IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “G”, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.1865/Mum/2024
Assessment Year: 2016-17

Sikka Ports & Terminals Limited 1st Floor, Maker Chambers IV, 222, Nariman Point, Mumbai-400021. **PAN: AABCR 3878 B**	Vs.	PCIT-3(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Nimesh Vora & Moksha Mehta
Revenue by : Shri B. Laxmi Kanth, Sr. DR

Date of Hearing : 09.07.2024
Date of Pronouncement : 06.09.2024

O R D E R

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2016-17 is directed against the order dated 26.03.2024 passed u/s 263 of the Act by the ld. Principal Commissioner of Income-tax, PCIT, Mumbai-3. The assessee has raised the following grounds of appeal:

> *“On being aggrieved by the order dated 26 March 2024 (received on 27 March 2024) passed by the learned Principal Commissioner of Income-tax. PCIT, Mumbai-3 [hereinafter referred to as the learned PCIT] under section 263 of the Income-tax Act, 1961 ('the Act'), the present appeal is being preferred on the following grounds which, it is prayed, may be considered without prejudice to one another.*
>
> *On the facts and in the circumstances of the case and in law, the learned PCIT:*

Order passed u/s 263 of the Act is bad in law and without jurisdiction

1. erred in setting aside the assessment completed u/s 143(3) r.w.s. 147 r.w.s. 144B of the Act by the Faceless assessing officer as erroneous and prejudicial to the interest of revenue without appreciating that such an action can be taken only by PCIT having jurisdiction under Faceless regime;

2. erred in setting aside the assessment completed u/s 143(3) r.w.s. 147 rw.s. 144B of the Act as erroneous and prejudicial to the interest of revenue on a wrong presumption that learned AO has failed to consider the issue of eligibility of deduction u/s 80G on donation made as a part of CSR expenditure and thereby setting aside the assessment order with a direction to the AO to disallow the claim of deduction u/s 80G;

3. failed to appreciate that the assessment order u/s 143(3) r.w.s. 147 rw.s. 144B of the Act is neither erroneous nor prejudicial to the interest of the revenue as the same was duly passed after considering the detailed submissions filed during the assessment proceedings and considering provisions of the Act and judicial precedents;

Disallowance of deduction u/s 80G

4. erred in directing disallowance of deduction u/s 80G of Rs.4,55,00,000/- without appreciating that the claim of deduction fulfils all prescribed conditions:

The Appellant craves leave to add, amend, delete, rectify, substitute, modify, or otherwise, all or any of the aforesaid grounds or add a new ground(s) at any time before or during the hearing of the above appeal."

2. Fact in brief is that return of income declaring total income of Rs. 886,28,79,640/- under normal provision of the Act and Rs. 376,03,50,744/- u/s 115JB of the Act was filed on 30.11.2016. The assessment order u/s 143(3) of the Act was passed on 27.12.2018 accepting the return of income. Subsequently, It was noticed that an amount of Rs. 9,10,00,000/- towards expenses of Corporate Social Responsibility (CSR) activities was added back in

the computation of income, however, the assessee claimed deduction of Rs. 4,55,00,000/- being 50% of the CSR expenses u/s 80G of the Act. It was observed that CSR expenditure was not allowable expenditure u/s 37(1) of the Act therefore assessee was not eligible to claim deduction u/s 80G of the Act. Accordingly, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 and re-assessment order passed u/s 143(3) r.w.s. 147 of the Act without making any such disallowance on the basis of which the case was reopened. In the re-assessment proceeding, the assessee submitted the details of CSR expenditure and further submitted that the assessee-company has rightly claimed deduction of Rs. 4,55,00,000/- u/s 80G of the Act. The assessing officer has accepted the contention of the assessee and did not make any addition. However, the ld. PCIT initiated proceeding u/s 263 of the Act stating that assessing officer has accepted the contention of the assessee without examining the allowbility of deduction u/s 80G of the Act with reference to CSR expenditure. Therefore, a show cause notice dated 18.03.2024 u/s 263 of the Act was issued to the assessee stating that order u/s 143(3) r.w.s. 147 of the Act passed by the assessing officer is deemed to be erroneous in so far as it is prejudicial to the interest of revenue. The assessee explained by submission dated 21.03.2024 as elaborately discussed in the order passed by the ld. PCIT u/s 263 of the Act that assessing officer has passed the order after examining the provision of the Act and the legal precedents with respect to the issue of allowbility of deduction u/s 80G of the Act pertaining to CSR expenditure incurred by the assessee during the

year under consideration. However, the ld. PCIT has not agreed with the submission of the assessee and held that the order passed by the assessing officer u/s 143(3) r.w.s. 147 of the Act dated 30.03.2022 is erroneous as far as it is prejudicial to the interest of revenue.

3. During the course of appellate proceedings before us, the ld. Counsel referred the detailed submission made by the assessee before the ld. PCIT as reproduced at para 8 in the order passed u/s 263 of the Act. The ld. Counsel submitted that the case of the assessee was particularly reopened on the issue of allowbility of deduction u/s 80G in respect of CSR expenditure incurred by the assessee during the year under consideration. However, after verification/examination of the detailed submission of the assessee, the assessing officer has accepted the claim of the assessee for deduction u/s 80G of the Act without making any disallowance. He further submitted that during the course of assessment proceeding, the AO has made detailed enquiry and assessee has made relevant submission which has been considered by the assessing officer therefore passing of order u/s 263 of the Act on the settled issue in law by the ld. PCIT is not justified. The ld. Counsel has also filed paper book comprising copies of notices issued by the assessing officer as per which specific details in respect of allowbility of deduction u/s 80G on CSR expenditure was asked and also placed in the paper book along with copies of submission made by the assessee in response to the query raised by the assessing officer on the claim of deduction u/s 80G of Rs. 4,55,00,000/- on CSR expenditure. In

the paper book, the ld. Counsel has also placed copies of various judicial pronouncement wherein the identical claim of 80G deduction on CSR expenditure was allowed in the various decisions of the ITAT, Mumbai and other Courts.

4. On the other hand, ld. DR supported the order of ld. PCIT and contended that assessing officer has failed to examine the claim of deduction made by the assessee u/s 80G of the Act in respect of CSR expenditure incurred during the year under consideration.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed supra in this order, we have perused the copies of various notices issued by the assessing officer during the course of assessment proceedings. Vide notice u/s 143(2) r.w.s. 147 dated 16.07.2021, the assessing officer has categorically asked the assessee to provide detail and claim made u/s 80G on the amount spent for CSR activities. The relevant extract of the query raised by the ld. AO is as under:

> *"2. As per explanation 2 below section 37 of the Income Tax Act, 1961, the amount spent on CSR activities under section 135 of the Companies Act is not an allowable as expenditure incurred for business and profession. Thus, the expenditure on CSR is not an allowable deduction from AY 2015-16. It was seen from the perusal of records that the assessee had debited an amount of Rs. 9,10,00,000/- towards Corporate Social Responsibility (CSR) which was added back in the computation of income statement. However, assessee has claimed deduction under 80G of Rs. 4,55,00,000/- on above CSR expenditure, which is not an allowable deduction. The deduction under section 80G on CSR expenditure claimed by the assessee resulted in underassessment of income by Rs. 4,55,00,000/- with consequential shot levy of tax of Rs.1,57,46,640/- and the same has escaped assessment."*

6. In response the assessee vide submission dated 06.08.2021 made detailed submission, the relevant part of the submission made by the assessee is as under:

> *"c) Section 80G(2)(a) allows deduction for any sums paid by the assessee in the previous year as donations', Thus, the deduction allowable is for sums paid as donation. Donations paid to the said Kosh and Fund are not allowable under*
>
> *section S0G(2)\a)(iibk) and (iiibl). Contributions to the said Kosh and Fund are CSR activities included in Schedule VIl to the CA 2013. The disallowance for deduction under section 80G vis-à-vis CSR can be restricted only to contributions to these Funds under CSR. It is a well-established rule of interpretation that one has to look merely at what is stated in the statute; there is no scope for intendment in law. So only contributions to these two funds will not qualify for deduction under section 80G(2)(a). There is no blanket ban of deduction under section 80G for donations, which also qualifying under CSR.*
>
> *d) In the Memorandum to the Finance Bill, it has been clarified that no deduction will be allowed for CSR expenditure as a business expenditure, but makes no reference to ineligibility or restriction in claiming deduction under section 80G for donations made pursuant to CA 2013 obligations. Also, in the Memorandum, it has been clarified that CSR expenses which fall for consideration under sections 30 to 36 of the IT Act are allowable. Thus, a position emerges that the intent of the Legislature was not to blanketly disallow CSR expenses.*
>
> *e) The Ministry of Corporate Affairs (MCA)) has issued Frequently Asked Questions (FAQ) through General circular no. 01/2016 dated January 12, 2016 (FAQ No. 6) has clarified that as follows:*
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> *"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 find place in Schedule VII,*

> *already enjoys exemptions under different sections of the Income-tax Act, 1961, "*

7. The assessing officer has further issued notice u/s 142(1) of the Act on 19.01.2022 asking the assessee to provide justification for claiming deduction u/s 80G of Rs. 4,55,00,000/- on CSR expenditure. The assessee vide letter dated 02.02.2022 has made detailed submission, the relevant part of the submission is reproduced as under:

> *"d. The provision of section 80G(2)(iv) does not exclude any sum which has been given by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013. The exclusion of this nature has only been specified for the donation made to Swachh Bharat Kosh (Section- 80G(2)(iiihk) and Clean Ganga Fund (Section -80G(2)(iiihl) and accordingly the same is allowable in respect of other institution set out in section 80-G(2)."*

8. The assessee has also placed the copy of receipt issued by the Reliance Foundation to whom donation was made by the assessee. The assessing officer has also issued show cause notice on 23.03.2022 to explain tax deduction claimed u/s 80G on the above CSR expenditure made to Reliance Foundation. The assessee vide letter dated 25.03.2023 made detailed submission and submitted that there is no co-relation between section 37(1) and section 80G of the Act and deduction u/s 80G is available to the extent it is allowable. Similarly, the assessee has also referred the submission dated 15.11.2018 in the original assessment proceedings made u/s 143(3) wherein the assessee has explained that it had incurred CSR expenditure and also made submission that deduction u/s 80G was also claimed at 50% u/s 80G of the Act. We have also perused the copy of various decisions placed in the paper book

filed by the assessee on the proposition that where the assessing officer during the course of assessment proceedings issued notices and made query on the issue on which the assessee has filed corresponding details but the AO did not find in any adverse claim of the assessee and the order passed u/s 263 of the Act was not justified and same was quashed.

9. We have also perused the various decisions of ITAT holding that expenditure towards CSR activities are allowable deduction u/s 80G of the Act i.e. Alubond Dacs India (P) Ltd. vs DCIT and the decision of ITAT, Mumbai in the case of Synergia Lifesciences Pvt. Ltd. ITA No. 938/Mum/2023.

10. In the light of the above facts and findings, it is evident that assessing officer has made detailed enquiries and verification in respect of claim of deduction u/s 80G on the CSR expenditure incurred by the assessee during the year under consideration. This is undisputed fact that assessee had added back CSR expenditure in the computation of total income as per Explanation 2 to Section 37 of the I.T. Act and claimed 50% deduction u/s 80G of the Act. In the various judicial pronouncements ITAT, Mumbai as referred above held that expenditure towards CSR activities are allowable as deduction u/s 80G of the Act. Further, it is evident from the copies of document placed in the paper book and as discussed supra in this order that assessing officer has made detailed verification and assessee has made relevant submission during the course of assessment proceedings in respect of the query raised by the assessing officer on the issue of allowbility of deduction u/s

80G of the Act as discussed above in this order. In view of the above facts and findings, we consider that the order passed u/s 263 of the Act by the ld. PCIT is not sustainable therefore, the order passed u/s 263 is quashed. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 06.09.2024.

Sd/-	**Sd/-**
(MS. KAVITHA RAJAGOPAL)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated: 06.09.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai