

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SMT. KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2521/Mum/2024

Assessment Year: 2017-18

BNP Paribas 1, North Avenue Maker Maxity Bandra Kurla Complex Bandra East Mumbai - 400051 [PAN: AAACB4868Q]	Vs	Commissioner of Income Tax (International Taxation)-I, Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Niraj Sheth, A/R
Revenue by :	Shri A.R. Dhyani, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 16/07/2024
घोषणा की तारीख /Date of Pronouncement: 25/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the ld. CIT(IT), Mumbai-1, dated 27/03/2024, framed u/s 263 of the Act pertaining to AY 2017-18.

2. The sum and substance of the grievance of the assessee is that the ld. CIT erred in assuming jurisdiction u/s 263 of the Act and further erred in setting aside the assessment order dt. 08/04/2021 framed u/s 143(3) r.w.s. 144C(13) of the Act on the alleged ground that the assessment order was erroneous and prejudicial to the interest of the revenue.

3. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidence

brought on record duly considered in light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated the facts of the case are that, the assessee is a commercial bank having its head office in France. It has eight (8) branches in India and is involved in normal banking activities including financing of foreign trade and foreign exchange transactions. The return for the year under consideration was filed on 30/11/2017 declaring total income at Rs.7,10,44,21,630/-. The return was selected for CASS scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. The return of income was assessed at Rs.7,66,12,56,920/-, vide order dt. 08/04/2021 framed u/s 143(3) r.w.s. 144C(13) of the Act.

5. Assuming jurisdiction cast upon him by the provisions of Section 263 of the Act, the CIT(IT), Mumbai-1, issued a show-cause notice u/s 263 of the Act which reads as under:-

"I have called for and examined the records of IT proceedings in your case for A. Y. 2017-18. It is seen that the order passed u/s 143(3) of the Income Tax Act, 1961 by DCIT(IT)-1(3)(1) dated 08.04.2021 has been passed without making enquiries and verification which should have been made.

It is seen from computation of income that the assessee company has claimed deduction u/s 28G of the Act of Rs. 1,51,24,320/- against the donation of Rs. 3,02,48,620/-. Further, it is seen from the P&L account coupled with computation of income that the assessee has debited in P&L account under the 'CSR Expenses' and suo-moto disallowed the same amount of Rs. 3,02,48,620/- under CSR donation disallowed. However, the assessee company has claimed deduction u/s 80G of the Act against these donations paid @50% of Rs. 1,51,24,320/ This payment was made towards CSR expenses and not paid voluntarily to a donee, which is registered u/s 80G(5) of the Act. As expenditure for which deduction is claimed is purely CSR expenditure on which 80G deduction is not allowable as:

- *CSR expenditure by the assessee forms part of the mandatory requirement of the Companies Act and consequently not eligible for deduction u/s 80G of the Act.*
- *Allowing deduction under section 80G will result in subsidizing these expenses incurred by the corporate which is not the intent of the legislature.*

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Thus, CSR donation of Rs. 3,02,48,620/- is found to be not eligible for deduction u/s 80G of the Act. and accordingly, the deduction claimed @50% of Rs. 1,51,24,320/- is not allowable. In view of the above fact, AO has wrongly allowed the deduction claimed @50% of Rs. 1,51,24,320/-to the assessee, which is erroneous and prejudicial to the interest of the revenue.

In view of the above fact, I am of the considered view that the assessment order u/s 143(3) of the Act dated 08.04.2021 passed by the Assessing Officer is not only erroneous but prejudicial to the interest of revenue and need to be revised u/s 263 of the Act.

In the above matter, you are being given an opportunity to represent your case by fixing hearing on 22.03.2023 at 3.15 P.M. You are requested to submit your written submission in this regard or attend the office of the undersigned on the above mentioned address either in person or through your authorized representative."

6. The sum and substance of the notice issued by the Id. CIT is that CSR expenses is an application of income and not allowable for deduction u/s 37 of the Act. It is also not allowable as a deduction u/s 80G of the Act and since the AO has failed to make adequate enquiries and verifications, the assessment order framed by him tantamounts to being erroneous and prejudicial to the interest of the revenue.

7. All that we have to see is whether sufficient enquiry was made by the AO during the assessment proceedings. Vide notice dt. 18/11/2019 u/s 142(1) of the Act, the AO raised the following queries:-

"Sir/Madam/ M/s,

In connection with the assessment for the assessment year 2017-18 you are required to:

- a) Furnish or cause to be furnished on or before 21/11/2019 at 03:45 PM the accounts and documents specified overleaf.
- b) Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 21/11/2019 at 03:45 PM.

c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.

d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings be carried out either through your e-mail account or manually (if e-mail is not available)

e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Please submit the following details with proper documentary evidences and if not provided the reasons thereof. In absence of relevant details with proper documentary evidences, the same will be disallowed without any further opportunity.

1. Details of donation given and claimed as deduction. Need of donation for business purpose.
2. Chart of TDS deducted on other expenses claimed in P & L A/C.
3. Details of Other expenses and need of the same for business purpose.
4. Depreciation chart showing complete details of assets, new assets added, old assets sold and respectively depreciation claimed against these assets.
5. Details of law charges, these charges are paid to whom and TDS deducted thereon and need for the business of payments of law charges.
6. Insurance details assets wise, location wise and proof of payment made towards insurance premium.
7. Details of Salary & Wages paid, TDS deducted thereon and employee wise and nature of their duties rendered.
8. Details of Repairs to Building & paid to whom TDS deducted thereon, need for repairs is incidental to the business.
9. Details of Repairs to Machinery & paid to whom TDS deducted thereon, need for repairs is incidental to the business.
10. Details of Misc. Income and Income and nature of services rendered for earning these Misc. Income

Please submit the above mentioned details with proper documentary evidences on or before 21.11.2019."

8. The assessee filed detailed reply dt. 21/11/2019 which reads as under:-

"We refer to the notice dated 18 November 2019 issued under sub-section (1) of section 142 of the Act, (copy enclosed as Annexure 1), requesting for

information/documentation in connection with the return of income filed for the AY 2017-18

In this connection, we hereby submit the following:

1. Details of donation given and claimed as deduction. Need of donation for business purpose.

During the FY 2016-17, the Assessee has made donation to various parties aggregating to Rs 30,248,620, the details of which are enclosed as Annexure 2. The amount of Rs 30,248,620 has been added back to the net profit as per profit and loss account while computing income under the head 'Profits and gains of business or profession'.

An amount of Rs 15,124,310 representing 50% of the aforesaid amount of donations made has been claimed as a deduction in accordance with the provisions of section 80G of the Act. The Assessee humbly wishes to submit that the deduction under section 80G of the Act is not a deduction allowed under the head 'Profits and gains of business or profession' but a general deduction allowed under Chapter VIA of the Act while computing the total income. Thus, it is submitted that section 80G of the Act does not require an Assessee to necessarily have a business purpose in order to claim a deduction under that section as such deduction is available even if an Assessee does not carry on any business.

2. Details of Other expenses and need of the same for business purpose.

The details of 'Other expenses' have been submitted with your office vide our letter dated 24 October 2019 (please refer to Annexure 3 of that letter). The Assessee wishes to submit that the entire expenditure has been incurred wholly and exclusively for the purpose of the business of the Assessee.

“3. Depreciation chart showing complete details of assets, new assets added, old assets sold and respectively depreciation claimed against these assets.

Please refer point no. 18 and additional details to point no 18 in the Form 3CD of AY 2017-18 for details of addition, deletion and depreciation claimed for each block of assets. A copy of Form 3CD has been submitted with your office vide letter dated 30 August 2018 (please refer Annexure 4 of that letter).

4. Insurance details assets wise, location wise and proof of payment made towards insurance premium.

The details of insurance expenses are enclosed as **Annexure 3.**”

9. The details of donation given during the year was as under:-

Name	Date	Amount (INR)	PAN	Receipt No.
Aseema	12-08-16	7,334,000	AAATA2843R	Rcp 6927
Aseema	21-12-16	7,334,000	AAATA2843R	Rcp 7153
Aseema	13-02-17	5,150,000	AAATA2843R	Rcp 7237
Aseema	14-03-17	532,620	AAATA2843R	Rcp 7294
Aseema	14-10-16	2,320,000	AAATA2843R	Rcp 7051
Fight Hunger Foundation	05-09-16	500,000	AACCF0420C	Rcp 118
Room to Read	23-12-16	4,155,000	AAATR7377M	Rcp 8000836
Room to Read	23-02-17	243,000	AAATR7377M	Rcp 8000856
Teach to Lead	08-08-16	1,100,000	AABTT6248E	TFI-ODR-FC-173
Teach to Lead	19-12-16	1,100,000	AABTT6248E	TFI-ODR-FC-194
United Way	27-09-16	480,000	AAATU0734D	Rcp 344
Total		30,248,620		

10. Not satisfied with the reply, the AO further issued query letter dt. 22/11/2019, which reads as under:-

"Sir/Madam/M/s,

In connection with the assessment for the assessment year 2017-18 you are required to:

- a) Furnish or cause to be furnished on or before 29/11/2019 at 04:30 PM the accounts and documents specified overleaf.*
- b) Furnish and verified in the prescribed manner under Rule 14 of 1.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 29/11/2019 at 04:30 PM.*
- c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.*
- d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available)*
- e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.*

This office calling for the details of various expenses to confirm that they are following basic principles of governing admissibility of deduction u/s 30 to 44AD.

The donation receipts are not submitted by you which shows the amount of donation, date of donation. exemption certificate from person who received donation and mode of payment, etc.

Details of insurance details, date of payment mode of payment details of goods/premises against which insurance taken, etc.

For your further clarification it is requested that any type of deduction and exemption claim made by you are to be substantiate with the various provisions of Income Tax Act which will minimize your valuable time and energy."

11. The assessee filed reply dt. 29/11/2019, which reads as under:-

"We refer to the notice dated 22 November 2019 issued under sub-section (1) of section 142 of the Act, (copy enclosed as Annexure 1), requesting for further information/ documentation in connection with the return of income filed for the AY 2017-18.

In this connection, we hereby submit the following:

1. The donation receipts are not submitted by you which shows the amount of donation, date of donation exemption certificate from person who received donation and mode of payment, etc.

The details of donation made during the FY 2016-17 has been submitted with your office vide letter dated 21 November 2019 (please refer Annexure 2 of that letter). As per your further request we are hereby enclosing receipts of the donation made as Annexure 2.

2. Details of insurance details, date of payment mode of payment details of goods/premises against which insurance taken, etc.

Payment of INR 281,402,994 pertains to the Deposit Insurance and Credit Guarantee Corporation (DICGC) (as per RBI Guidelines) is the major Insurance expense out of the total insurance expense amounting to INR 287,955,987 incurred during the FY 2016-17. We are hereby enclosing the Auditors certificate as a supporting of DICGC premium payment and sample invoices for other insurance payment as Annexure 3."

12. Thereafter, the assessment was completed.

13. Thus, it can be seen that to the specific queries raised during the assessment proceedings, the assessee has filed point-wise reply supported by documentary evidence. A perusal of the assessment order when considered with the statutory notices issued u/s 142(1) of

the Act along with the questionnaire clearly shows that the AO has made enquiry in respect of the CSR expenses and 80G deduction.

14. In the light of the afore-stated facts the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd.*, 243 ITR 83, has laid down the following ratio:

"A bare reading of [section 263](#) of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent--if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-- recourse cannot be had to [section 263\(1\)](#) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order 7 is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous " .

15. The Hon'ble Bombay High Court in the case of *Gabriel India Ltd* 203 ITR 108 has held as under:

"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this subsection, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law".

"Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law; or upon

erroneous application of legal principles". From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We, therefore, hold that in order to exercise power under sub-section (1) of [section 263](#) of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has

been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the 10 record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income- 11 tax Officer to re- examine the matter. That, in our opinion, is not permissible. Hence the provisions of [section 263](#) of the Act were not applicable to the instant case and, therefore, the commissioner was not justified in setting aside the assessment order."

16. It is a settled position of law that powers u/s 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to

establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the decision of Hon'ble High Court of Bombay in the case of [CIT vs. Nirav Modi](#), [2016] 71 Taxmann.com 272 (Bombay)".

17. The Hon'ble High Court of Gujarat in the case of [CIT vs. Nirma Chemical Works Ltd.](#) 309 ITR 67 has observed as under:

"if assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment order. In this case, during the assessment proceedings for both the Assessment Years, the Assessing . A.Y. 2009-10 Officer issued a query memo to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the creditworthiness/capacity of the donors, the source from where these funds have come and also the creditworthiness/ capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Order passed thereon. Thus, this objection on the part of the Revenue cannot be accepted."

18. We find that the Hon'ble Delhi High Court in the case of [CIT Vs Sunbeam Auto](#) reported in 332 ITR 167 has held as held as under:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the CIT under [s. 263](#) of the IT Act. As noted above, the submission of learned counsel for

the Revenue was that while passing the assessment order, the AO did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission 14 that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the CIT to pass orders under [s. 263](#) of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open".

19. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the assessment order which could make it erroneous and prejudicial to the interest of the revenue. Therefore, we set aside the order of the CIT dated 27/03/2024, and restore that of the Assessing Officer dated 08/04/2021.

20. In the result, appeal of the assessee in ITA No. 2521/Mum/2024, is allowed.

Order pronounced in the Court on 25th July, 2024 at Mumbai.

Sd/-

**(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 25/07/2024

SL S/P

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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1. □ पीलर्षी / The Appellant
2. प्रत्यर्षी / The Respondent
3. संबंघित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभर्षीय प्रतिनिधि , आयकर अपीलिय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलिय अधिकरण
ITAT, Mumbai

1. Date of Dictation 16/07/2024
2. Date on which the typed order is placed before the dictating Member 17/07/2024
3. Date on which the order came back to Sr. PS.....
4. Date on which the file goes to the Bench Clerk.....
5. Date on which the file goes to the O.S.....
- Date on dispatch of the order.....