

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.272/Coch/2023 : Asst.Year 2018-2019

The Deputy Commissioner of Income-tax, Circle 1(1) Thiruvananthapuram.	v.	Kerala State Industrial Development Corporation Ltd. Keston Road, Kowdiar PO Trivandrum – 695 003.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Sri.Sanjit Kumar Das, CIT-DR

Date of Hearing : 14.08.2024	Date of Pronouncement : 14.08.2024
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ORDER

Per Bench :

This Revenue's appeal ITA No.272/Coch/2023 for assessment year 2018-2019 arises against the CIT(A)/NFAC's DIN & Order No.ITBA/NFAC/S/250/2022-23/1048488884(1) dated 06.01.2023, in proceedings u/s.143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Case called twice. None appears at assessee's behest. It is accordingly proceeded *ex parte*.

2. The Revenue pleads following substantive grounds in the instant appeal:-

"1. The learned CIT(A), NFAC disposed of the appeal with reference to Section 14A in favour of the assessee and against the Revenue by ordering to restrict the disallowance u/s 14A of the Income tax Act by considering only those dividend yielding investments which generate exempt income. This is against Rule 8D of Income Tax Rules, 1962 and the

clarification given in CBDT Circular No. 05 of 2014 dated 11.02.2014.

2. The learned Commissioner of Income Tax (Appeals) also passed the order by allowing the deduction of Rs.1,00,00,000/- claimed u/s 80G for donation given to Chief Minister's relief fund which was incurred as part of mandatory CSR expenditure. The expenditure incurred by the assessee on Corporate Social Responsibility was due to mandatory requirement as per section 135 of Companies Act and such expenditure as deduction is inadmissible as per explanatory note to Finance Act, 2015 vide circular 01/2015 dated 21.01.2015 (para 13.1 - 13.4)."

3. Coming to the first and foremost issue of sec.14A disallowance, we note that the CIT(A)'s lower appellate discussion restricting the same to the extent of re-computation of the disallowance amount only qua exempt income yielding investment(s), reads as under:-

"The assessee has stated that the Assessing officer has considered entire investments for calculating 14A disallowance instead of considering only those dividend yielding investments. And has further agitated that such working for disallowance must be made only on the average value of investment which are yielding dividend. Assessee placed reliance on the decision of ITAT New Delhi special Bench in the case of Vireet investment Pvt Ltd in which it has been held that only dividend yielding investments must be considered for the purpose of computing average value of investment. Further the ITAT New Delhi, in the case of Religare securities has decided the issue in favour of the assessee. While ruling so the Hon'ble tribunal stated as follows:

"As far as the assessee's additional ground is concerned which challenges the disallowance made u/s 14A of the Act, it is seen that in Assessment Year 2008-09 in ITA No.2282/Del/2013, vide order dated 13.12.2019, on the issue of disallowance u/s 14A of the Act, the Co-ordinate Bench of the Tribunal in Para 5.4 of the said order had considered the issue of disallowance and remitted the issue back to the file of the Assessing Officer to work out of the disallowance by calculating average investments under Rule 8D(2)(i)(il) by taking only those investments which have actually yielded dividend income during the relevant year

and also directed that if the same exceeded the dividend income then to restrict the same to the extent of exempt income only. Similarly, in Assessment Year 2011-12 in ITA Nos. 230/Del/2017 and 574/Del/2017, vide order dated 31.07.2020, vide Para 18 of the said order, the issue of disallowance u/s 14A of the Act had again restored the issue to the file of the AO with the direction to ascertain the investment which have yielded dividend income and to consider only those investments for computing the average value of investments Therefore, on identical facts and with consent of both the parties, we deem it appropriate to restore this issue also to the file of the Assessing Officer with a direction to include only those investments which have yielded dividend income for computing the average value of investments for the purpose of computing the amount of disallowance us 14A of the Act. The Assessing Officer is directed to offer reasonable opportunity to the assessee to present its case before proceeding to re-compute the disallowance."

Respectfully following the above decisions and also due to the fact that for the A.Y.2017-18, the A.O himself has accepted the same, the A.O is directed to restrict the disallowance by considering only those dividend yielding investments which generate exempt income. Ground of appeal is allowed."

4. Learned DR could hardly dispute that the instant issue of re-computation of the impugned 14A r.w.r. 8D disallowance is no more res integra as the same has to be calculated only after considering such exempt income yielding investment as per various judicial precedents. We thus find no reason to interfere the CIT(A)'s directions as regards the Revenue's first and foremost ground. Same position also continues regarding Revenue's second substantive ground seeking to revive assessment finding disallowing sec.80G deduction claim, which has been allowed by the CIT(A) as follows:-

"This ground is against the disallowance of deduction of Rs.1,00,00,000/- under section 80G for donation given to Chief Minister relief fund on the ground that it is incurred as part of mandatory CSR expenditure. In this connection the

assessee relied on the decision of Kolkata A bench of ITAT in the case of JMS Mining Pvt Ltd in ITA No. 146/KOL/2021. Submissions were perused and the ITAT in the above referred ruling has stated as under:

"Further the Ld. A.R. contended that CSR expenses are required to be mandatorily incurred by companies as per section 135 of Companies Act and accepted the fact that the assessee was aware that deduction u/s 37(1) of the Act, was not available from assessment year 2015-16 as per Explanation 2 to Section 37(1) of the Act which was inserted by the Finance Act No. 2. 2014 and therefore, assessee has not made any claim for deduction under that Chapter IV-D. However according to Ld. A.R. the assessee company has made a claim of deduction for CSR expenses u/s 80G of the Act which is under Chapter VIA and there is no prohibition/restriction for claiming the same. The Ld. A.R. further submitted that the legislative intent would be clear from the fact that under Section 80G, there are two specific donations which if classified as CSR expenses by an assessee can be allowed u/s. 80G of the Act only on satisfaction of certain condition precedent prescribed in that Section itself and for that he drew our attention to sub-Clause (ihk) & (ihl) of clause (a) of Sub-section (2) of Section 80G of the Act and explained the contours of ITA No. 146/Kol/2021 M/s JMS Mining Pvt. Ltd. A.Y. 2016-17 the provision viz, exceptions in respect of CSR expenses incurred in respect of two projects i.e. Swachh Bharat Kosh and Clean Ganga Fund."

In addition to this, the Bangalore Tribunal in the case of FNF India Pvt. Ltd. vs. ACIT (ITA No. 1565/Bang/2019) reported in 2021-TIOL-319-ITAT-BANG pronounced on January,05.2021 held as under:

"Similar issue came up for consideration before this Tribunal in the case of Allegis Services (India) Pvt. Ltd. wherein it was held that "For claiming benefit under Section 80G, ITA No. 146/Kol/2021 M/s JMS Mining Pvt. Ltd. A. Y. 2016-17 deductions are considered at the stage of computing "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 held "income from 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.....authorities below have erred in denying claim of assessee under section 80G of the Act.....”

Respectfully following the ruling of the tribunals referred above and also in view of the fact that Section 80G(2) (a) allows deduction for any sums paid by the assessee in the previous year as donation and it restricts donations paid in pursuance of corporate social responsibility to Swacha Bharat Kosh and Clean Ganga Fund as referred in sub sections (jihk) (ilihl) of the IT Act, addition made on this account is deleted and ground of appeal is allowed.”

5. It is clear that the CIT(A) has already followed various judicial precedents regarding the impugned CSR expenses held allowable in sec.80G of the Act. We thus reject Revenue's latter ground as well. This Revenue's appeal ITA No.272/Coch/2023 is dismissed.

Order pronounced in the open court on this 14th Day of August, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 14th August, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin