sale of asset and accordingly GSSPL has carried forward such losses to the subsequent assessment years. However, on the perusal of the computation sheet which is annexed to the order in Row No 18, the loss in current year to be carried forward is reflected as NIL.

6.2 The learned AO erred in not considering the fact that during the year under consideration, the books profits of GSSPL and corresponding tax liability under section 115JB of the Act amounts to INR 3,45,53,26,729 *and INR 73,* 4,22,009 *respectively.*

6.3 However, in the computation sheet annexed to the order the books profits and corresponding tax liability under section 115JB of the Act has been erroneously mentioned as INR 3,45,48,27,552 and INR 73,73,15,477.

7. Error in initiating penalty proceedings u/s 271(1)(c) of the Act

7.1 On the facts and circumstances of the case, the learned AO erred in initiating penalty proceedings under section 271(1)(c) of the Act for the above adjustments.

Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Hon'ble Income Tax Appellate Tribunal to decide this appeal according to law."

2. The issues in Ground Nos.1 to 1.8 are settled by Advance Pricing Agreement dated 30.1.2023 & 16.2.2024. Hence, assessee made an endorsement vide letter dated 1.4.2024, stating that these grounds are not pressed. In view of this, these grounds are dismissed as not pressed.

3. The issues in Ground Nos.2 to 2.4 are relating to disallowance u/s 14A of the Income Tax Act, 1961 (in short "The Act"). At the time of hearing, ld. A.R. submitted that the issue came before this Tribunal in assessment year 2015-16 in IT(TP)A No.2355/Bang/2019 dated 15.6.2020, wherein held as under:

"15. The learned Authorized Representative submitted that the Assessing Officer has disallowed under Section 14A r.w. Rule 8D(2)(iii), where the assessee has disclosed investment of Rs.1,44,00,000/-.Since these investments need a potential Advisor to earn exempted income, the Ao computed disallowance under Rule 8D(2)(iii) ofRs.1,37,500 based on the disclosures in the Balance Sheet. But the assessee company has not yielded any exempted income nor dividend income in the financial year and the Ld Ar referred to the disclosures in the Paper Book, financial statements at page 20 Schedule 3.17,were there is no dividend nor exempted income received as per profit and loss account. Further similar disallowance was deleted in assessee own case for the Assessment Year 2014-15 as no dividend income has been earned on investments. The learned Authorized Representative relied on the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT 378 ITR 33 (Del) where the Hon'ble High Court has held that unless and until exempted income is received for the concerned assessment year, the provisions of Section 14A of the Act are not applicable. we find the co-ordinate Bench of the Tribunal in assessee own case in IT(TP)A No.3244/Bang/2018 for the Assessment Year 2014-15 has dealt at pages 46 & 47 para 8 of the order as under :

" 8. Ground No. 4 raised by assessee is in respect of disallowance made by Ld.AO under section 14 A of the Act.

8.1. *At the outset Ld.AR submitted that there is no exempt income during the year under consideration and therefore no disallowance could be computed under section 14 A by applying rule 8D. In support of his contentions he placed reliance on a recent ruling by Hon'ble Madras High Court in case of CIT vs Chittinad Logistics Ltd reported in (2018) 18 Taxmann.com 221. It is also been submitted that Hon'ble Supreme*

Court has dismissed SLP filed by revenue in this case which has been reported in (2018) 95 Taxmann.com 250.

8.2. *Ld. CIT DR placed reliance upon orders passed by authorities below.*

8.3. *We have perused submissions advanced by both sides in light of records placed before us. Admittedly, there is no exempt income earned by assessee during the year, as has been noted by Ld.AO in impugned order. Under such circumstances, ratio of Hon'ble Madras High Court which has been approved by Hon'ble Supreme Court in case of Chittinad Logistics Ltd (supra) is squarely applicable. Respectfully following the same we direct Ld.AO to delete addition made under section 14 a read with rule 8D for year under consideration. Accordingly, this ground raised by assessee stands allowed."*

We found that there is no exempted income earned by the assessee company in the current financial year. We accordingly, follow the judicial precedence and direct the A.O. to delete the addition and allow the ground of appeal of the assessee."

3.1 In view of the above order of the Tribunal, we inclined to remit the issue to the file of ld. AO to decide the issue in the light of above order of the Tribunal.

4. The issue in Ground Nos.3 to 3.7 is relating to disallowance u/s 40(a)(ia) of the Act.

4.1 After hearing both the parties, we are of the opinion that the same issue came for consideration for the AYs 2011-12 to 2014-15 & 2015-16 to 2018-19 with regard to invoking the provisions of section 201(1) of the Act on this payment in ITA No.362 to 369/Bang/2020 dated 29.4.2022, wherein the Tribunal held as under:

"36. Respectfully following the above views expressed by Hon'ble Karnataka High Court in DIT vs. Abbey Business Services India (P.)Ltd.(supra), Hon'ble AAR in Cholamandalam MS General Insurance Co. Ltd. (supra), Hon'ble Bombay High Court in case of Marks & Spencer Reliance India Pvt.Ltd. vs. DIT (supra), Hon'ble Delhi High Court in the case of DIT Vs. HCL Infosystems Ltd. (supra), Coordinate bench of this Tribunal in case of IDS Software Solutions vs. ITO (supra), Hon'ble Pune Tribunal in case of M/s.Faurecia Automative Holding(supra), Hon'ble Ahmedabad Tribunal in the case of Burt Hill Designs (P) Ltd. vs. DDIT(IT) (supra), we are of the view that the reimbursement made by the assessee in India to overseas entity, towards the seconded employees cannot be regarded as "Fee For technical Services"

Once there is no violation of provision of section 195, assessee cannot be held to be an assessee in default under section 201(1) of the Act for all the years under consideration. We therefore direct the Ld.AO to delete the interest levied under section 201(1A) of the Act for all the years under consideration.

In the result, the appeal filed by the assessee for all the years under consideration stands allowed."

4.2 Further, in AY 2015-16 in IT(TP)A No.194/Bang/2023 vide order dated 25.5.5023, the Tribunal held as under:

"11. The next issue for consideration is disallowance u/s. 40(a)(ia) of Rs.48,25,91,738 in respect of secondment of employees. The ld. AR submitted that the reimbursement of salary was on cost-to-cost basis and there was no element of profit/income/mark-up. The revenue authorities have erroneously held that the reimbursement of salary cost of seconded employees to AEs amounted to payment in respect of technical services which made available the technical knowledge and hence taxable as "fees for included services" under the relevant treaty without taking cognizance of the documents submitted by the assessee. Without prejudice to the above, the ld. AR submitted that the managerial services are not covered within the ambit of fees for included services under the relevant tax treaty. He further submitted that the revenue authorities upheld the requirement of TDS u/s. 195 despite the fact that the salary payments have already suffered TDS u/s. 192 of the Act and double taxation is not permissible under the provisions of the Act. The ld. AR submitted that in the assessee's own case for the very same assessment year i.e., AY 2015-16 has deleted the addition in this regard in ITA Nos. 362 to 369 & 338 to 345/Bang/2020 for the AYs 2011-12 to 2018-19."

4.3 In view of the above order of the Tribunal, we inclined to decide the issue in favour of the assessee against the revenue. This ground of the assessee is allowed.

5. The issue in Ground No.4 is with regard to deduction u/s 80G of the Act on CST Tribune. This issue came for consideration before this Tribunal in AY 2015-16 in IT(TP)A No.2355/Bang/2019 dated 15.6.2020, wherein 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 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 assesses 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 Act. We consider it appropriate to refer to the Clauses (iiihk) & (iiihl) of subsection 2 of Section 80G of the Act which are read as under :

"(iiihk) 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 (iiihl) 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 hearing and shall co-operate in submitting the information and we allow the ground of appeal of the assessee for statistical purposes."

5.1 In view of the above order of the Tribunal, we inclined to decide this issue in favour of the assessee and this ground of the assessee's appeal is allowed.

6. Ground No.5 is not pressed and hence, dismissed as not pressed.

7. With regard to ground No.6, this ground is required to be examined at the end of ld. AO and he has to decide whether there is any carry forwarding of earlier loss in any assessment year and given effect to the same in accordance with law. Ordered accordingly.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25th Apr, 2024

Sd/-	**Sd/-**
(Keshav Dubey)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 25th Apr, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.