

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 1114/Ahd/2024
Assessment Year 2017-18**

| | | |
|--|----|---|
| Sequel Logistics Private Limited 29/B, Shrimali Society, Opp. Passport Seva Kendra, Navrangpura, Ahmedabad-380009 PAN: AAHCS9813P (Appellant) | Vs | The Principal Commissioner of Income Tax, Ahmedabad-3, Ahmedabad (Respondent) |
|--|----|---|

**Assessee Represented: Ms. Nisha Ojha & Ms.
Vinisha Jain, A.Rs.**

Revenue Represented: Shri A.P. Singh, CIT-DR

Date of hearing : 23-10-2024

Date of pronouncement : 28-10-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 27.03.2024 passed by the Principal Commissioner of Income Tax-3, Ahmedabad arising out of the assessment order passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. Brief facts of the case is that the assessee is a Company engaged in the business of Logistic Services. For the Asst. Year 2017-18, the assessee filed its Revised Return of Income on 31-03-2018 declaring total income of Rs.14,51,78,023/-. The return was taken up for scrutiny assessment after calling for various information and evidences and assessment order was passed on 07-06-2021 accepting the returned income.

3. Perusal of the above assessment order, Ld. PCIT found that the assessee had claimed expenditure of Rs.32,51,000/- as Corporate Social Responsibility (CSR) expenditure in the P & L account. This amount was added back the in the computation of income but 50% of the same namely Rs. 16,25,500/- claimed as deduction u/s. 80G of the Act Since CSR expenditure being an application of income is not incurred wholly and exclusively for the purpose of carrying on business, is not allowable as deduction u/s. 80G of the Act. Thus the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. Hence a show cause notice was issued to the assessee as to why not to revise the assessment order to deny the claim of deduction u/s. 80G on the CSR expenses.

3.1. In reply the assessee made a detailed submission brining the fact that the A.O. during the assessment proceedings thoroughly considered the issue in detail and allowed the deduction u/s. 80G of the Act. Thus the assessment order is neither erroneous nor prejudicial to the interest of Revenue and therefore requested to drop the proceedings. However the Ld. PCIT set aside the

reassessment order and directed the Ld. A.O. to pass fresh assessment order and compute addition if any arising out of the deduction claim u/s. 80G of the Act and also charge interest u/s. 234A/B/C as applicable and initiate penalty proceedings as per law by giving adequate opportunity of hearing to the assessee.

4. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

1 The Impugned Order dated 27th March 2024 passed by the Respondent is erroneous, arbitrary, mechanical and contrary to the provisions of Income Tax Act, 1961 and the settled principles of law.

2. The Respondent was not entitled to invoke the jurisdiction under Section 263 of the Income Tax Act, 1961 because the Assessment Order dated 7th June 2021 is not erroneous and the Assessment Order dated 7th June 2021 is in consonance with the settled principles of law.

3. The Respondent has failed to consider the settled principle of law that a payment made towards Corporate Social Responsibility under Section 135 of the Companies Act, 2013 to an entity approved for deduction / exemption under Section 80G of the Income Tax Act, 1961 is allowable to be deducted / exempted from the total taxable income of the Appellant and therefore, the Impugned Order dated 27th March 2024 passed by the Respondent is bad in law.

4. The Impugned Order dated 27 March 2024 passed by the Respondent is erroneous in noting that the Assessing Order did not conduct the necessary inquiries into the assessment of income of the Appellant for the Assessment Year 2017-18.

5. The Impugned Order dated 27th March 2024 passed by the Respondent is a non speaking order since the Respondent has failed to provide proper reasoning for non-consideration the precedents relied upon by the Appellant.

6. The Respondent has erroneously directed the Assessing Officer to conduct fresh inquiries and assessment into the income of the Appellant for the Assessment Year 2017-18 in the Impugned Order dated 27th March 2024.

5. Ld. Counsel Ms. Nisha Ojha appearing for the assessee submitted that the reassessment order passed by the Ld. A.O. is neither erroneous nor prejudicial to the interest of Revenue. Since the Ld. A.O. considered the fact of the case in its entirety, raised queries in respect of the deduction claimed u/s. 80G (Chapter VI-A of the Act) on the CSR expenditure paid to H.N. Safal Foundation, which has valid exemption certificate from DIT(Exemption) and a recognized the Trust as an eligible entity for exemption u/s. 80G of the Act. Further the Ld. A.O. considered the submissions and evidences with respect to the claim and took a plausible view that the claim of deduction u/s. 80G in respect of CSR are allowable expenses. Thus there is no loss to the Revenue on account of allowing such claim.

5.1. On merits of the case, Ld. Counsel submitted that it is well settled law that deduction u/s. 80G in respect of CSR expenses is allowable and placed reliance on the following decisions:

| <i>Sr. No.</i> | <i>Case Title</i> | <i>Relevant Paragraph</i> | <i>Page No.</i> |
|----------------|---|---------------------------|-----------------|
| 1. | <i>FNF India Private Limited Vs. Assistant Commissioner of Income Tax [(2021) SCC OnLine ITAT 1277]</i> | 16-19 | 1 to 5 |
| 2. | <i>Goldman Sachs Services Pvt. Ltd. Vs. Joint Commissioner of Income Tax [(2020) SCC OnLine ITAT 4373]</i> | 16 | 6 to 22 |
| 3 | <i>Honda Motorcycle and Scooter India Pvt. Ltd Vs. Assistant Commissioner of Income Tax, Circle 1(1) [(2023) SCC OnLine ITAT 614]</i> | 22 | 23 to 45 |
| 4 | <i>Ericsson India Global Service Ltd Vs. DCIT Circle -7(1) [ITANo. 1150/Del/2022]</i> | 7,8 | 46 to 52 |

6. Per contra Ld. CIT-DR Shri A.P. Singh appearing for the Revenue supported the Revision order passed by the Ld. PCIT and requested to uphold the same.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book and Case Laws filed by the assessee counsel. It is seen from Page No. 43 to 50 of the Paper Book, during the assessment proceedings, the A.O. issued notice u/s. 143(2) dated 30.01.2020 asking various details including documentary evidence in support of the deduction claimed under Chapter VI-A of the Act. In response, the assessee filed the details in Annexure-G namely the stamped receipt from H.N. Safal Foundation dated 27-03-2017 for a sum of Rs.32,51,000/- and u/s. 80G exemption certificate granted by Director of Income Tax (Exemption) dated 15-02-2013. Again the ld. A.O. vide notice u/s. 142(1) dated 04-02-2021 requested the assessee to furnish details, assessee replied to the same. It is thereafter the assessing officer passed the assessment order dated 07-06-2021 and allowed the claim of deduction u/s. 80G in respect of CSR expenses which is a plausible view taken by the Ld. A.O. In the above circumstances, the Ld. PCIT is not correct in invoking Revision proceedings u/s. 263 of the Act.

7.1. The Hon'ble Supreme Court in the case of Malabar Industries Ltd. v. CIT [2000] 109 Taxman 66/243 ITR 83 (SC) wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application

of law, or (iii) Assessing Officer's order is in violation of the principle of natural justice, or (iv) if the order is passed by the Assessing Officer without application of mind. (v) if the AO has not investigated the issue before him; [because AO has to discharge dual role of an investigator as well as that of an adjudicator) then in aforesaid any event the order passed by the Assessing Officer can be termed as erroneous order.

7.2. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries Co. Ltd. (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue "unless the view taken by the Assessing Officer is unsustainable in law". Thus in our considered view following Apex Court ruling the Revision orders passed by Ld. PCIT are not sustainable in law.

8. On merits of the case, whether the CSR expenditure is allowable u/s. 80G of the Act is also no more res integra by a series of decisions by various Co-ordinate Benches of the Tribunal.

8.1. The Delhi Tribunal in the case of Interglobe Technology Quotient (P.) Ltd. (cited supra) held that mandatory nature of CSR expenditure does not justify disallowance of same u/s. 80G, if other conditions of Section 80G are fulfilled by observing as follows:

"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 2011, 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."

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."

8.2. The Mumbai Bench of the Tribunal in the case of Alubond Dacs India (P.) Ltd. (cited supra) considered the provisions of Companies Act and I.T. Act and held as follows:

"11. We have heard the rival submissions and perused the materials available on record. The only morn question to be decided here is whether the expenditure towards CSR activities are an allowable deduction us 80G of the Act. The CSR expenses are governed by section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies (CSR) Policy Rules, 2014 where companies having net worth of Rs 500 crores of more or turnover of Rs. 1000 crores or more or net profit of Rs 5 crores of more have to mandatorily comply with the CSR provisions specified us. 135(1) of the Companies Act, 2011. The above mentioned companies are liable to spend atleast 25% of its average net profit for the immediately preceding three financial years on CSR activities. In the present case, the

assessee has contributed Rs 30 lacs to various educational and charitable trust for which the assessee has claimed 50% of the total donation paid as deduction u/s. 800 of the Act. Prior to the Finance (No.2) Act, 2014, the said expenditure was claimed as 'business expenditure' u/s. 37(1) of the Act where after the insertion of Explanation 2 to section 37(1) of the Act, the CSR expenses referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession. It is observed that the said expenses pertaining to CSR has been claimed as deduction u/s. 80G of the Act which claim was perennially rejected by the Revenue for the reason that only donations which are voluntary in nature will come under the purview of section 80G of the Act and donation towards CSR was merely a statutory obligation on companies as per section 135 of the Companies Act, 2013. **It is pertinent to point out that the intention of the legislature was clear when the same was clarified by the Finance (No.2) Act, 2014 that CSR expenses will not fall under the business expenditure and also there has been an express bar specified in sub clause (iiihk) and (iiihl) of section 80G(2)(a) of the Act that any sum paid by the assessee as donation to Swatch Bharat Kosh and Clean Ganga Fund will not come under the purview of deduction u/s 80G of the Act subject to certain conditions. This justifies the fact that the other donations specified us 80G of the Act would be entitled to deduction provided the conditions stipulated u/s. 80G of the Act are satisfied.** In the present case in hand, the contributions made by the assessee would not fall under the two exceptions specified above which clearly mandates that the assessee is entitled to claim deduction for the donations contributed during the year under consideration u/s 80G of the Act. The decision relied upon by the Id. A.O in the case of PVG Raju (supra) is distinguishable on the facts of the present case where there is no requirement of proving the voluntariness of the donation contributed by the assessee for claiming deduction u/s. 80G of the Act. **The amendment brought about by Finance Act, 2015 to section 80G of the Act which had inserted the sub clauses (iiihk) and (iiihl) to be the exception for qualifying a donation for claiming us. 80G of the Act could also be an evidencing factor to substantiate that CSR expenditures which falls under the nature specified in section 30 to 36 of the Act are an allowable deduction u/s 80G of the Act.**

12. On the above observation, we deem it fit to hold that the assessee is entitled to deduction claimed u/s. 80G of the Act towards the CSR expenditure incurred by it. We, therefore, direct the Id. A.O, to allow the claim of the assessee subject to the condition that the assessee has satisfied

the other requirements warranted u/s.80G of the Act. Hence, ground no. 2 raised by the assessee is allowed.”

8.3. The Kolkata Bench of the Tribunal in the case of JMS Mining (P.) Ltd (cited supra) held that invocation of revision proceedings under section 263 itself unjustified in denying deduction u/s. 80G on CSR expenditure by observing as follows:

“Section 80G, read with section 263, of the Income-tax Act, 1961- Deductions - Donations to certain funds, charitable institutions, etc. (Revision) - Assessment year 2016-17-Assessee- company was a mining service provider engaged in business of management and operation of mines - It claimed deduction under section 80G in respect of donation of certain amount made to Shree Charity Fund and a sum of certain amount given to Pt. Jasraj Music Academy Trust as contribution towards corporate social responsibility (CSR) - Assessing Officer allowed same - Principal Commissioner invoked revision jurisdiction under section 263 on ground that action of Assessing Officer in allowing such claim of assessee for deduction under section 80G was erroneous because CSR expenditure could not be allowed as per express prohibition laid down in Explanation 2 of section 37(1) Whether Explanation 2 to section 37(1) which denies deduction for CSR expenses by way of business expenditure is applicable only to extent of computing 'business income' under Chapter IV-D and; it could not be extended or imported to CSR contributions which was otherwise eligible for deduction under Chapter VI, to say, donations made to charitable trusts registered under section 80G-Held, yes Whether, therefore, since said donation on account of CSR was made by assessee to charitable trusts which were duly registered under section 80G(5)(vi), assessee was entitled to claim deduction under section 80G in respect of such contribution - Held, yes - **Whether since action of Assessing Officer in allowing claim under section 80G was a plausible view, impugned invocation of revision jurisdiction under section 263 was unjustified-Held, yes [Para 23] [In favour of assessee)**

Section 37(1), of the Income-tax Act, 1961 Business expenditure Allowability of (Explanation 2) - Assessment year 2016-17 - Whether corporate social responsibility (CSR) expenses which are required to be mandatorily incurred by assessee-company as per section 135 of Companies Act are not entitled to deduction under section 37(1) by virtue of fetter placed by Explanation 2 to section 37(1), which was inserted by Finance (No. 2) Act, 2014-Held, yes [Para 23] [In favour of assessee]”

8.4. Similarly Mumbai Bench of the Tribunal in the case of Societe Generale Securities India (P.) Ltd. and FDC Ltd. held that Revision proceedings are not justified on the claim of deduction under section 80G on CSR expenditure.

9. Respectfully following the above judicial precedents, we have no hesitation in quashing the Revision order dated 27-03-2024 passed by Ld. PCIT for the Asst. Years 2017-18 and thereby allow the grounds of appeal raised by the assessee.

10. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 28-10-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad : Dated 28/10/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद