

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “F”, NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI NARINDER KUMAR, JUDICIAL MEMBER

ITA NO. 2556/Del/2023		
A.YR. : 2018-19		
M/s Ratna Sagar Pvt. Ltd. C/o M/s Raj Kumar & Associates, L-7A (LGF), South Extension, Part-II, New Delhi – 110 049 (PAN: AAACR1294C)	VS.	ACIT, Central Circle-4, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by : S/Shri Raj Kumar Gupta, CA &
: J.P. Sharma, CA
Respondent by : Shri Yogeshwar Sharma, Sr. DR.

Date of hearing : 29.08.2024
Date of pronouncement : 29.08.2024

ORDER

PER SHAMIM YAHYA, AM :

This appeal filed by the assessee for the assessment year 2018-19 is directed against the Order of Ld. CIT(A)-23, New Delhi dated 14.07.2023. The assessee has raised the following ground of appeal :-

- “1. That under the facts and circumstances, disallowance of 80G claim of Rs. 12,50,000/- being 50% of Rs. 25,00,000/- donation paid to Saint Francies Home (Regd.) Society, Pathankot out of CSR funds is absolutely illegal and uncalled for in law as well as on facts.”*

2. Briefly stated, facts are that the assessee paid Rs. 25,00,000/- to a trust named Saint Francis Home (Regd.) Society Pathankot. The amount of Rs. 25,00,000/- paid out of CSR obligation was claimed as deduction u/s. 80G of the Act. On such payments of Rs. 25,00,000/-, the assessee claimed deduction u/s. 80G of the Act. The Assessing Officer did not allow the deduction u/s. 80G as it was CSR expenditure which is not allowable under the Act.

3. Aggrieved with the above order of the AO, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions of the assessee, dismissed the appeal of the assessee by way of confirming the action of the Assessing Officer.

4. Against the Ld. CIT(A)'s action, assessee is in appeal before us.

5. We have heard the rival contentions and perused the material available on record and also gone through the orders of the authorities below.

5.1 At the time of hearing, Ld. AR for the assessee contended that the issue in dispute is squarely covered by the several case laws of the ITAT. In this regard, he referred to the ITAT decisions dated 28.05.2024 passed in ITA No. 95/Del/2024 (AY 2020-21) in the case of Interglobe Technology Quotient Private Limited; Honda Motorcycle and Scooter India Pvt. Ltd. vs. ACIT in ITA No. 1523/Del/2022 (AY 2017-18) dated 22.8.2023; & Ericsson India Global Services (P) Ltd. vs. DCIT in ITA No. 1150/Del/2022 (AY 2015-16) dated 05.03.2024. In view of above, he requested to follow the ratio of the aforesaid Tribunal's orders and allow the issue in dispute in favour of the assessee raised in the instant appeal.

5.2 Ld. Sr. DR did not controvert the aforesaid proposition made by the Ld. AR, but he supported the orders of the authorities below.

6. Upon careful consideration, we find considerable cogency in the contention of the Ld. AR that identical issue has been dealt by the Coordinate Bench of ITAT, Delhi vide order dated 28.05.2024 passed in ITA No. 95/Del/2024 (AY 2020-21) in

the case of Interglobe Technology Quotient Private Limited, wherein the Coordinate Bench has held as under:-

“7. Learned DR has failed to bring forth any decision to the contrary. Thus, we accept the plea of learned counsel on the basis of case law cited, denial of CSR expenditure u/s 37(1) of the Act is not embargo to claim deduction u/s 80G of the Act.

7.1 Further, we like to observe that as a matter of fact as per Section 135 of the Companies Act, 2013 ('CA 2013), the qualifying Companies as mentioned therein are required to spend certain percentage of profits of last three years on activities pertaining to Corporate Social Responsibility (CSR). The expenditure on CSR, could be by way of expenditure on projects directly undertaken by said companies, such as setting up and running schools, social business projects, etc. Such expenditure would include expenditure otherwise falling for consideration under section 37(1) of the Act. On the other hand, companies, instead of undertaking or participating directly in a project, may choose to give donations to institutions that are engaged in undertaking such projects, which is also a recognized way of compliance of CSR obligation.

7.2 The assessing officer and CIT(A) have relied upon General Circular 14/2021 dated 25.08.2021 issued by MCA and "Explanatory Notes to the provisions of the Finance (No.2) Act, 2014" to hold that donations made as part of CSR expenditure are not allowable as deduction. The foundation of their reasoning being that the donation is voluntary in nature, while CSR expenditures are under statutory obligations.

7.3 As we take notice of the fact that Parliament legislated that CSR expenses would not be eligible for deduction as business expenditure

under section 37 of the Act by inserting Explanation 2 to section 37(1) vide the Finance (No.2) Act, 2014 (applicable from the assessment year 2015-16), which provided that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the CA 2013, shall not be deemed to be an expenditure incurred by an assessee for the purpose of business or profession and shall not be allowed as deduction under section 37(1) of the IT Act. The intent of Parliament in bringing the aforesaid provision is given in the Explanatory Memorandum to the Finance (No.2) Bill, 2014 and is reproduced as under ;

“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 subsidizing of around one-third of such expenses by the Government by way of tax expenditure.” (emphasis supplied)

7.4 The aforesaid explanatory memorandum categorically expresses the legislative intent and the rationale of disallowance of CSR expenditure referred to in section 135 of the Companies Act, that such expenditure is application of income and not incurred for the purposes of business. We are of considered view that this in itself justifies the grant of deduction u/s 80G. As CSR expenditure is application of income of the assessee under the Income Tax Act, that means it continues to form part of the Total income of the assessee. Section 80G(1) of the Act provides that in computing the total income of an assessee, there shall be

deducted, in accordance with the provisions of this section, such sum paid by the assessee in the previous year as a donation. Further, section 80G(2) lists down the sums on which deduction shall be allowed to the assessee. Section 80G falls in Chapter VIA, which comes into play only after the gross total income has been computed by applying the computation provisions under various heads of income, including the Explanation 2 to section 37(1) of the Act. Thus, there is no correlation between suo-moto disallowance in section 37(1) and claim of deduction under section 80G of the Act.

7.5 As with regard to the reasoning that CSR expenditure are not voluntary but mandatory in nature due to penal consequences, we are of considered view that voluntary nature of donation is by nature of fact that it is not on the basis of any reciprocal promise of donee. The CSR expenditures are also without any reciprocal commitment from beneficiary being philanthropic in nature. The Act permits deduction of donations as per Section 80G of the Act, even though, assessee is not gaining any benefit out of any reciprocity from donee. Similar is the case of CSR expenditure. Thus the reasoning of learned Tax Authority, the CSR expenditure is mandatory, does not justify disallowance of these expenditures u/s 80G, if other conditions of section 80G are fulfilled. There is no allegation of Revenue that other conditions of Section 80G are not fulfilled. We, thus sustain the ground.”

7. After perusing the aforesaid findings, we find that the facts of the present case are identical to that of the aforesaid case of other assessee, hence, the issue in dispute involved in the instant appeal is squarely covered in favour of the assessee. Therefore, respectfully following binding precedent (Supra), we delete the addition sustained by the Ld. CIT(A) and accordingly, allow the ground of appeal raised by the Assessee.

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

Order pronounced in the Open Court on 29th August, 2024.

Sd/-
(NARINDER KUMAR)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant.
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar