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

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

आयकर अपील सं./ITA No. 362/JP/2023
निर्धारण वर्ष/Assessment Years : 2018-19

Gangaur Exports Private Limited, Jaipur	बनाम Vs.	The Principal Commissioner of Income Tax, Jaipur-2
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG 8877 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Sanjeev Kumar Mathur, CA
राजस्व की ओर से/ Revenue by : Sh. Arvind Kumar (CIT)

सुनवाई की तारीख/ Date of Hearing : 25/04/2024
उदघोषणा की तारीख/Date of Pronouncement: 30/05/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Principal Commissioner of Income Tax, Jaipur-2, dated 30/03/2023 [here in after ld. PCIT] for assessment year 2018-19 which in turn arise from the order dated 01.02.2021 passed under section 143(3) r.w.s. 143(3A) & 143(3B) of the Income Tax Act, by the assessing officer.

2. In this appeal, the assessee has raised following grounds: -

"1. Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the assessment order dated 01.02.2021 as erroneous as well as prejudicial to the interest of revenue.

2. Ld. Pr.CIT has erred in law and on facts in setting aside the impugned assessment order dated 01.02.2021without considering the fact that all the details/information/evidences were available on the record at the time of assessment proceedings.

3. Ld. Pr.CIT has erred in law and on facts in holding that the deduction claimed u / s 80G of the act, 1961, on account of CSR contribution made to Prime Minister's National Relief Fund is not allowable without considering the provisions of Sec 80 G of the act and the fact that section 37 and section 80G of the Income Tax Act, 1961 are different and mutually exclusive.

4. Ld. Pr.CIT has erred in law and on facts in holding that the deduction claimed u / s 80G of the act, 1961,on account of CSR contribution made to Prime Minister's National Relief Fund is not allowable without considering the fact that such contribution is eligible for deduction u/s Sec 80 G(2)(a) (iiia) of the act and specific ineligibility as mentioned in case of contribution made to Swach Bharat Kosh U / s Sec 80G(2)(a) (iiihk) and Clean Ganga Fund U / s Sec 80G(2)(a) (iiihl) on account of sum spent in pursuance of CSR under sub section 5 of Sec135 of the Companies act, 2013 has not been mentioned in Sec 80 G(2)(a)(iiia) of the act.

5. The Petitioner craves the right to add, alter or in any way amend the grounds of appeal on or before the hearing of the appeal."

3. Succinctly, the fact as culled out from the records is that Return of income for the A.Y. 2018-19 was electronically furnished on 26/10/2018 by the assessee disclosing total income at Rs. 29,84,04,150/-. During the year under consideration, the assessee company has engaged in the business of manufacturing of readymade garments, home furnishing and engaged in generation of electricity through wind mills. The assessee company has

also engaged in the trading of handicraft items.The case of the assessee was selected for Limited Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

S. No. Issues

i. Refund Claim

ii. Deduction from Total Income under Chapter VI-A

3.1 Subsequently to the selection for scrutiny notice u/s 143(2) was issued and sent on 23/09/2019. Thereafter, notices under section 142(1) along with questionnaire were issued to the assessee, in response to which the assessee has submitted the requisite details through e-proceedings. The assessment was completed vide order dated 01/02/2021 wherein disallowance of Rs. 8,59,251/- out of the deduction claimed u/s. 80IA of the Act claimed by the assessee was disallowed.

4. On culmination of the assessment proceedings the ld. PCIT has called for the records for examination. The ld. PCIT on perusal of the assessment records, noticed that the assessee had incurred expenditure under the head of corporate social responsibility of □67,50,000 and further the same was claimed as a deduction under section 80G of the act while

completing the assessment the faceless assessing officer has allowed the deduction under section 80G of the Act amounting to □67,50,000 being CSR expenditure added back from the total income. As per the explanation 2 to 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 purpose of the business or profession. Thus, the expenditure of □67,50,000 was not allowable. This expenditure has been then claimed under section 80G, since the expenditure was disallowed under a particular section could not have been allowed under another section. Further it is seen that the faceless assessing officer has not examined or verified the deduction claimed under section 80G and allowed the same without verification.

4.1 Considering this facts, a show cause notice u/s. 263 of the Act was issued to the assessee on 23.02.2023 requiring the assessee to explain as to why the assessment order passed by NeAC on 01.02.2021 may not be revised u/s. 263 and may not be treated as erroneous and prejudicial to the interest of the revenue. In response, the assessee has filed a reply on

03.03.2023 agitating the proposed revision of the assessment order passed u/s. 143(3) of the Act.

4.2 The ld. PCIT considered the submissions filed by the assessee and in the facts and circumstances of the case he find that the contentions of the assessee are not tenable. Because the expenditure incurred for CSR is considered as application of Income and hence has been disallowed from section 37 of the IT Act1961. Once the income is considered as applied on CSR, the same cannot be considered to have been utilized for donation u/s 80G of the Act. Further, CSR is a statutory responsibility cast by the Government on certain Corporates to render Social responsibility to the society whereas donations involve an element of Charity and free will to donate those amounts. Hence the expenditure incurred for CSR cannot be again claimed for donations to a charitable trust and claim deduction on the same. Thus, this aspect was not examined by the AO at all. In view of the same, the order of the AO is found to be erroneous and thus prejudicial to the interest of Revenue and based on that aspect of the matter he order as under :

> Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of the Income Tax Act 1961, I hold that the order under Section 143 (3) of the IT Act dated 01.02.2021 for AY 2018-19 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of

revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue of deduction u/s 80G in respect of CSR expenditure. The order of the Assessing Officer is therefore liable to revision. Hence, the assessment order is set aside on the issue as discussed above. The AO is directed to examine the issue and pass suitable order after according opportunity of being heard to the assessee.

5. Feeling dissatisfied from the order of the ld. PCIT, the assessee has preferred the present appeal on the grounds as raised and reproduced in para 2 above. In support of the various grounds so raised by the ld. AR of the assessee, has filed the written submissions and the same is reproduced herein below:

"Brief fact of the case

The petitioner is a Company registered under the Companies act,2013. During the F.Y 2017-18 the Company made CSR contribution amounting to Rs 67,50,000/- to Prime Minister's National Relief Fund. While computing the total income, the Company disallowed the CSR expenditure as it is not allowable as per explanation 2 to sub section(1) of section 37 of the Income tax act,1961 But claimed deduction u/s 80 G of the Income tax act,1961 as it is allowable u/s 80G(2)(a)(iiia)of the act. TheLd AO allowed the deduction in the assessment u/s 143(3) of the Income tax act,1961. Subsequently the PCIT,Jaipur 2 issued a notice u/s263of the act(copy enclosed as paper book page no 11 to 12). The Assessee submitted a reply to the notice vide letter dated 2.03.2023 (copy of the letter is enclosed as paper book page 8 to 10).The PCIT passed an order u/s 263 of the act and vide para 6 of the order held as under ''Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of income tax act 1961. I hold that the order under Section 143 (3) of the IT Act dated 01.02.2021 for AY 2018-19 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue of deduction u/s 80G in respect of CSR expenditure. The order of the Assessing Officer is therefore liable to revision. Hence, the assessment order is set aside on the issue as discussed above. The AO is directed to examine the issue and pass suitable order after according opportunity of being heard to the assesse''.

The Pr. CIT passed an order without considering the fact that in case of CSR contribution specific ineligibility is expressly provided in case of contribution made to Swatch Bharat Kosh u/s 80G(2)(a)(iiihk) and Clean Ganga Fund U/s 80G(2)(a)(iiihl) of the act, whereas assessee made contribution to Prime Minister's National Relief Fund U/s 80 G(2)(a)(iiia) of the Income tax act,1961 and section 37(1) and section 80 G of the act are different and mutually exclusive.

Our Submission to the Grounds of appeals are as under

Ground 1&2

Ground 1

Ld. Pr.CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the assessment order dated 01.02.2021 as erroneous as well as prejudicial to the interest of revenue.

Ground 2

Ld. Pr.CIT has erred in law and on facts in setting aside the impugned assessment order dated 01.02.2021 without considering the fact that all the details/information/evidences were available on the record at the time of assessment proceedings.

Our Submission

The Ld. A.O at the time of assessment u/s 143(3) of the act has examined and verified all the deduction claimed u/s 80G of the Income tax act,1961. Ld AO vide query no 3(vi) of Annexure to the notice under sub section (1) of Section 142 dated 16.12.2020 sought the detail of claim of deduction U/s 80G of the act , the ld AO also called the Computation of total income vide query no 3(ii) of the Annexure. The assessee vide his reply dated 09.01.2021 submitted the details of contribution made to Prime Minister's National relief Fund alongwith Receipt issued by the Fund and also submitted the Computation of total Income wherein expenditure on Corporate Social Responsibility is added back to the Income from business or profession and the same is claimed as deduction U/s 80G of the act.

(Copy of the notice u/s 142(1) of the act alongwith submission is enclosed as additional paper book page No. 40 to 46).

Ground No 3&4

Ground 3

Ld. Pr.CIT has erred in law and on facts in holding that the deduction claimed u/s 80G of the act,1961, on account of CSR contribution made to Prime Minister's National Relief Fund is not allowable without considering the provisions of Sec 80

G of the act and the factthat section 37 and section 80G of the Income Tax Act, 1961 are different and mutually exclusive.

Ground 4

Ld. Pr.CIT has erred in law and on facts in holding that the deduction claimed u/s 80G of the act,1961,on account of CSR contribution made to Prime Minister's National Relief Fund is not allowable without considering the fact that such contribution is eligible for deduction u/s Sec 80 G(2)(a)(iiia) of the act and specific ineligibility as mentioned in case of contribution made to Swach Bharat Kosh U/s Sec 80G(2)(a)(iiihk) and Clean Ganga Fund U/s Sec 80G(2)(a)(iiihl) on account of sum spent in pursuance of CSR under sub section 5 of Sec135 of the Companies act,2013 has not been mentioned in Sec 80 G(2)(a)(iiia)of the act.

Our Submission

We submit that the Expenditure incurred on Corporate Social responsibility referred to in sec 135 of the Companies act, 2013 is not allowable under section 37(1) of Income tax act,1961 as business expenditure but CSR contribution made to funds as specified in sec 80 G except contribution made to Swach Bharat Kosh and clean Ganga Fund (iiihk) and (iiihl) of clause (a) of sub section (2) of section 80 G of the act, are qualified as deduction u/s 80 G of the Income tax act.

The Assessee made contribution of Rs 67,50,000/- to Prime Minister's National Relief fund U/s 80G(2)(a)(iiia) of the act to fulfill its CSR obligation , though CSR expenditure is not allowable u/s 37(1) of the Income tax act therefore added back while computing the Income from Business & profession but such contribution is eligible for claiming deduction under clause (iiia) of sub section 2 of section 80 G of the Income tax act,1961 therefore claimed as deduction U/s 80G of the act.(Copy of Computation of total Income is enclosed as paper book page no 18 to 22). We submit that both the sections are different, as section 37 of the act is in regard to allowability of business expenditure whereas sec 80 G of the act is in respect of deduction in respect of certain payments.

We draw attention to clause(iiihk) and clause (iiihl) of clause (a) of sub section (2) of sec 80 G of the act,where it is specifically mentioned that amount spent by the asseseee in pursuance of Corporate Social Responsibility under sub section 5 of section 135 of the Companies act,2013 is not eligible for deduction but such restriction in respect of clause (iiia) of clause (a) of sub section(2) of sec 80 G of the act had not been placed by Legislature, which clarifies the position that the amount spent for CSR and contributed to Prime minister's national relief fund is eligible for deduction U/s 80 G of the Income tax act,1961.

We refer the case law in the matter of M/s INFINERA INDIA PVT. LTD vs. JOINT COMMISSIONER OF INCOME TAX SPECIAL RANGE. Wherein the honorable ITAT BANGALORE BENCH B held as under;

"14. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, 'Income form 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 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. Forclaiming benefit under section 80G, deductions are considered at the stage ofcomputing "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 form 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 fulfillment 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 notform part of profit and loss account for computing Income under the head, "Income fromBusiness 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."

7.5 Following the above said decision, we direct the A.O. to allow deduction u/s 80G of the Act in respect of contributions made under CSR scheme, after examining the claim of the assessee that the said payments are eligible for deduction u/s 80G of the Act."

(Copy of the Case law is enclosed as additional paper book page No 47 to 69)

We also refer the case law in the matter of JMS MINING PVT.LTD vs PRINCIPAL COMMISSIONER OF INCOME TAX(2021) 62CCH0352KolTrib (Copy of the case law is enclosed for your reference as additional paper book page no 54 to 69)

Keeping in view of the above submission we request the Hon'ble bench to kindly set aside the order passed by Ld Principal CIT u/s 263 of the Income tax act,1961."

6. During the course of hearing the ld. AR of the assessee vehemently argued that the issue that the PCIT has raised has already been raised by the ld. AO and he has verified the claim at the time of assessment u/s 143(3) of the act. He further submitted that the ld. AO vide query no 3(vi) of Annexure to the notice under sub section (1) of Section 142 dated 16.12.2020 sought the details of the claim of deduction U/s 80G of the Act. The ld. AO also called the Computation of total income vide query no 3(ii) of Annexure. The same was replied on 09.01.2021 submitting the details of contribution made to Prime Minister's National relief Fund along with Receipt issued by the Fund and also submitted the Computation of total Income wherein expenditure on Corporate Social Responsibility is added back to the Income from business or profession and the same is claimed as deduction U/s 80G of the act. Thus, when the issue which the ld. PCIT is raising has already been verified the PCIT has jurisdiction to make review

and the order of the PCIT does not satisfy the twin condition given in the provision of section 263 of the Act.

7. The ld. DR is heard who relied on the findings of the ld. PCIT recorded in his order. The ld. DR submitted that the ld. AO has not examined the aspect of the matter that the expenditure incurred for CSR is considered as application of income and hence been disallowed as per provision of section 37 of the Act. Once the same is considered as disallowable the assessee cannot consider it again. To drive home to this contention, he supported the fact that is recorded in the order of the PCIT that the Finance Act 2014 has categorically debarred the deduction. Based on this contention the ld. DR supported the order of the ld. PCIT.

8. We have heard the rival contentions and perused the material placed on record. The brief facts as emerges from the orders of the lower authority that the assessment in this case was selected under CASS and one of the issue is to verify the deduction from total income under chapter VIA. The ld. AO has verified that aspect of the matter and also made addition u/s. 80IA of the Act. While do so the ld. AO at the time of assessment has also examined and verified the deduction claimed u/s 80G of the Income tax act,1961 and for that he vide query no 3(vi) of Annexure to the notice under

sub section (1) of Section 142 dated 16.12.2020 sought the detail of claim of deduction U/s 80G of the Act. The ld. AO also called the Computation of total income vide query no 3(ii) of the said notice. The assessee vide his reply dated 09.01.2021 submitted the details of contribution made to Prime Minister's National relief Fund along with Receipt issued by the Fund and also submitted the Computation of total Income wherein expenditure on Corporate Social Responsibility is added back to the Income from business or profession and the same is claimed as deduction U/s 80G of the Act. [Copy of the notice u/s 142(1) of the act along with submission placed in the paper book page No. 40 to 46 filed]. After completion of the assessment, as per provision of section 263 of the Act while examining the assessment record in the case of the assessee ld. PCIT noted that the assessee had incurred expenditure under the head of corporate social responsibility of □67,50,000 and further the same was claimed as a deduction under section 80G of the act while completing the assessment the faceless assessing officer has allowed the deduction under section 80G of the Act amounting to □67,50,000 being CSR expenditure added back from the total income. As per the explanation 2 to 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 purpose of the business or profession. Thus, the expenditure of □67,50,000 was not allowable. This expenditure has been then claimed under section 80G, since the expenditure was disallowed under a particular section could not have been allowed under another section. Further it is seen that the faceless assessing officer has not examined or verified the deduction claimed under section 80G and allowed the same without verification. Considering this facts, a show cause notice u/s. 263 of the Act was issued to the assessee on 23.02.2023 requiring the assessee to explain as to why the assessment order passed by NeAC on 01.02.2021 may not be revised u/s. 263 and may not be treated as erroneous and prejudicial to the interest of the revenue. In response, the assessee has filed a reply on 03.03.2023 agitating the proposed revision of the assessment order passed u/s. 143(3) of the Act. The ld. PCIT considered the submissions filed by the assessee and in the facts and circumstances of the case he find that the contentions of the assessee are not tenable and therefore, he exercised the power u/s. 263 of the Act and directed the ld. AO to examine the issue and pass suitable order after affording opportunity of being heard to the assessee. The assessee has challenged the invocation of power u/s. 263 of the Act stating that the issue that the ld. PCIT has raised has already been

enquired upon and the ld. NeAC has applied mind on the aspect of the matter that is raised by the PCIT and therefore, the law does not empower the ld. PCIT to review the order of the NeAC(ld.AO). On the aspect of the matter the bench noted from the submission of the assessee that the ld. NeAC(ld. AO) has called for the computation of income of the assessee and also called for the details of the deduction claimed u/s. 80G of the Act specifying the (i) stamped payment receipt with details like name, address and PAN of the trust, amount donated and name of the doner, (ii) Evidence of proof of donation by non cash means and (iii) Proof of donee's registration under 80G. This information was provided and verified by the ld. AO and thereafter he applied mind on the issue and has allowed the claim of the assessee. The bench also noted from the observation of the ld. PCIT that she has raised the objection on the count that the assessee had incurred expenditure under the head corporate social responsibility and further the same was claimed as a deduction u/s. 80G of the Act. She further noted that as per explanation 2 to 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 purpose of the business or profession. Thus, the expenditure of □67,50,000

was not allowable. This expenditure has been then claimed under section 80G, since the expenditure was disallowed under a particular section could not have been allowed under another section. Further it is seen that the faceless assessing officer has not examined or verified the deduction claimed under section 80G and allowed the same without verification. As against these observations the ld. AR of the assessee submitted that the issue being verified by raising the specific query and has taken a view that is a plausible view of the matter. Thus, on this issue the ld. FAO has taken a plausible view of the matter and ld. PCIT failed to observe any error on the claim of the assessee. The assessee in the proceeding before her categorically deal with the aspect of the matter that why even though the claim is disallowable u/s. 37(1) of the Act the same is allowable u/s. 80G of the Act so far as it relates to the contribution made to the Prime Minister Relief Fund. The assessee also in support of the contention relied upon the decision in the case of M/s. INFINERA India P. Ltd. Vs JCIT and JMS Mining P. Ltd. Vs. PCIT 62 CCH 352. The ld. PCIT has not dealt with the important aspect of the matter raised by the assessee and has the order passed by the ld. AO as erroneous and prejudicial to the interest of the revenue. Thus, without doing so we are of the considered view that the issue has been carefully examined by the FAO while passing the order u/s

143 of the Act and that too under the team based faceless assessment scheme framed by the Board. There are plethora of decisions that when the Assessing Officer has considered the issue on hand and has taken a plausible view of the matter merely the Assessing Officer ought to have been verified the other facet on the issue and same is not mentioned in the order it does not tantamount that order is erroneous and prejudicial to the interest of the revenue and thus cannot support the invocation of provisions of Section 263 of the Act. In fact the provision of section 263 of the Act nowhere allow to challenge the judicial wisdom of the ld. AO or to replace the wisdom of the PCIT in the guise of revision unless the view taken by the ld. AO is not at all sustainable in the law. The extent of the enquiry can be stretched to any level by forcing the AO to go through the assessment process again and again and that case there cannot be a finality of the issue. Here in this case it is noted by the bench that on the issue raised the judicial precedent are in favour of the assessee when the assessment is completed and the ld. AO has taken a plausible of the matter and concluded the limited assessment the order of the FAO cannot be considered as erroneous or prejudicial. The co-ordinate bench of this tribunal in the case of Annu Agrotech Private Limited in ITA NO. 09/JP/2021 already taken a view that in case of limited scrutiny, scope of examination

of the AO is restricted towards the reasons for which the case of the assessee was selected. AO cannot proceed to examine the issues, which are beyond the scope of the limited scrutiny. The bench also noted that the assessee has cited the judicial precedent stating that the view taken by the ld. AO is not erroneous or prejudicial and the claim of the assessee is withing the four corner of the law. Therefore, we are of the view that the issues which are already settled on those issues there cannot be applied the provision of the section 263 of the Act. Not only that, the order has been passed in this case by NeAC where there are as much as four units i.e. Assessment unit, Verification unit, Technical unit and Review unit.

9. The prerequisite for exercising the jurisdiction by the learned Principal CIT under section 263 of the Act is that the order of the AO is established to be erroneous in so far as it is prejudicial to the interest of the Revenue. The ld. PCIT has to be satisfied of twin conditions, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent i.e., if the assessment order is not erroneous but it is prejudicial to the Revenue, provision of section 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order

is erroneous as also prejudicial to Revenue's interest, than the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. It is pertinent to mention that if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the Pr. CIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. In this process even the AO has no power to review his own. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 159 CTR (SC) 1: (2000) 243 ITR 83 (SC). We also draw strength from the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. (2007) 213 CTR (SC) 266: (2007) 295 ITR 282 (SC) wherein it was held that:

> "The phrase 'prejudicial to the interests of the Revenue' in s. 263 of the IT Act, 1961, has to be read in conjunction with the expression 'erroneous' order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue. For example, when the

> AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."

10. Thus, based on this decision it is also noteworthy to mention that one of the pre-requisite before invoking S. 263 and the allegation of the Ld. PCIT is that there has been incorrect assumption of fact and law by the Assessing Officer. However, despite our deep and careful consideration of the material on record and the findings recorded in the order under challenge, we do not find any incorrectness and incompleteness in the appreciation of facts made by the ld. AO. In the light of these observations, we do not agree on this aspect to this extent with Ld. Pr. CIT.

11. As pointed out by the ld. AR of the assessee that on the similar set of facts the order passed u/s. 263 of the Act has been quashed by the co-ordinate bench of Mumbai in the case of Societe Generale Securities India P. Ltd. Vs. PCIT [177 taxmann.com 533] by holding that ;

> **5.** It is observed that *Explanation 2* to section 37(1) of the Act says that any expenditure relatable to the discharge of CSR is not business expenditure and cannot be allowed as such. On this aspect, there is no contradiction of the fact submitted by the assessee that in compliance with this requirement, the assessee does not claim any deduction of such amount spent as CSR under any of the provisions between sections 30 and 36 of the Act, and *suo moto* disallowed the same by adding it back to the profit and loss account. It is only thereafter the business income of the assessee is computed in accordance with the

principles laid down for computation of the profits and gains of business or profession in sections 28 to 44DB of the Act. By this, the assessee seeks compliance with *Explanation 2* of section 37 of the Act and, therefore, the revenue shall not have any grievance. Whether or not the assessee *suo moto* disallowed the amount spend towards the CSR while computing the business income is a verifiable fact.

6. After computing the business income, while computing the total income of the assessee, the assessee is invoking the benefit under Chapter VIA by claiming deduction of the sums under section 80G of the Act. According to the revenue, when once such sum went to satisfy the requirement of section 135 of the Companies Act, the benefit gets exhausted and such an amount is no more available for the purpose of claiming deduction under section 80G of the Act. There is no express provision to support the contention of Revenue. On the other hand, section 80G (2) (*iiihk*) and (*iiihl*) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as a part of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(*iiihk*) and (*iiihl*) of the Act. As stated above, clue can be had from the restrictions by way of section 80G (2) (*iiihk*) and (*iiihl*) of the Act. *Explanation 2* to section 37(1) of the Act which denies deduction for CSR expenses by way of business expenditure is applicable only to extent of computing 'business income' under Chapter IV-D of the Act and; it could not be extended or imported to CSR contributions which was otherwise eligible for deduction under Chapter VI-A of the Act.

7. Where the deduction under section 80G of the Act is also disallowed, since CSR qualifying donations are not 'voluntary contributions', it will be a double jeopardy in the case of assessee. Assessee cannot be denied the benefit of claim under Chapter VIA of the Act, which is considered for computing 'Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, it would lead to double disallowance, which is not the intention of Legislature at all. Legislature on this matter simply dealing with the computation of total income under chapter IVD pertaining to "Income under the head Business and Profession" and not at all dealt with the eligibility of assessee to claim deduction u/s. 80G of the Act, falling in chapter VIA of the Act. It is further observed that genuineness of the transactions and identity of the donees are also not under challenge. All the payments were made through proper banking channel and appropriate donation receipts were also produced before the lower authorities and before us also.

8. As discussed and observed (*supra*), there is no bar for the assessee to claim benefit u/s. 80G of the Act, falling in Chapter VIA of the Act, we found observations of the Ld. PCIT

as untenable in law, in the result grounds raised by the assessee are allowed and order of Ld. PCIT passed u/s. 263 of the Act is set-aside.

9. In the result, appeal of the assessee is allowed.

Before us the ld. DR did not placed on record any other contrary decision on the issue and therefore, on being consistent to the view already taken we are of the considered view that the law and does not attract the clause (a) or (b) to explanation 2 of section 263 of the Act and thus, it is nothing but a change of opinion which is not permitted in the eyes of the law. In the light of the aforesaid discussion, we hold that the order of the PCIT is not in accordance with the provisions of section 263 of the Act as the twin conditions failed in this case and therefore, we vacate the order of the PCIT passed u/s. 263 of the Act.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30/05/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक/Dated:- /05/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Gangaur Exports Private Limited, Jaipur
2. प्रत्यर्थी/ The Respondent- PCIT, Jaipur-2
3. आयकर आयुक्त/ The ld CIT
4. आयकर आयुक्त(अपील)/The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 362/JP/2023)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar