आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B"BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्यएवं श्री मनीष बोरड , लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. Nos.1059 & 1060/Kol/2023
Assessment Years: 2018-19 & 2019-20

L&T Finance Limited…..……..…..……...Appellant
[Successor of L&T Infrastructure Finance Company Limited, now Merger]
15th Floor, PS Srijan Tech Park,
Plot No.52, Block-DN, Sector-V,
Salt Lake, Kolkata – 700091.
[PAN: AACCA1963B]

vs.

DCIT, Circle-5(1), Kolkata…....….....….... Respondent

Appearances by:
Nisha Bharti, CA and Aadarsh Kabra, CA, appeared on behalf of the appellant.
ShriP. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 28, 2024
Date of pronouncing the order : September 30, 2024

आदेश / ORDER

संजय गर्ग, न्यायिकसदस्यद्वारा/ Per Sanjay Garg, Judicial Member:

The captioned are the two appeals preferred by the assesseeagainst the separate orders, of even date 07.08.2023, of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). ince common issues are involved in both the appeals, hence these have been heard together and are being disposed of by this common order. ITA No.1059/Kol/2023 is taken as the lead case for the purpose of narration of facts.

2. **ITA No.1059/Kol/2023**–The assessee in this appeal has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Ld. CIT(Appeal) was not justified rather grossly erred in confirming the disallowance of deduction claimed u/s 80G under Chapter VIA in respect of donations which also qualifies as CSR expenditure and expressly disallowed by the appellant under Section 37(1) of the Income-tax Act, 1961.

2. That the appellant craves leave to add, amend, modify, rescind, supplement or alter any of the grounds stated hereinabove, either before or at the time of hearing of this appeal."

3. The brief facts of the case are that during the year under consideration, the assessee has incurred Corporate Social Responsibility (in short, "CSR") expenses as mandatorily required u/s 135 of the Companies Act, 2013 amounting to Rs.4,53,33,770/-. Out of total CSR expenditure, certain expenditure was made by way of donations to eligible institutions u/s 80G of the income Tax Act ("the Act") for the purpose of claiming admissible deduction out of expenditure. The assessee, accordingly, claimed deduction u/s 80G of the Act amounting to Rs.1,48,19,675/- in the return of income. The Assessing Officer, however, during the assessment proceedings carried out u/s 143(3) of the Act, held that in view of Explanation to section 37(1) of the Act, the CSR expenditure was not an allowable deduction out of expenditure u/s 37 of the Act. He further held that on the same analogy, the deduction claimed u/s 80G out of the CSR expenditure also warrant disallowance. He, accordingly, disallowed the deduction claimed by the assessee u/s 80G of the Act in respect of amount paid to the charitable institution out of the amount meant for CSR activity.

4. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

5. The sole issue before us is as to whether the amount paid by the assessee to the charitable institution approved u/s 80G of the Act out

of its CSR as mandated u/s 135 of the Companies Act, would be eligible for deduction u/s 80G of the Act.

6. Both the ld. Representatives of the parties in respect of their contentions have furnished written submissions and also relied upon various case laws.

6.1. The main contention of the Ld. AR of the assessee has been that the explanation 2 to section 37(1) inserted vide Finance Act (2) of 2015 prohibits deduction of any expenditure incurred by the assessee by way of CSR under that section only and not under any other section or provision of the Act. That as per the settled law, the taxing statutes are to be interpreted strictly and the bar of deduction u/s 37(1) cannot be assumed, presumed, imported or read into any other section or provisions of the Act unless it is so specifically provided. It has been further contended by herthat section 80G nowhere prohibits,except under clauses (iiihk) and (iiihl) of section 80G(2), for claim of deduction in respect of donations made to other institutions even though the same is made in discharge of CSR. She, therefore, has contended that the aforesaid clauses (iiihk) and (iiihl) of section 80G(2)(a) specifically states that deduction shall not be allowed in respect of any donation made to Swachh Bharat Kosh and Clean Ganga Fund if, such donation has been made in pursuance of CSR u/s 135 of the Companies Act 2013. She, therefore, has contended that such prohibitions cannot be read into other clauses of section 80G(2)(a) prescribing for deduction on account of donation to the various institutions, funds etc. as mentioned therein. She in this respect has relied upon following case laws:

a) JMS Mining (P) Ltd. vs. PCIT (2021) 130 taxmann.com 118 (Kol-Trib)

b) P.C. Chandra Holding Pvt. Ltd. vs. PCIT in ITA No.256/Kol/2022 order dated 21.12.2022

c) Allegies Service (India) Pvt. Ltd. (ITA No.1693/Bang/2019 dated 29.04.2020) (Bang-Trib)

6.2. Whereas, the contention of the Ld. CIT-DR has been that the provisions of section 80G(2)(a) speaks of donations made to the various institutions, funds etc. That the contribution under CSR is a mandatory contribution and hence it is not a voluntary contribution. That the donations are always voluntary contributions hence the contribution made out of CSR obligation would not fall within the definition and scope of donation and hence will not be covered for claiming deduction u/s 80G of the Income Tax Act. Secondly, that there was no need felt by the legislature to amend any other clause of section 80G(2)(a) of the Act because payments made to those funds/institutions do not qualify as CSR.

7. We have considered the rival contentions and gone through the record. Before proceeding further, it will be relevant to reproduce the relevant statutory provisions/rules. Section 135 of the Companies Act, 2013 is read as under:

> **Corporate Social responsibility**
>
> **Section 135.** (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
>
> (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
>
> (3) The Corporate Social Responsibility Committee shall—
>
> (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.

7.1. Schedule VII of the Companies Act provides a list of activities, which may be included by the companies in their CSR policies. The contents of the said Schedule VII are reproduced as under:

SCHEDULE VII
(See section 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

[(i) eradicating hunger, poverty and malnutrition, [promoting health care including preventive health] and sanitation 3 [Including contribution to the Swatch Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water;

(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;

(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water [including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga];

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their dependents, [Central Armed Police Forces (CAPE) and Central Para Military Forces (CPMF) veterans, and their dependents including windows];

(vii) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;

(viii) contribution to the Prime Minister's National Relief Fund or [Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or] any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

[(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defence Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in

conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)]

7.2. The Companies (Corporate SocialResponsibility Policy Rules 2014 notified by Ministry of Corporate Affairs vide notification dated 27.02.2014, also prescribe certain modes for compliance of CSR. The relevant Rule 4 of the said rules is reproduced as under:

CSR Activities.

(1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

(2) The Board of a company may decide to undertake its CSR activities approved by the CSR committee, through a registered trust or a registered society or a company established by the company or itsholding or subsidiary or associate company under section 8 ofthe Act or otherwise:

Provided that

(i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similarprograms or projects;

(ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

(3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR committees of respective companies are in a position to reportseparately on such projects or programs in accordance with these rules.

(4) Subject to the provisions of subsection (5) of section 135 of the Act, the CSR projects or programs or activities undertaken in India only shall amount to CSR expenditure.

(5) The CSR projects or programs or activities that benefit only the employees ofthe company and their families shall not be consideredas CSR activities in accordance with section 135 of the Act.

(6) Companies may build CSR capacities of their own personnel as well as those of their Implementingagencies through Institutions with established track records of at

least three financial years but such expenditure shall not exceed five percent of total CSR expenditure ofthe company in one financial year.

(7) Contribution ofany amount directly or indirectly to any political party under section 182 ofthe Act, shall not be considered as CSR activity.

7.3. Thereafter The Ministry of Corporate Affairs, vide General Circular No. 21/2014 dated 18.06.2014 has clarified:

"Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory"

7.4. However, the afore reproduced Rule 4 of the CSR Rules 2014 has been substituted by the new Rule 4 of the 'Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 notified vide notification dated 22.01.2021. The substituted Rule 4 vide rules of 2021 is reproduced as under:

" 4. In the said rules, for rule 4, the following rule shall be substituted, namely:-

"4. CSR Implementation. – (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021:

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021.

(b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

(3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

(4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

(6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period. ".

8. A perusal of the afore-reproduced provisions section 135 of the Companies Act, 2013 would reveal that the CSR has not been fastened upon over every company, rather, it has been mandated only for the companies having net worth of Rs.500 crore or more or turnover of Rs.1000 crore or more or of a net profit of Rs.5 crore or more during any financial year; and what has been mandated is that at least 2% of the average net profits of the company made during the three immediate preceding financial year should be spent on CSR policy. The list of activities has been provided under Schedule VII to the Companies

Act, 2013. It is to be mentioned here that the said list is inclusive but not exhaustive. A perusal of the aforesaid list would show that the same can be bifurcated into two parts i.e. clause (i) to (vii), which provides for the list of activities, which can be included by the Board of Directors of the company in their CSR policies. Clause (viii) to (ix) provides that the contributions to the institutions mentioned in the said clauses, which includes public funded universities and institutes engaged in scientific research etc. will also be treated as discharge of its obligation of CSR.The CSR rules of 2014 prescribes that the CSR activities can also be taken through a registered trust or a registered society or a company either established by the company,itself,or by any other registered trust, society or company having an established track record of three years in undertaking similar programs or projects. Further a clarification has been issued vide Ministry of Corporate's circular No.21 of 2014 that "Registered Trust' as stated above would include Trusts registered under Income Tax Act, 1956, for those States where registration of Trust is not mandatory. Further it has also been provided in the CSR Rules of 2014 that the company will have to specify the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism. This means that simply making donation to a registered trust or institution will not suffice the compliance of CSR rather, the company has to ensure that the funds contributed by it have been spent on CSR activity and on the specified projects and programs through devised monitoring and reporting mechanism. These rules, thus, specify that mere donation to a registered charitable organisation is not in itself can be treated compliance of the CSR, rather, the donor company has to ensure that

the expenditure is incurred on the CSR activity and that too on the specified projects and programs as approved by the company.

8.1. The CSR Amendment Rules, 2021 at the first instance reiterate that CSR activity can be carried out by the company itself, or through a registered public trust or a registered society, registered under sections 12A and 80G of the Income Tax Act, 1961. However, it is further provided that every such entity, who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar of the Companies. It is further provided that the Board of the company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it.

8.2. The crux of the above discussion is that it is not the donation simpliciter rather, there is a responsibility upon the company to ensure that the CSR expenditure is actually incurred, that too, in the specified projects and programs. Under the 2021, Rules, even the recipient institution/trust is also required to register itself with the Registrar of Companies. However, the contribution to other Govt. Funds such as Prime Ministers Relief Fund, PM Cares Fund etc. does not cast any obligation on the company to monitor or to ensure the application of such funds.

9. Having discussed the relevant provisions of the Companies Act, 2013 and the relevant CSR Rules, we now proceed to discuss the relevant provisions of the Income Tax Act,1961. At this stage, it will be relevant to reproduce here the relevant part of provisions of section 37 of the said Act:

> ***"37. (1)****Any expenditure (not being expenditure of the nature described in sections 30 to 36 [* * *] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*
>
> *Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."*

9.1. It is pertinent to mention here that before insertion of Explanation-2 to section 37(1) of the Act w.e.f.1.4.2015, various Benches of the Tribunal were of the view that since the CSR expenditure has been fastened upon the assessee under the Companies Act and that noncompliance of the same invites penal actions, therefore incurring of such expenditure is essential for running of the business of the company, therefore, the same would be allowable as business expenditure. However, with the insertion of explanation-2 to section 37(1) of the Act, it has been declared that the CSR expenditure would not be eligible for deduction as business expenditure. The aforesaid explanation has been brought into the Income Tax Act by way of Finance (No.2) Act, 2014 w.e.f. 01.04.2015. The "Explanatory Notes to the provisions of Finance (No.2) Act, 2014" issued by the Central Board of Direct Taxes vide its Circular No.01/2015 dated 21.1.2015 explaining the aforesaid amendment, read as under:

> ***"13. Corporate Social Responsibility (CSR)***
>
> ***13.1*** *Corporate Social Responsibility (CSR) Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more*

during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income.

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 subsidizing of around one-third of such expenses by the Government by way of tax expenditure.*

13.3 *The provisions of section 37(1) of the Income-tax Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Income-tax Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Income-tax Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.*

13.4 Applicability:*-This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years."*

9.2. In para 13.2 of the explanatory notes, it has been explained that 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. It has been provided that 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. At this stage, it

is pertinent to refer to the last lines to para 13.3 of the explanatory notes, wherein, it has been provided that though, the expenditure incurred towards CSRs is not an expenditure incurred for the purpose of business, "however, the CSR expenditure which is of the nature described in section 30 to section 36 of the Income-tax Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein". Surprisingly, such an explanation has been given in explanatory notes explaining the insertion of "Explanation-2 to section 37(1) and not either in the relevant provisions of section 30 to 36 or any explanatory notes thereto.

9.3. At this stage it will be relevant to reproduce the relevant provisions of section 35 of the Act:

> ***" Expenditure on scientific research.***
>
> ***35.****(1) In respect of expenditure on scientific research, the following deductions shall be allowed-*
>
> *(i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.*
>
> *[Explanation. - Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary [defined in Explanation 2 below sub-section (5) of section 40A to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority (See rule 6(1). The prescribed authority under rule 6(1) is Director General (Income-tax Exemptions) in concurrence with Secretary, Department of Scientific and Industrial Research, Government of India.) to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced;]*

(ii) an amount equal to one and one-fourth times of any sum paid [Substituted by Act 27 of 1999, Section 15, for " any sum paid" (w.e.f. 1.4.2000).] to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research

***[Provided** that such association, university, college or other institution for the purposes of this clause-*

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government;]

*[**Provided further** that where any sum is paid to such association, university, college or other institution in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the sum so paid;]*

[(iia) any sum paid to a company to be used by it for scientific research:

***Provided** that such company—*

(A) is registered in India,

(B) has as its main object the scientific research and development,

(C) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(D) fulfils such other conditions as may be prescribed;]

[(iii) [any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university], college or other institution to be used for research in social science or statistical research :

[Provided that [such association, university], college or other institution for the purposes of this clause-

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) [such association, university], college or other institution is specified as such, by notification in the Official Gazette, by the Central Government." ….

[(2AA) Where the assessee pays any sum to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority, then—

(a) there shall be allowed a deduction of a sum equal to one and one-half times the sum so paid ; and

(b) no deduction in respect of such sum shall be allowed under any other provision of this Act:"

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9.3. A perusal of the above reproduced provisions of section 35 of the Act would reveal that a deduction, even in some cases more than 100% of the contribution, is allowed, if it is made to a research association, or to a university or to a college or other institution to be used for scientific research and to or to national laboratory or to an Indian Institute of technology etc. which are approved under section 35 of the Act and subject to the fulfilment of prescribed conditions.

9.4. It is very much surprising that the CBDT circular explaining the amendment brought to Income Tax Act by way of insertion of 'Explanation 2'to section 37 (1) of the Act vide finance Act (2) of 2014, on the one hand states that the amount spent by a company towards it's CSR activity will not be treated as expenditure incurred for the purpose of business, but, simultaneously, states that if an assessee contributes any sum to a research institute engaged in scientific research as provided u/s 35 of the Act (section 35 being covered between section 30 to section 36) and such an institution/activity is

also covered under clause (ix) of Schedule VII, then such an assessee will be eligible, in respect of such a sum, not only for deduction as admissible u/s 35 of the Act but will also be treated as discharge of its obligation towards its CSR under Companies Act. This explanation is given in Para 13.3 of the explanatory notes is self-contradictory to the justification given regarding the disallowance of CSR expenses.However, that makes it clear that there is no embargo regarding the admissibility of CSR expenditure in any other provision of the Act, except under section 37(1) of the Act.

10. Now coming to the provisions of section 80G of the Act, the relevant part of the same is reproduced as under:

> Deduction in respect of donations to certain funds, charitable institutions, etc.
>
> 80G. [(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,
>
> [(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified 3 [in sub-clause (i) or in 4 [sub-clause (iiia)] 5 [or in sub-clause (iiiaa) 6 [or in sub-clause (iiiab)] 7 [or in sub-clause (iiib)] 8 [or in sub-clause (iiie)] 9 [or in sub-clause (iiif)] 10[or in sub-clause (iiig)] 11[or in sub-clause (iiiga)] 12[or sub-clause (iiih)] 13[or sub-clause (iiiha) or sub-clause (iiihb) or sub-clause (iiihc)] 14[or sub-clause (iiihd)] 15[or sub-clause (iiihe)] 16[or subclause (iiihf)] 17[or sub-clause (iiihg) or sub-clause (iiihh)] 18[or sub-clause (iiihi)] 19[or sub-clause (iiihj)] or] 20[sub-clause (iiihk) or sub-clause (iiihl) or] 20[sub-clause (iiihm) or] in] sub-clause (vii) of clause (a) 21[or in clause (c)] 11[or in clause (d)] thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty per cent of the balance of such aggregate; and]
>
> (ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).]
>
> (2) The sums referred to in sub-section (1) shall be the following, namely:—
>
> (a) any sums paid by the assessee in the previous year as donations to—
>
> i) the National Defence Fund set up by the Central Government; or
>
> (ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or

(iii) the Prime Minister's Drought Relief Fund; or 22[(iiia) the Prime Minister's National Relief Fund; or

(iiiaa) the Prime Minister's Armenia Earthquake Relief Fund; or]

(iiiab) the Africa (Public Contributions-India) Fund; or]

(iiib) the National Children's Fund; or]

(iiic) the Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985; or]

(iiid) the Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991; or]

(iiie) the National Foundation for Communal Harmony; or]

(iiif) a University or any educational institution of national eminence as may be approved by the prescribed authority in this behalf; or]

(iiig) the Maharashtra Chief Minister's Relief Fund during the period beginning on the 1st day of October, 1993 and ending on the 6th day of October, 1993 or to the Chief Minister's Earthquake Relief Fund, Maharashtra; or]

(iiiga) any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat; or]

iiih) any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district for the purposes of improvement of primary education in villages and towns in such district and for literacy and post literacy activities.

Explanation.—For the purposes of this sub-clause, "town" means a town which has a population not exceeding one lakh according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or]

(iiiha) the National Blood Transfusion Council or to any State Blood Transfusion Council which has its sole object the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.

Explanation.—For the purposes of this sub-clause,—

(a) "National Blood Transfusion Council" means a society registered under the Societies Registration Act, 1860 (21 of 1860) and has an officer not below the rank of an Additional Secretary to the Government of India dealing with the AIDS Control Project as its Chairman, by whatever name called;

(b) "State Blood Transfusion Council" means a society registered, in consultation with the National Blood Transfusion Council, under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India and has Secretary to

the Government of that State dealing with the Department of Health, as its Chairman, by whatever name called; or

(iiihb) any fund set up by a State Government to provide medical relief to the poor; or

(iiihc) the Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants; or]

(iiihd) the Andhra Pradesh Chief Minister's Cyclone Relief Fun d, 1996; or]

(iiihe) the National Illness Assistance Fund; or]

iiihf) the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be:

Provided that such Fund is—

(a) the only Fund of its kind established in the State or the Union territory, as the case may be;

(b) under the overall control of the Chief Secretary or the Department of Finance of the State or the Union territory, as the case may be;

(c) administered in such manner as may be specified by the State Government or the Lieutenant Governor, as the case may be; or]

(iiihg) the National Sports Fund to be set up by the Central Government; or

(iiihh) the National Cultural Fund set up by the Central Government; or]

(iiihi) the Fund for Technology Development and Application set up by the Central Government; or

(iiihj) the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities constituted under sub-section (1) of section 3 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999); or]

(iiihk) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013); or

(iiihl) the Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013); or]

(iiihm) the National Fund for Control of Drug Abuse constituted under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or]

(iv) any other fund or any institution to which this section applies; or

(v) the Government or any local authority, to be utilised 6 [for any charitable purpose other than the purpose of promoting family planning; or]

(vi) an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;]

(via) any corporation referred to in clause (26BB) of section 10; or]

(vii) the Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning;]

(b) any sums paid by the assessee in the previous year as donations for the renovation or repair of any such temple, mosque, gurdwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States;

(c) any sums paid by the assessee, being a company, in the previous year as donations to the Indian Olympic Association or to any other association or institution 2 [established in India, as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf] for—

(i) the development of infrastructure for sports and games; or

(ii) the sponsorship of sports and games, in India;]

(d) any sums paid by the assessee, during the period beginning on the 26th day of January, 2001 and ending on the 30th day of September, 2001, to any trust, institution or fund to which this section applies for providing relief to the victims of earthquake in Gujarat.]

(3) [Omitted by the Finance Act, 1994 w.e.f. 1-4-1994]

(4) Where the aggregate of the sums referred to in sub-clauses (iv), (v), 6 [(vi), (via) and (vii)] of clause (a) and in 7 [clauses (b) and (c)] of sub-section (2) exceeds ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), then the amount in excess of ten per cent of the gross total income shall be ignored for the purpose of computing the aggregate of the sums in respect of which deduction is to be allowed under subsection (1).]

5. ……"

11. It is to be noted that there is no mention under any of the provisions of section 80G of the Act for barring deduction in respect of the amount donated towards discharge of CSR activity, except under clause (iiihk) and (iiihl) to section 80G(2)(a) of the Act, wherein, the claim of deduction has been specifically barred in respect of amount donated towards Swachh Bharat Kosh and Clean Ganga Fund in pursuance of CSR mandated under sub-section (5) of section 135 of the Companies Act. No such embargo has been mentioned in respect of other institutions, for example, Prime Minister Relief Fund and Prime Minister Care fund under clause (iiia) of section 80G(2) and these funds also have been mentioned under clause (viii) of Schedule VII of the Companies Act. The list of institutions mentioned under clause (ix) has also been included either u/s 35 of the Act or u/s 80G of the Act, however, there is no amendment brought in the relevant statutory provisions that the contribution made to the registered charitable institutions towards discharge of obligation under CSR, will not be eligible for deduction u/s 80G of the Act. It is pertinent to mention here that even there is no explanation provided under the Income Tax Act as to why the contributions towards Swachh Bharat Kosh and Clean Ganga Fund set up by the Central Government are not eligible for claiming deduction u/s 80G of the Act, whereas, there is no such restriction in relation to other type of contributions and to the institutions whose names find mention in Schedule VII of the Companies Act read with CSR Rules of 2014 and CSR Rules of 2021, as well as u/s 80G of the Act the even u/s 35 of the Act. Rather, as noted above, in the explanatory notes explaining the amendment to section 37(1), it has been clarified by the CBDT that if the funds meant for CSR are spent and are in the nature of expenditure described u/s 30 to 36 of the Act, that shall be allowed as deduction under those sections,

despite the fact that such funds are made towards discharge of CSR obligation. Hence, this clarifies the position that the purpose of introduction of Explanation-2 to section 37(1) is not to disallow the CSR expenditure, if so admissible, under any other provision of the Act, but under section 37 only.

12. Now, coming to the contention of the ld. DR, that u/s 80G(2)(a) the deduction is admissible on the sum paid by the assessee to the approved institutions as "donations". That the term"donations" refers to a gift usually one of a charitable nature. That the donation is a voluntary transfer of property by the doner to the donee without any exchange of value on the part of the recipient and that the CSR expenditure u/s 135 of the Companies Act, 2013 is a mandatory/statutory obligation and cannot be termed as "donation". Though, on the face of it, there seems to be some force in the aforesaid contention of the ld. DR, however, on deeper analysis of the facts, we find that this contention is not applicable in this case.

12.1. Though, there is a statutory obligation of CSR expenditure u/s 135 of Companies Act 2013, however there are many prescribed modes and activities under Schedule VII of the Companies Act for spending the CSR expenditure, which list is not exhaustive rather inclusive. There is no provision either u/s 135 of the Companies Act or under Schedule VII to the Companies Act or the CSR Rules, requiring mandatory donations to the institutes/funds prescribed under the relevant provisions of section 80G of the Income Tax Act. Therefore, there was no compulsion upon the assessee to donate the funds to a charitable organisation approved u/s 80G of the Income Tax Act.The assessee has chosen this mode out of its own volition.

12.2. The contribution made by a company toward the discharge of it's CSR to a registered charitable institution, in our view, is akin to corpus donations. Section 11(1)(d) of the Income Tax Act speaks of the specific or corpus, donations, although it has not been defined under Income Tax Act, 1961. Corpus donations are donations wherein, the donor makes the donations to the donee for a specific purpose or object. Prior to the amendment made by amended CSR Rules of 2021, Rule 7 of the erstwhile CSR Rules permitted corpus contributions to charitable institutions as eligible CSR expenditure. Further, the Ministry of Corporate Affairs vide Circular No.21/2014 dated 18th June 2014 had also clarified that contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure, if such a donee institution or the said corpus has been created exclusively for a purpose related to the activities provided under the CSR framework. However, under the old rules, the mechanism to monitor and ensure that such donation has been actually spent on CSR activity was missing. The donor company would get absolved of its liability of CSR by just donating to the eligible trust/society/company, without ensuring that the amount has been actually spent by the donee on such specific object or purpose (CSR activity) for which it was donated. Therefore, Rule 7 of the CSR Rules, which permitted corpus contributions as eligible CSR expenditure, has been substitutedand under the amended CSR Rules of 2021, corpus contributions to any entity shall not be admissible as CSR expenditure. The object and purpose of the aforesaid amendment is to ensure that the expenditure made is actually utilised towards CSR activities.

12.3. Further, certain amendments have also been made in the Income Tax Act,vide Finance Act, 2021. In the Memorandum

explaining on the Finance Bill, 2021 it has been noted that various public trusts or institutions claim corpus donations as exempt under Section 11(1)(d) of the IT Act, and simultaneously also claim application of these funds as part of the mandatory 85% application for non-corpus income exempted under Section 11(1). Therefore, to curb such practice of claiming double deduction, following amendments have been made in the Income Tax Act, 1961 vide the Finance Act, 2021:

(i) Under Section 11(1)(d), an insertion has been made that corpus contributions shall be subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified under Section 11(5) specifically for such corpus.

(ii) Explanation 4 to Section 11(1) has been inserted which provides that any application of income out of the corpus shall not be treated as application for charitable and religious purposes. However, if such amount is invested or deposited back to the corpus fund and in the prescribed form of investment/deposit, then such amount shall be allowed as application in the previous year in which it is deposited back to corpus.

12.4. These amendments have been made to ensure that the funds donated towards the discharge of CSR should be actually spent for the specific projects/purposes towards CSR activity. However, none of the amendments, except those, wherein, it has been specifically provided suggest that the contribution to a registered charitable Trust or Institution will not be eligible for deduction under section 80G of the Income Tax Act. Though, under the amended CSR Rules of 2021, simply a donation towards corpus of a charitable trust/society etc.

would not be treated as a discharge of CSR, but the donor has to ensure that such donation is actually spent on CSR activity, however, that is to belooked by the competent authority under the Companies Act. So far as the deduction, under section 80G of the Income Tax Act in respect of donations made towards compliance of CSR is concerned, as discussed above, such donations are akin to corpus donations, which are donated for specific object and purpose and the donor/assessee has to ensure also that such donations are actually spent on such specific object/CSR activity for claiming discharge of CSR under Companies Act. However, such donations for specific purpose/CSR activity do qualify for deduction under section 80G of the Act, unless specifically barred in respect of certain fund such as Swachh Bharat Kosh and Clean Ganga Fund. If the intention of the legislature was to prohibit the allowance of deduction under section 80G of the Act of the amount spent or contributed in discharge of CSR, it would have specifically mentioned so at the beginning of section 80G that such restriction would be applicable to all such donations as mentioned therein, as is clearly mentioned in the clauses (iiihk) and (iiihl) to section 80G(2)(a). Even, as noted above, though, vide explanation 2 to section 37(1) of the Act, deduction of expenditure incurred towards CSR has been made inadmissible, however, in the explanatory notes explaining the amendment to section 37(1), it has been clarified that if the funds meant for CSRs are spent and are in the nature of expenditure described u/s 30 to 36 of the Act, that shall be allowed as deduction under those sections.Therefore, the contention canvassed by the ld. DR, in our view, cannot be applied to hold that the amount contributed by the assessee to the charitable organisation would not fall within the definition and scope of the term donation under section 80G of the Act.

12.5. It has been held time and again that the taxing statutes require strict interpretation. The Hon'ble Supreme Court in the case of CST vs. Modi Sugar Mill 1961 SCR (2) 189 (SC) (since relied upon by both the representatives of the parties) has held that a taxing statute must be interpreted in the light of what is clearly expressed. It cannot imply anything which is not expressed. It cannot import provisions in the statutes so as to supply any assumed deficiency. Reliance in this respect can also be placed on another decision of the Hon'ble Supreme Court in the case of Smt. Tarulata Shyam vs. CIT (1977) 108 ITR 345 (SC) holding that in a tax statute nothing is to be read and nothing is to be implied. That there is no scope of importing in the statute words which are not there. Even it has been held time and again that in interpreting a taxing statute, equitable considerations are out of place. When a taxing statute imposes a financial burden/tax liability even though the same appears to be harsh and not equitable, the courts have held that the fiscal statues are to be interpreted in strict terms and such liability cannot be set aside on the ground of equity or natural justice. The vice-versa is also true. Since, there is no bar to claim deduction under the relevant provisions of section 80G, except wherein so specifically barred i.e. in respect of donation towards Swachh Bharat Kosh and Clean Ganga Fund, the same cannot be denied to an assessee importing or reading the barring provisions of some other section to the entire provisions of section 80G.

13. In view of the above discussion, the assessee, in our view, is not barred from claiming deduction u/s 80G of the Income Tax Act in respect of donations made to the approved institutions even though the same is made in discharge of CSR obligation u/s 135 of the Companies Act.

14. However, before parting with the judgement, we deem it fit to point out anomalies occurred because of the aforesaid partial amendment carried out in section 80G of the Act.

Firstly, it discriminates between an assessee who actually spends such sum on charitable activity/welfare towards CSRs and who simply donates the amount to a registered charitable organisation u/s 12A and 80G of the Act. The assessee who himself carries out the charitable activity in discharge of CSR obligation, will not be eligible in claiming any deduction either u/s 35 or u/s 80G of the Act, on the other hand, an assessee who just pays amount meant for CSR activity to a registered charitable institution, will not only be discharged from its obligation under CSRs but also get deduction u/s 80G of the Act. The donated amount becomes the income of charitable institution, which is subject to the exemptions/deductions under the Income Tax Act available to such an institution. Such an institution has a right to accumulate 15% of its income for future application. This may result into non-application of 100% of the amount meant for CSRs in the stipulated period mentioned under the Companies Act.

Secondly, there may be a case where such an institution does not spend the amount on charitable activity, the result would be that the said amount donated by the doner company under CSR policy will become the income of the charitable institution, which may be subjected to the taxation, however, the very purpose of spending such amount towards specific welfare projects would get defeated.

Thirdly, there is no rationale given as to why the contribution made in discharge of CSR towards donation to Swachh Bharat Kosh and Clean Ganga Fund is not specifically allowed as deduction whereas, there is

no such embargo in respect of donations given for other purposes/fund as enlisted under section 80G.

Fourthly, as noted above, though, vide explanation 2 to section 37(1) of the Act, deduction of expenditure incurred towards CSR has been made inadmissible, however, in the explanatory notes explaining the amendment to section 37(1), it has been clarified that if the funds meant for CSRs are spent and are in the nature of expenditure described u/s 30 to 36 of the Act, that shall be allowed as deduction under those sections. The rationale behind such an explanation is missing.

The Registry is directed to send the copy of this order to the Chairman, CBDT for their appraisal and removal of the lacunae/anomalies so that a clear picture may emerge to avoid future disputes/controversies on this issue.

ITA No.1060/Kol/2023– The facts and issue involved in this appeal is identical to that have been discussed above in ITA No.1059/Kol/2023, therefore, our findings given above will mutatis mutandis apply to this appeal also.

12. In the result, both the appeals of the assessee stand allowed.

Kolkata, the 30th September, 2024.

[डॉक्टर मनीष बोरड **/Dr. Manish Borad]**	**[**संजय गर्ग**/Sanjay Garg]**
लेखा सदस्य **/Accountant Member**	न्यायिक सदस्य**/Judicial Member**

Dated: 30.09.2024.
RS

Copy of the order forwarded to:
1. L&T Finance Limited [Successor of L&T Infrastructure Finance Company Limited, nowMerger]
2. DCIT, Circle-5(1), Kolkata
3.CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

1. Date of Dictation…….
2. Date on which the typed order is placed before the dictating Member and other Member……..
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……
6. Date on dispatch of the order……