

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM, &
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No.4452/Mum/2024
(Assessment Year: 2015-16)**

ACIT-3(3)(1), Room No. 522, Aayakar Bhavan, Churchgate, Mumbai-400020.	Vs.	Jamnagar Utilities and Power Pvt. Ltd., 3rd, Maker Chamber-IV, Nariman Point, Mumbai-400021. PAN : AAACR3893B
Appellant)	:	Respondent)

**C.O. No.207/Mum/2024
(Assessment Year: 2015-16)**

Jamnagar Utilities and Power Pvt. Ltd., 3rd, Maker Chamber-IV, Nariman Point, Mumbai-400021. PAN : AAACR3893B	Vs.	ACIT-3(3)(1), Room No. 522, Aayakar Bhavan, Churchgate, Mumbai-400020.
Appellant)	:	Respondent)

Revenue by : Shri Vivek Perampurna, CIT-DR

Assessee by : Ms. Moksha Mehta, AR

Date of Hearing : 07.10.2024

Date of Pronouncement : 09.10.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue and the Cross Objections by the assessee are against the order of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 15.07.2024 for Assessment Year (AY) 2015-16. The only issue contended in this appeal by the Revenue is with regard to the CIT(A) allowing the deduction under section 80G of the Income Tax Act, 1961 (the Act) towards the amount expended by the assessee under Corporate Social Responsibility (CSR). The CO raised by the assessee pertains to the legality of reopening of assessment under section 147 of the Act.

2. The assessee is a private limited company and filed the return of income for AY 2015-16 on 27.11.2015 admitting a total income of Rs. 245,74,25,110/- under normal provisions of the Act and a book profit of Rs. 822,06,83,524/- under section 115JB of the Act. The case was selected for scrutiny and the assessment under section 143(3) was completed accepting the income returned by the assessee. The assessment was reopened under section 147 of the Act for the reason that the assessee was involved in Specified Domestic Transactions with its Associated Enterprises (AE). The Assessing Officer (AO) during the course of re-assessment proceedings noticed on perusal of records noticed that the assessee has claimed a sum of Rs. 5,50,00,000/- (Rs. 11,00,00,000 * 50%) under section 80G of the Act. The AO further noticed that the said amount which was debited towards CSR spend was added back in the computation of income and 50% of the said amount is claimed under section 80G of the Act. The AO did not allow the claim under section 80G of the Act for the reason that CSR expenditure incurred by the company is under statutory obligation on the part of the assessee and is not a

voluntary donation eligible for claim under section 80G of the Act. On further appeal the CIT(A) allowed the claim of deduction under section 80G to the assessee by placing reliance on the decision of the Co-ordinate Bench in the case of Reliance Industries Ltd. Vs. DCIT (ITA No. 2587 & 2588/Mum/2022) and Naik Seafoods Pvt. Ltd. Vs. PCIT (ITA No. 490/Mum/2021).

3. The Id. Departmental Representative (DR) submitted that the CSR expenditure incurred is an obligation regulated by the Companies Act and is not voluntary in nature. Therefore, the Id. DR argued that the assessee is not entitled to claim deduction under section 80G of the Act. In this regard, the Id. DR placed reliance on the decision of the Delhi Bench of the Tribunal in the case of Agilent Technologies (International) Pvt. Ltd. Vs. ACIT (2024) 160 taxmann.com 238 (Del. Trib.).

4. The Id. Authorized Representative (AR) on the other hand submitted that the Co-ordinate Bench in assessee's own case for AY 2016-17 (ITA No. 2117 & C.O. 122/Mum/2024 dated 24.07.2024) has considered a similar issue and has held that the assessee is entitled for deduction under section 80G of the Act towards CSR spends. The Id. AR also submitted that the Delhi Bench of the Tribunal in the case of Interglobe Technology Quotient Pvt. Ltd. (2024) 163 taxmann.com 542 (Del. Trib.) has considered a similar issue and allowed the deduction under section 80G of the Act to the assessee towards CSR expenditure.

5. We heard the parties and perused the material on record. During the year under consideration the assessee has claimed 50% of the amount donated to M/s Reliance Foundations which is registered under section 12A of the Act against the certificate issued under section 80G(5) of the Act. The AO denied the claim on the

ground that the donation made is not voluntary but is under a statutory obligation. The CIT(A) allowed the claim of the assessee by placing reliance on the decision of the Co-ordinate Bench. We notice that the Co-ordinate Bench in assessee's own case for AY 2016-17 has considered a similar issue and held that

“5. We have heard rival submission of the parties and perused the relevant material on record. In the case, the assessee debited Rs.8,60,00,000/- on account of CSR while computing total income. However, the assessee claimed 50% deduction i.e. Rs.4,30,00,000/- u/s 80G of the Act. According to the Officer CSR is statutory liability on the part of the assessee, which is to be incurred out of profit in compliance to the Companies Act whereas section 80G of the Act deal with donation in the nature of the voluntary out of once own violation. voluntary rather it was legal mand the Assessing Officer held the CSR expenditure out of purview the section 80G of the Act and accordingly he disallowed the claim of deduction of the assessee of Rs.4,30,00,000/ the Ld. CIT(A) allowed the claim of the assessee observing as under:

“I have carefully considered the assessment order and submission made by the appellant. The appellant has relied upon the following judicial decisions including the decisions of jurisdictional ITAT Mumbai where it has been held that payments towards donations made on account of corporate social responsibility, disallowed under section 37(1), are allowable as deductions under section 80G of the Act:

- *DCIT Reliance Industries Ltd. [2023] I.T.A. No. 2587 & 2588/Mum/2022 (Mumbai ITAT)*
- *M/s. Naik Seafoods Pvt. Ltd. Vs. Pr. CIT-2 (ITA No 490/MUM/2021)(Mumbai ITAT)*
- *FNF India (P.) Ltd. Vs. ACIT (2021) (133 taxmann.com 251) (Bangalore ITAT)*
- *Sling Media (P.) Ltd. Vs. DCIT (2022) (194 ITD 1) (Banglore ITAT)*
- *Infinera India (P.) Ltd. Vs. JCIT (2022) (194 ITD 463) (Bangalore ITAT)*

- *DCIT Vs. M/s. The Peerless General Finance & Investment & Co. Ltd (ITA No. 1469 & 1470/Kol/2019) (Kolkata ITAT)*

Further, it is also observed from the contents of above decision of Hon'ble ITAT that the explanatory memorandum to Finance Act No. 2, 2014, introducing Explanation 2 to Section 37 (1) which prohibited the allowability of CSR expenditure as business expenditure. The memorandum clearly states that CSR expenditure described in sections 30 to 36 of the Income-tax Act, 1961 shall be allowed. Legislators never intended to deny deductions for CSR expenditure outright; it is only not allowable under section 37(1). As the amendment in section 37(1) does not apply to sections 30 to 36 of the Act, the same would not apply to section 80G of the Act. Thus, appellant shall be allowed to claim a deduction under section 80G of the Income Tax Act, 1961 to the extent of eligibility.

It is further viewed that jurisdictional Hon'ble Mumbai ITAT in the case of M/s. Reliance Industries Ltd. V.DCIT[2023](ITA NO.2587 & 2588/MUM/2022) has followed the decision rendered by Mumbai ITAT in the case of Naik Sea foods P Ltd V.Pr. CIT-2(ITA NO.490/MUM/2021). In the case of Naik Sea foods P Ltd (supra), the co-ordinate bench has followed the decision rendered by Bangalore bench of Tribunal in the case of M/s FNF India P Ltd (ITA No. 1565/Bang/2019 dated 05-01-2021), which in turn followed the decision rendered in the ease of Allegis Services (India) Pvt. Ltd. v. ACIT (ITA No. 1693/Bang/2019) and held that the assessee is eligible for deduction u/s 80G of the Act in respect of certain payments included in CSR Expenses. The relevant discussions made by the Tribunal are extracted below:-

"15. Considered the rival submissions and material placed on record, we observe from the record that Ld. Pr.CIT while examining the records of the assessment observed that the Assessing Officer has not Verified the expenses claimed by the assessee and allowed by the Assessing Officer ITA NO. 490/MUM/2021 (A.Y: 2016-17) M/s Naik Seafoods Pvt. Ltd., without making the proper verification and purchases which is 95% of the sale declared by the assessee and again Assessing Officer allowed the same without making proper

verification. After considering the submissions of both the parties we observe from the record that with regard to section 80G deduction we observed that the Coordinate Bench of ITAT Bangalore Bench decided the issue of deduction u/s. 80G relating to donations which is part of Corporate Social Responsibility in the case of M/s FNF India Pvt. Ltd., v. ACIT (ITA. No. 1565/Bang/2019 dated 05.01.2021). The relevant findings of the Bangalore Bench are reproduced below: -

"9. After hearing both the parties, we find that similar issue came up for consideration before this Tribunal in ITA No. 1693/Bang/2019 in the case of Allegis Services (India) Pvt. Ltd. v. ACIT. The Tribunal by its order dated 29.4.2020 held as under.-

"10. Section 135 of Companies Act, 2013 requires companies with CSR obligations, with effect from 01/04/2014.

Finance (No.2) Act, 2014 inserted new Explanation 2 to sub-section (1) of section 37, so as to clarify that for purposes of sub-section (1) of section 37, 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 be an expenditure incurred by the assessee for the purposes of the business or profession.

11. This amendment will take effect from 1/04/2015 and will, accordingly, apply to assessment year 2015-16 and subsequent years.

12. Thus, CSR expenditure is to be disallowed by new Explanation 2 to section 37(1), while computing Income under, the Head Income form Business and Profession. Further, clarification regarding impact of Explanation 2 to section 37(1) of the Income Tax Act in Explanatory Memorandum to The Finance (No.2) Bul, 2014 is as under:

"The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the 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 expenditure 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 Act shall be allowed deduction under those sections subject to fulfillment of conditions, if any, specified therein."

13. From the above it is clear that under Income tax Act, certain provisions explicitly state that deductions for expenditure would be allowed while computing income under the head, Income from Business and Profession to those, who pursue corporate social responsibility projects under following sections.

- Section 30 provides deduction on repairs, municipal tax and insurance premium*
- Section 31, provides deduction on repairs and insurance of plant, machinery and furniture Section 32 provides for depreciation on tangible assets like building, machinery, plant, furniture and also on intangible assets like knowhow, patents, trademarks, licenses. Section 33 allows development rebate on machinery, plants and ships.*
- Section 34 states conditions for depreciation and development rebate.*
- Section 35 grants deduction on expenditure for scientific research and knowledge extension in natural and applied sciences under agriculture, animal husbandry and fisheries. Payment to approved universities/research institutions or company also qualifies for deduction. In-house R&D is eligible for deduction, under this section.*

- *Section 35CCD provides deduction for skill development projects, which constitute the flagship mission of the present Government.*
- *Section 36 provides deduction regarding insurance premium on stock, health of employees, loans or commission for employees, interest on borrowed capital, employer contribution to provident fund, gratuity and payment of security transaction tax.*

Income Tax Act, under section 80G, forming part of Chapter VIA, provides for deductions for computing taxable income as under:

- *Section 80G(2) provides for sums expended by an assessee as donations against which deduction is available.*

1. Certain donations, give 100% deduction, without any qualifying limit like Prime Minister's National Relief Fund, National Defence Fund, National Illness Assistance Fund etc., specified under section 80G(1) (i)

2. Donations with 50% deduction are also available under Section 80G for all those sums that do not fall under section 80G(1)i).

Under Section 80G(2) (i) and (ii) there are specific exclusion of certain payments, that are part of CR responsibility, not eligible for deduction u/s 80G.

1. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, "Income from Business and Profession", whereas monies spent under section 80G are claimed while computing "Total Taxable income" in the hands of assessee. The point of claim under these provisions are different.

2. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies

necessary conditions under section 30 to 36 of the Act, for computing income under the head, "Income from Business and Profession".

3. For claiming benefit under section 80G, 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 head, "Income form 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.

4. We therefore do not agree with arguments advanced by Ld. Sr. DR

5. In present facts of case, Ld.AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Professionit has been submitted that some payments forming part of GSR were claimed as deduction under section 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

1. On the basis of above discussion, in our view, authorities below have erred in

denying claim of assessee under section 80G of the Act. 77e also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G(1) of the Act.

1. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its claim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility. Accordingly grounds raised by assessee stands allowed for statistical purposes:

In view of the decision of jurisdictional Hon'ble Mumbai ITAT in the case of M/s. Reliance Industries Ltd. V.DCIT[2023](ITA NO.2587 & 2588/MUM/2022) and Naik Seafoods Pvt. Ltd. V.PY.CIT-2/2021] ITA No. 490/MUM/2021, it is held that AO has erred in denying claim of the appellant under section 80G of the Act. It is also observed that assessing officer has not verified nature of payments qualifying exemption u/s.80G of the Act and quantum of eligibility as per section 80G(1) of the Act. Therefore, AO is directed to verify conditions necessary to claim deduction u/s.80G of the Act and grant deduction to the extent of eligibility. Accordingly, this ground stands allowed for statistical purposes."

5.1 We find that the Ld. CIT(A) has followed the decision of the Co-ordinate Bench on the issue in dispute. Further, we find that the assessee has fulfilled all the conditions for deduction u/s 80G of the Act in respect of deduction claimed. We also note there is no specific bar in section 80G of the Act for claiming deduction in respect of CSR expenditure if an assessee otherwise fulfill all the requirement of section 80G of the Act. In view of the above, respectfully following the finding of the Co-ordinate Bench of ITAT on the issue in dispute referred by the Ld. CIT(A), we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground of appeal of the Revenue is accordingly dismissed.

6. The ground raised by the assessee being in support of order of the Ld. CIT(A) and since we have already upheld the finding of the Ld. CIT(A) and dismissed the appeal of the Revenue, the ground raised by the assessee is rendered academic. Accordingly, we are not required to adjudicate upon the same."

6. The facts for the year under consideration are identical and therefore, respectfully following the above decision of the Co-ordinate Bench in assessee's own case, we uphold the order of the CIT(A). The grounds raised by the Revenue in this regard are dismissed.

7. Since we have upheld the order of the CIT(A) and dismissed the grounds of the Revenue, the C.O. of the assessee contending the legality of reopening has become academic not warranting any adjudication. Hence, the same is dismissed accordingly.

8. In the result, the appeal of the Revenue and the C.O. of the assessee are dismissed.

Order pronounced in the open court on 09-10-2024.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

Sr. No.	Details	Date	Initial	Designation
1	Draft dictated on PC	07.10.2024		Sr.PS/PS
2	Draft Placed before author	08.10.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			Sr.PS/PS
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			JM/AM
6	Order pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			Sr.PS/PS
9	Date on which file goes to the AR			
10	Date of Dispatch of order			