IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

	ITA NO. 29/Del/2024	
	A.YR. : 2020-21	
CHEIL INDIA PRIVATE LIMITED 7TH FLOOR, TWO HORIZON CENTRE, GOLF COURSE ROAD, GURGAON, HARYANA-122001 (PAN: AACCC2299Q)	VS.	DCIT, CIRCLE 4(2), C.R. BUILDING, NEW DELHI – 2
(APPELLANT)		**(RESPONDENT)**

Appellant by	:	Ms. Ananya Kapoor, Adv., Sh. Tarun Chanana, Adv. & Sh. Shivam Yadav, Advocate
Respondent by	:	Ms. Harpreet Kaur, Sr. DR.
Date of hearing	:	24.10.2024
Date of pronouncement	:	28.10.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 08.11.2023, relating to assessment year 2020-21 on the following grounds:-

1. That the assessment order dated 20.09.2022 passed by the National Faceless Assessment Centre ('Assessment Centre') under section 143(3) read with section 144B of the Income-tax Act, 1961 ("the Act") and the order dated 08.11.2023 passed by the National

Faceless Appeal Centre ('Appeal Centre') under section 250 of the Act for the Assessment Year ("AY") 2020- 21, and the additions/ disallowances made therein, are based on surmises and conjectures, and hence, bad in law.

2. That the Assessment Centre/ Appeal Centre has erred on facts and in law in disallowing the deduction claimed under section 80G of the Act to the extent of Rs 2,57,66,663/- alleging that the expenses incurred on account of Corporate Social Responsibility ("CSR") are not eligible for deduction under section 80G of the Act.

3. That the Assessing Officer/NFAC has erred on facts and in law in not appreciating that the payments forming part of CSR do not form part of the profit and loss account for computing Income under the head, "Income from Business and Profession". Pertinently, Assessee cannot be denied the benefit of the claim under Chapter VI A, while computing 'Total Taxable Income".

4. That the Assessment Centre/ Appeal Centre has erred on facts and in law in denying deduction under section 80G of the Act pertaining to eligible payments without appreciating that section 37 of the Act does not provide any restriction towards deduction under Chapter VI-A of the Act, which is otherwise eligible.

5. That the Assessment Centre/ Appeal Centre has erred on facts and in law in not appreciating the intent of the legislature that the disallowance of deduction under section 80G of the Act by way of CSR contribution was limited to clauses (iiihk) and (iiihl) of section 80G(2) of the Act (i.e. Clean Ganga Fund and Swacch Bharath Kosh) and not to be extended to other donations to various trusts and institutions which are otherwise eligible under section 80G of the Act.

6. That in view of the facts and circumstances of the case and in law, the Assessment Centre/ Appeal Centre has erred in not following the ratio of various judicial precedents in respect of allowability of deduction under section 80G in respect of donations made to eligible funds, even if the same forms part of the CSR expenditure.

7. That in view of the facts and circumstances of the case and in law, the Assessment Centre has erred in initiating the penalty proceedings against the assessee under section 270A of the Act.

8. That the documents, explanations filed by the Appellant, and the material available on record have not been properly considered and judicially interpreted and have been wrongly ignored.

2. The brief facts of the case are that the assessee filed its return of income on 10.02.2021 and processing u/s. 143(3) was completed on 20.09.2022. The AO made the disallowance of claimed as donation u/s. 80G amounting to Rs. 2,57,66,663/-, charged interest u/s. 115P amounting to Rs. 5,79,69,120/- and initiated penalty proceedings u/s. 270A of the Act. Against the AO's action, assessee appealed before the Ld. CIT(A).

3. Upon assessee's appeal, Ld. CIT(A) confirmed the AO's order by observing as under:-

> *"5.2 The claim u/s 80G amounting Rs. 2,57,66,663/- has been rightly disallowed, since the same has been mandatorily spent within the threshold limits as mandated in Section 135(5) of the Companies Act 2013. Further, the element of charity is missing in the sum paid by the assessee. The main characteristics of charity is that it is purely voluntary and there is no legal obligation to make that contribution. The amounts spent on CSR activities, is an obligation fulfilled in accordance with Section 135 of the Companies Act, 2013. The Hon'ble Supreme Court in the matter of Ramnath And Co. vs. The Commissioner of Income Tax, delivered on June 05, 2020, has categorically held that the exemption statutes have to be interpreted strictly and in case of ambiguity, it must be*

interpreted in favour of the Revenue. The underlying nature of payment is CSR expense and not a donation. Therefore, it can't be a voluntarily donation for the purpose of Section 80G. Accordingly, ground of appeal no. 1 to 3 is dismissed."

4. Against the above order of the Ld. CIT(A), assessee is in appeal before us.

5. We have heard both the parties and perused the records.

6. At the time of hearing, Ld. AR for the assessee submitted that the issue in dispute is squarely covered by the following catena of ITAT orders. Hence, he requested to follow the ratio of the following decisions in the instant case and allow the grounds raised in the appeal.

1.	Ratna Sagar Pvt. Ltd. vs. ACIT, Central Circle-4, New Delhi	ITA No. 2256/Del/23
2.	Honda Motorcycle & Scooter India Pvt. Ltd. vs. ACIT, Circle 1(1), Gurugram	ITA No. 1523/Del/22
3.	Interglobe Technology Quotient Private Limited vs. ACIT, Circle 10(1), New Delhi.	ITA No. 95/Del/24
4.	M/s Goldman Sachs Services Pvt. Ltd. vs. JCIT, Special Range-3, Bangalore.	IT(TP)A No. 2355/Bang/2019
5.	M/s JMS Mining Pvt. Ltd. vs. PCIT, Kolkata-2, Kolkata.	ITA No. 146/Kol/21
6.	Ericsson India Global Services Private Limited vs. DCIT, Circle 7(1), New Delhi	ITA No. 1150/Del/22
7.	Optum Global Solutions (India) Private Limited, Hyderabad vs. DCIT, Circle 5(1), Hyderabad	ITA-TP Nos. 145 & 482/Hyd/2022
8.	Societe Generale Securities India (P) Ltd. vs. PCIT	[2024] 204 ITD 796 (Mumbai – Trib)
9.	Power Mech Projects Ltd. vs. DCIT	[2023] 156 taxmann.com 575 (Hyderabad Trib.)

7. Per contra, Ld. DR could not controvert the statement of the Ld. AR that the issue in dispute is squarely covered in favour of the assessee.

8. Upon careful consideration, we note that the Coordinate Bench of the Delhi Tribunal vide its order dated 29.08.2024 passed in ITA No. 2556/Del/2023 (AY 2018-19) in the case of M/s Ratna Sagar Pvt. Ltd. vs. ACIT has dealt the similar issue and held as under:-

> *"5. We have heard the rival contentions and perused the material available on record and also gone through the orders of the authorities below.*
>
> *5.1 At the time of hearing, Ld. AR for the assessee contended that the issue in dispute is squarely covered by the several case laws of the ITAT. In this regard, he referred to the ITAT decisions dated 28.05.2024 passed in ITA No. 95/Del/2024 (AY 2020-21) in the case of Interglobe Technology Quotient Private Limited; Honda Motorcycle and Scooter India Pvt. Ltd. vs. ACIT in ITA No. 1523/Del/2022 (AY 2017-18) dated 22.8.2023; & Ericsson India Global Services (P) Ltd. vs. DCIT in ITA No. 1150/Del/2022 (AY 2015-16) dated 05.03.2024. In view of above, he requested to follow the ratio of the aforesaid Tribunal's orders and allow the issue in dispute in favour of the assessee raised in the instant appeal.*
>
> *5.2 Ld. Sr. DR did not controvert the aforesaid proposition made by the Ld. AR, but he supported the orders of the authorities below.*
>
> *6. Upon careful consideration, we find considerable cogency in the contention of the Ld. AR that identical issue has been dealt by the Coordinate Bench of ITAT, Delhi vide order dated 28.05.2024 passed in ITA No. 95/Del/2024 (AY 2020-21) in the*

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

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

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

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

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

*"**CSR expenditure, being an application of income**, is not incurred wholly and exclusively for the purposes of carrying on business, As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for .computing the taxable income of the company, Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure." (emphasis supplied)*

7.4 The aforesaid explanatory memorandum categorically expresses the legislative intent and the rationale of disallowance of CSR expenditure referred to in section 135 of the Companies Act, that such expenditure is application of income and not incurred for the purposes of business. We are of considered view that this in itself justifies the grant of deduction u/s 80G. As CSR

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

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

that other conditions of Section 80G are not fulfilled. We, thus sustain the ground."

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

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

7. Respectfully following the precedent as aforesaid, we set aside the orders of the authorities below and accordingly decide the issue in dispute in favour of the assessee.

8. In the result, the Assessee's appeal is allowed.

Order pronounced on 28/10/2024.

Sd/-	**Sd/-**
(SUDHIR PAREEK)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

SRB

Copy forwarded to:-

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

Assistant Registrar