

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4400/Mum/2023
(Assessment Year :2018-19)**

M/s. Inter Gold (India) Private Limited Plot No.34, SEEPZ Andheri East Mumbai- 400 096	Vs.	Pr. Commissioner of Income Tax-2 Mumbai Room No.344, 3 rd Floor Aayakar Bhawan Maharishi Karve Marg Mumbai - 400 020
PAN/GIR No.AAACI2677Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Nitesh Joshi & Shri Ashwin Kashinath
Revenue by	Ms. Madhu Malati Ghosh
Date of Hearing	06/05/2024
Date of Pronouncement	05/08/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 03/11/2023, passed by Id. PCIT-2, Mumbai in his revisionary jurisdiction u/s.263 for the A.Y.2018-19.

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

1. The Ld. Principal Commissioner of Income-tax-2, Mumbai erred in invoking the jurisdiction under Section 263 of the Income-tax Act, 1961 (the Act) and passing the order dated 3rd November 2023 setting aside the assessment order passed u/s. 143(3) of the Act, based on audit objections, without appreciating that:

1.1 The Assessing Officer had conducted enquiries, verified the claim of deductions, taken a plausible view and then passed the assessment order.

1.2 The assessment order dated 22nd April 2021 passed under Section 143(3) r.w.s. 144B of the Act is not erroneous in so far as it is prejudicial to the interest of the Revenue and thus the order passed u/s. 263 of the Act is without jurisdiction.

2. The Ld. Principal Commissioner of Income-tax-2, Mumbai erred in directing the Assessing Officer to re-examine the claim of deduction of Rs. 25,47,175/- under Section 80G of the Act on the ground that the donation classified as 'Corporate Social Responsibility expenditure is not eligible for deduction under Section 80G of the Act.

3. The Ld. Principal Commissioner of Income-tax-2, Mumbai erred in directing the Assessing Officer to re-examine the claim of bank charges amounting to Rs. 1,13,95,084/- The expenses were incurred wholly and exclusively for the purpose of business and there is no reason for the Ld. Principal Commissioner of Income-tax- 2, Mumbai to intervene in the matter and issue directions to the Assessing Officer to re-verify the same.

4. The Ld. Principal Commissioner of Income-tax-2, Mumbai erred in directing the Assessing Officer to re-examine the Provisions aggregating to Rs. 3,37,39,599/-, the break-up of which is as under:

- i. Provision for Gratuity of Rs. 54,70,623/-
- ii. Provision for Leave Salary of Rs. 1,09,688/-
- iii. Provision for Tax of Rs. 92,09,485/-

It is submitted that all the above provisions have not been claimed as deduction in computing the income for the year and as such, the question of allowability of the provisions does not arise.

3. The brief facts are that the assessee has filed its return of income on 29/11/2018 declaring total income of Rs.23,77,40,410/- and also returned book profit of Rs.22,16,64,756/- u/s.115JB. The case was selected for complete scrutiny under faceless e-assessment scheme. Thereafter, ld. AO issued several notices and questionnaires u/s. 142(1) to which assessee filed the replies on ITBA portal. After examining the details and documents submitted by the assessee, the return income was accepted.

. Later on, on examining all records the ld. PCIT issued show-cause notice u/s.263 on the following three grounds:-

i. On perusal of the case records, it is noticed that an amount of Rs.25,47,175/ claimed as donation u/s 80G on the amount spent on CSR activities. The same is prima facie not an allowable deduction.

ii. Further, it was observed that the AO failed to examine the bank charges of Rs.1,13,95,084/-, gratuity, leave salary & provision for tax amounting Rs.3,37,39,599/- during the assessment proceedings. The same should have been examined from the point of view of its allowability

3. It is prima facie noticed that the above issues have not been inquired/verified during the course of assessment proceedings thus rendering the assessment order erroneous in so far as it is prejudicial to the interest of the revenue.

5. In response, assessee filed its detailed submissions which have been incorporated in the impugned order. In sum and substance the assessee submitted that in so far as claim of 80G of Rs.25,47,175 is concerned, the same was on account of donation of Rs.50,94,350/- to Rosy Blue Foundation which was recognized u/s. 80G and all the details were furnished during the course of assessment proceedings. It was further submitted that ld. AO has examined this issue and accepted that assessee has not claimed any CSR expenditure and accepted deduction u/s.80G. Assessee also referred to FAQs issued by Ministry of corporate affairs vide Circular No.01/2016 dated 12/01/2016 and also various decisions of the Tribunal that out of CSR funds if assessee pays donation to an institution recognized u/s.80G, same is allowable as deduction.

6. In so far as bank charges are concerned, it was submitted that ld. AO has called for all the bank statements and specifically asked about the bank charges. Assessee had filed the entire details of the bank charges incurred and proved that it was wholly and exclusively for the purpose of business. *Lastly*, with regard to provision for gratuity, leave salary and provision for tax aggregating to Rs.3,37,39,599/- it was submitted that the provision made during the year had been disallowed in the return of income and provision for tax has not been claimed, therefore, there is no question of any disallowance.

7. Ld. PCIT despite noting these submissions had set aside the assessment order after observing as under:-

5. I have gone through the records and the submissions of the assessee carefully. During the proceedings u/s 263, the assessment case records has been perused and it has been noticed that following issues were not duly addressed and considered while passing the final assessment order. These observations are below

CSR EXPENSES towards 80G Deduction:

(i) An amount of Rs. 25,47,175/- has been claimed by the assessee as deduction u/s 80G towards CSR expenses incurred by the assessee. In this regard an amendment has been made in the Act and it has been abundantly clarified by way of an explanation that such expenses are not allowable as a deduction. The Explanation 2 to Sec. 37(1) of the IT Act makes it quite clear that any expenditure incurred in relation to the CSR activities could not qualify as a bona-fide deduction while computing the business income of the assessee.

(ii) On verification of the records of the assessee, it is observed that the AO issued the notice u/s. 142(1) on 16.03.2020. In the said notice, vide Question No.15, he called for complete details and evidences with respect to deduction claimed under Chapter VIA. On perusal of the said notice, it is observed that no specific questionnaire has been issued by the AO with respect to eligibility of CSR expenses for 80G deduction. It is further observed that the assessee suo-moto, vide its submission dated 08.07.2020, has furnished only the name of the party to which the donation amount of Rs.50,94,350/- has been given. In the said 'detail' filed there is not even a fleeting mention of the fact that the deduction u/s.80G has been claimed against the CSR expenses incurred by them. Moreover, there is no discussion, in the submission of the assessee, on the issue whether the CSR expenses are eligible for deduction u/s.80G or not. In fact, the assessee has also not disclosed the fact that the above 80G deduction is being claimed on the expenditure which it has statutorily incurred towards the CSR expenses. Therefore, on perusal of the same, there is

complete non application of mind of the AO on the issue of CSR expenses being eligible for 80G deduction or not? Moreover, the requisite enquiry whether the said expenses have satisfied the mandatory conditions required for being eligible for 80G deduction has also not been conducted.

(iii) It would be pertinent to point out that provisions of eligibility of CSR expenses as business expenses u/s 37(1) of the IT Act was amended by the Finance Act, 2014, wherein it was clarified that CSR expenses will be deemed not to have been incurred for the purposes of business. In the said Memorandum to the Finance Act, it has been clearly stated that these expenses, if allowed as tax deduction would result in an anomalous situation of Government subsidising the said expenditure incurred by the tax payers. The relevant extract of the Memorandum is as follows:-

"13.2 CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold If such expenses are allowed as tax deduction, this would result in subsidising of around one-third of such expenses by the Government by way of tax expenditure

This is, both, a case of no enquiry on the issue and also non application of mind on the issue with respect to the clarifications given in the Memorandum to the Finance Act explaining the very basis of bringing the amendment

BANK CHARGES:-

(i) On perusal of the assessment records, it is seen that the assessee has also claimed Bank charges of Rs. 1,13,95,084/- which is over and above the interest expenses on loan claimed by the assessee In the present assessment, which is the subject matter of proceedings u/s 263 of the Act, the AO has not

examined this issue of allowability of the aforesaid bank charges as an item of the expense in the P&L Account of the assessee as per the provisions of the Income Tax Act. The nature of the bank charges and the purpose for which the said expense was incurred has also not been examined. The AO should have examined the submissions of the assessee and its justification in support of its claim for the aforesaid bank charges debited as an expense u/s 37 of the Act.

PROVISIONS FOR GRATUITY, LEAVE SALARY & TAX:

Further, it has been also noticed that the assessee has also claimed expenses made towards provisions on account of gratuity, leave salary and provision of tax amounting to Rs.3,37,39,599/- during the year under consideration and there were no details available on record to indicate that the said amounts were paid before the filing of ITR. In the present assessment, which is the subject matter of the proceedings u/s 263 of the Act, the AO has not examined the complete facts regarding the allowability of the aforesaid provisions on account of gratuity, leave salary and tax aggregating to Rs. 3,37,39,599/- It is pertinent to mention that the AO is obliged by law, where the circumstances warrant, to make proper enquiry on the facts and circumstances of the case. In making such enquiry there should be proper application of mind with respect to the facts of the case and the legal provisions involved therein. As per the Act only expenses which have accrued and crystallised can be allowed as a deduction Provisions created in the books of accounts cannot be allowed as a deduction Income tax paid by the assessee or any provision created towards the same has to be written back. Further, as regards gratuity etc. the AO should have examined the submissions of the assessee and its claim for the allowability of the same as per the provisions of section 43B of the Income Tax Act, 1961 (0)

8. We have heard both the parties at length and also perused the relevant finding given in the impugned order as well as material referred to before us. The ld. PCIT has cancelled the assessment mainly on three points:-

1. Donation under Section 80G of Rs.25,47,175/-. Amount spent as 'Corporate Social Responsibility (CSR).
2. Bank charges of Rs.1,13,95,084/-
3. Provision for gratuity, leave salary and provision for tax all aggregating to Rs.3,37,39,599/-

9. First of all, it has been pointed out by the Id. Counsel before us that Id. AO has specifically raised the queries on all the three issues vide notice dated 16/03/2020 and further notice dated 25/11/2020. In response assessee had filed detailed submissions on all these three issues alongwith detailed notes and the copy of all the documents furnished before the AO had also been placed before us in the paper book. He further pointed out that assessee had debited CSR expenses of Rs.50,94,350/- but assessee has not made any claim for CSR expenses as revenue expenditure u/s.37(1). The said amount was given as a donation to Rosy Blue Foundation which was carrying out CSR activities and also recognised as 80G. Thus, the donation *per se* does not fall in the category of CSR nor it has been claimed as Revenue expenditure, albeit assessee has claimed deduction under Chapter VIA. He also drew our attention to the specific reply dated 16/04/2023 filed before the Id. AO wherein this issue has been discussed in detail.

10. On the other hand, Id. DR submitted that once the amount has been embarked as CSR under the Companies Act and same amount has been given to any charitable organisation or institution, the same cannot be allowed as expenditure

u/s.37(1). Once assessee had shown it has incurred expenditure of CSR then same has to be disallowed and same cannot be allowed u/s.80G.

11. After considering the aforesaid submissions and the reasons given by the ld. PCIT, we are unable to sustain the impugned order u/s.263 on this issue for the reason that, this issue has been duly enquired and examined by the ld. AO during the course of assessment proceedings and without finding any defect in such order or how the claim allowed by the ld. AO u/s.80G is unsustainable in law, he cannot cancel the assessment order. Assessee has also relied upon various Tribunal decisions directly on this issue which has also been incorporated in the impugned order, wherein it has been held that even if the money spent for CSR is disallowable but if the same has been paid to charitable organisation and donation is claimed u/s.80G, the same is allowable, because both operate separately. Thus, taking a contrary opinion does not mean that order of the ld. AO erroneous and prejudicial to the interest of the Revenue.

12. Claiming a deduction from computation of business income as provided from sections 28 to 44DB is different from claiming a deduction under chapter VIA of the Act which is allowed from Total Income. As per *Explanation 2* to Section 37, CSR expenditure is not allowable as deduction while computing the business income under the provision of Section 28-44DB, whereas deduction u/s.80G is allowed while computing the total income under Chapter VIA. There is no pre-condition that claim

for deduction u/s.80G on a donation should be voluntary. It is independent of computation of business income as it is allowed from Gross Total Income. The assessee had disallowed the CSR expenses while computing business income. Further, there is no dispute that the assessee has filed complete details of donation and also filed the certificate u/s.80G which was enclosed before the AO. **Section 80G (1) of the Act provides that in computing total income of the assessee, they shall be deducted in accordance with the provision of Section, such sum paid by the assessee in the previous year as a donation.** Deduction under Chapter VIA provides deduction from the gross total income which is computed after making necessary allowances / disallowances in accordance with Section 28-44BB of the Act including Explanation to Section 37(1). Thus, Section 37(1) and Section 80G of the Act are independent and the principles governing what is not allowable u/s. 37(1) have been provided in the section itself. Even in section 80G also, what is not allowable has also been provided under the Act. For instance, Section 80G specifically mentions two clauses, viz., section 800(2)(a)(iihk) and (iihl), i.e., contributions towards 'Swacha Bharat Kosh' and 'Clean Ganga Fund', where donation in the nature of CSR Expenditure is not allowable as deduction under section 80G of the Act. Therefore, the disallowances for deduction under section 80G vis-à-vis CSR can be restricted to contributions made to these Funds mentioned in Section 800(2)(a)(iihk) and (iihl) only. It is an undisputed fact that the assessee has not claimed any deduction against the aforesaid

clauses of 80G (2)(a) of the Act and as such entire donation claimed by the assessee is allowable u/s 80G. The Ministry of Corporate Affairs ("MCA") has issued "FAQs" through General circular no. 01/2016 dated January 12, 2016 (FAQ No. 6) and has clarified on the issue as follows:

"Question No. 6: What tax benefits can be availed under CSR?"

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

12. This clarification being issued by the Ministry of Corporate Affairs, Government of India clarifies that donation covered under CSR Expenses which not are eligible for the deduction under section 80G of the Income-tax Act, 1961, but are allowed under different sections. Ergo, there is nothing that if any expenditure is disallowable u/s 37 the same cannot be allowed under other provisions of Act, if the conditions of allowability are satisfied. Thus, allowing the claim of deduction u/s.80G by the ld. AO cannot be held to be unsustainable in law or amounts to erroneous and prejudicial to the interest of the Revenue. Thus order of the Ld. PCIT is reversed on this point.

13. In so far as bank charges aggregating to Rs.1,13,95,084/-, we find that assessee has filed entire details of bank charges, extract of ledger account of bank charges and all

the bank advices. The same has also been placed before us in the paper book from pages 90-187. From the perusal of the details of these bank charges, it is seen that it merely consists of export realization charges, import payment charges, processing fees etc., levied by the banks. The entire bank charges are thus Revenue in nature which has been incurred wholly and exclusively for the purpose of the business of the company which was manufacturing and exporting of jewellery. Nowhere, ld. CIT in his order had stated that such bank charges are not allowable. His only case is that ld. AO has not examined this issue. Once the entire details have been furnished before the Assessing Officer alongwith justification for allowability in response to specific notice u/s. 142(1) in its reply dated 16/04/2023, we do not find any reason as to why such an allegation has been made by the ld. PCIT. For the sake of ready reference, the relevant extract of the reply filed before the ld. AO reads as under:-

“2. In regard to Bank charges aggregating to Rs.1,13,95,084/-, We are enclosing herewith the details of bank charges, Extract of ledger account of bank charges and Specimen bank advices. It would be appreciated from the ledger that bank charges mainly consist of Export realization charges, Import payment charges, Processing fees etc levied by banks. Entire bank charges are revenue in nature and incurred wholly and exclusively for the purpose of business of the Company.”

14. Apart from that, the entire bank charges debited pertains to export realization paid to the Bank of India and State Bank of India and for Import payment charges and processing fees levied by the banks. If these expenses are directly connected to

assessee's business, then how same is not allowable. On this count also it cannot be held that the order of the ld. PCIT is sustainable.

15. *Lastly*, with regard to provision for gratuity, leave salary and taxes, it is seen that before the ld. AO, assessee has stated as under:-

“In regard to disallowance of Provision for gratuity, Leave Salary and Taxes aggregating to Rs. 3,37,39,599/-, it is submitted that the said provisions are as on 31.3.2018. The details of Provisions made for gratuity and leave salary and taxes as on 31.3.2017 and 31.3.2018 are enclosed. It would be appreciated that the provisions made during the year for Gratuity Rs. 54,70,623/- and Leave Salary Rs. 1,09,688/- has already been disallowed in computing total income, Statement of Computation of total income is enclosed for ready reference. In regard to Provision for taxes aggregating to Rs. 92,09,485/-, it would be appreciated that the Net Profit as per Profit and Loss account has been taken before Provisions of taxes. The provisions for taxes are not claimed and as such, disallowance of same does not arise.”

16. All these facts were also brought to the knowledge of the ld. PCIT in the written submissions incorporated by him. It has been clearly stated that firstly, the amount of Rs. 3,37,39,599/- is mixed of three expenses and the said amount was outstanding balance of 31/03/2018 and not the provisions debited to the profit and loss account. The provisions which were made for gratuity, leave salary and provision of tax has already been disallowed while computing the income and these disallowances have also disclosed in the tax audit report. For the sake of ready

reference, the relevant reply of the assessee before the PCIT is reproduced hereunder:-

1. The amount of Rs. 3,37,39,599/- is a mix of three expenses. The said amount is the outstanding balance as on 31st March 2018 and not the provision debited to P&L account. The details of Provisions for Gratuity, Leave Salary and Provision for Tax are as under:-

	Outstanding Provision as on 31st March 2018 (As Balance Sheet)	Non-Current	Amount(Rs.)	
			<i>Current</i>	<i>Total</i>
A	Gratuity	2,06,54,121	7,36,108	2,13,90,229
B	Leave Encashment	25,59,826	5,80,059	31,39,885
	Provision for Employee Benefits	2,32,13,947	13,16,167	2,45,30,114
C	Provision for Tax		92,09,485	92,09,485
	Total	2,32,13,947	1,05,25,652	3,37,39,599

A: Provision for Gratuity:

Particulars	Amount (Rs.)
<i>Closing Balance as on 31st March 2018</i>	2,13,90,229
<i>Less: Opening Balance as on 1st April 2017</i>	1,59,19,606
Provision during the year under consideration and disallowed in the return	54,70,623

B: Provision for Leave Encashment:

Particulars	Amount (Rs.)
Closing Balance as on 31st March 2018	31,39,885
Less: Opening Balance as on 1st April 2017	30,30,197
Provision during the year under consideration and disallowed in the return	1,09,688

The provisions for Gratuity of Rs 54,70,623 and Leave Encashment of Rs. 1,09,688/- were disallowed in the return of income (Refer Computation of income at Page 83) These disallowances have also been disclosed in the Tax Audit Report at Page 90 and 92

Provision for Tax of Rs. 92,09,485/- is accounted below the line. The Computation of Total Income starts from 'Profit Before Tax' which does not include the Provision for Tax of Rs. 92,09,485/- The same is evident from the Statement of Profit and Loss (Page 102) and the table below

C: Provision for Tax

Particulars	Amount (Rs.)
Profit After Tax	13,32,48,085
Add: Tax Expense (including Provision for Tax of Rs. 92,09,485)	9,22,35,908
Profit Before Tax	22,54,83,993
Less: Re-measurement of Defined Benefit Plan taken to Other Comprehensive Income	38,19,237

Profit before Tax as per Computation of Income	22,16,64,756
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The Provision for Tax of Rs. 92,09,485/- has not been claimed and as such, disallowance of same does not arise.

In view of the above, it is submitted that the issues raised in the impugned notice have been examined by the Assessing Officer during the course of assessment proceedings and has adopted a view which is plausible and sustainable in law. The assessment order under Section 143(3) of the Act is not erroneous in so far as it is prejudicial to the interest of the Revenue and therefore the conditions for invoking Section 263 remain unfulfilled Therefore, it is prayed that the impugned proceedings initiated under Section 263 of the Act be dropped.

17. Thus, when assessee itself has disallowed the claim, then we fail to understand where the question of AO further disallowing the same amount. This shows complete lack of application of mind by the ld. PCIT by holding that order passed by the ld. AO is erroneous and prejudicial to the interest of the Revenue. Thus, we do not find any substance in the impugned order and the same is quashed and the assessment order is restored and accordingly, appeal of the assessee is allowed.

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

Order pronounced on 5th August, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 05/08/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai