IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA Nos. 309 & 310/Ahd/2024
Asst. Years. 2017-18 & 2018-19

AIA Engineering Ltd. 115, GVMM Estate, Odhav Road, Odhav, Ahmedabad Gujarat-382415 **PAN: AABCA2777J** **(Appellant)**	Vs	Principal Commissioner of Income Tax, Ahmedabad-1, Ahmedabad **(Respondent)**

Assessee Represented: **Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.**
Revenue Represented: **Shri Sudhendu Das, CIT-DR**

Date of hearing : 09-10-2024
Date of pronouncement : 25-10-2024

आदेश/ORDER

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

These two appeals are filed by the Assessee as against the Revision orders both dated 06.02.2024 passed by the Principal Commissioner of Income Tax, Ahmedabad-1 arising out of the assessment order passed under section 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2017-18 and 2018-19. Since the solitary issue in both the asst. years is Whether CSR expenditure is allowable under section 80G of the Act, hence the above appeals are disposed of by this common order for the sake of convenience.

2. Brief facts of the case is that the assessee is engaged in the business of manufacturing of grinding media, vertical spindle mill spares, etc. primarily used in grinding mills by cement, mining and thermal power industries. During the Asst. Year 2017-18, the assessee incurred donation expenses of Rs.41,06,704/- and Corporate Social Responsibility (herein after referred as CSR) expenses of Rs.6,18,62,624/-. The assessee company filed its Return of Income on 29-11-2017, wherein disallowed the above donation and CSR expenses while calculating its business income. The assessee claimed deduction of Rs.2,87,80,500/- in respect of CSR expenses of Rs.5,65,61,000/- under section 80G of the Act, which is the only claim made under Chapter VI-A. The return was taken up for scrutiny assessment and the claim of deduction u/s.80G was fully examined by the A.O. by issuing notices u/s. 142(1) and after considering the detailed replies the Ld. AO allowed claim of deduction u/s. 80G of the Act.

3. Perusal of the above assessment order, Ld. PCIT found that the AO is erred in allowing the claim of deduction u/s.80G in respect of CSR expenses thereby passed erroneous assessment order which is prejudicial to the interest of Revenue. Therefore PCIT issued a show cause notice to the assessee why not to revise the assessment order to deny the claim of deduction u/s.80G on the CSR expenses. In reply the assessee made a detailed submission bringing the fact that the A.O. during the assessment proceedings dealt with the issue in detail and then 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

Revision proceedings. However, the Ld. PCIT directed the Assessing Officer to pass fresh assessment order after duly examining the facts of the case and thereby setaside the assessment orders.

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

> 1. The Ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s.263 of the Act on the erroneous ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue,
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> 2. The Ld. PCTT has grossly erred in not appreciating that in order to invoke s.263, two conditions must be fulfilled viz, the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, Id. AO has passed the reasoned assessment order after analyzing all details and therefore there was no error in the impugned assessment order so as to justify action u/s.263 of the Act. Under the circumstances, the very assumption of power u/s.263 of the Act is unjustified and bad in law and therefore, order u/s.263 of the Act deserved to be quashed.
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> 3. The subject order u/s. 263 passed by the Ld. PCIT is illegal and bad in law in absence of any finding of Ld. PCIT how the alleged error of AO has resulted in loss of revenue particularly when deduction u/s. 80G has rightly been claimed w.r.t. CSR expenditure.
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> 4. The Ld. PCIT has further erred in law and on facts in not appreciating that the view taken by the AO is a possible view and hence the proceedings are illegal and bad in law.
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> 5. The Id. PCIT has further erred in law in not coming to any concrete conclusion and without conducting any inquiry or investigating the issue, merely directed the AO to frame the assessment order afresh. Without there being any positive finding about order being erroneous and prejudicial to the interest of the revenue, the action of Id. PCIT is to be deleted.

6. Ld. PCIT has erred in not considering various facts, submissions, explanations and clarifications as given by the appellant and further erred in not appreciating the facts and law in their proper perspective.

7. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

5. Ld. Senior Counsel Shri Tushar Hemani appearing for the assessee submitted that the assessment orders passed by the Ld. AO are neither erroneous nor prejudicial to the interest of Revenue. Since the Ld. AO considered facts of the case in its entirety, raised queries in respect of deduction claimed under section 80G (Chapter VI-A) of the Act. Further the Ld. AO 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. Hence, there is no loss to the revenue on account of allowing such claim. Thus, AO's order is neither prejudicial to the interest of the revenue nor erroneous, but the AO's view was duly supported by the then existing proposition of law.

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

- Interglobe Technology Quotient Ltd (2024) 163 taxmann. com 542 (Del);
- Alubond Dacs India P Ltd. vs. DCIT (2024) 163 taxmann. com 536 (Mum);
- Optum Global Solutions (India) P Ltd- (2023) 154 taxmann. com 651 (Hyd);
- JMS Mining (P.) Ltd. vs. PCIT (2021) 130 taxmann.com 118 (Kol);
- Societe General Securities India P Ltd - (2023) 157 taxmann. com 533 (Mum);

- FDC Ltd. vs. PCIT-(2023) 157 taxmann.com 387 (Mumbai - Trib.);
- Britannia Industries Ltd vs. DCIT-(2024) 161 taxmann.com 393 (Kolkata);

5.2. Ld. Senior Counsel further submitted that it is also not out of place to mention that genuineness of underlying expenses is not in dispute at all. The AO is an investigator and not merely an adjudicator, once a claim has been allowed by Ld. AO after threadbare examination, then PCIT must assign solid reasoning for holding that AO's order as erroneous and relied upon various case laws. Thus, the revision order is bereft of such reasoning even on this count, therefore the impugned order deserve to be quashed.

6. Per contra Ld. CIT DR Shri Sudhendu Das appearing for the Revenue supported the revision orders passed by the PCIT and requested to uphold the same, but not relied upon any case laws in support of his prayer.

7. We have given our thoughtful consideration and perused the materials available on record including the paper books and case laws filed by the Ld. Senior Counsel. It is seen from the Paper Book filed by the assessee at Page No. 74 during the assessment proceedings, the Ld. A.O. issued notice u/s. 142(1) dated 08-08-2019 calling the assessee to furnish various details with supporting documentary evidences, one among them is to furnish details of deduction claimed under Chapter-VIA of the Act as per the Return of Income for the Asst. Year 2017-18. In response, the assessee filed its reply dated 14-08-2019, the details of deduction claimed

under Chapter-VIA along with supporting documentary evidence as follows:

Sr. No.	Name of Party	Rs.	Covered u/s.	@	Claim amount
1	AIA CSR Foundation	4,80,00,000	80G	50%	2,40,00,000
7	Chandrakanta Kantilal Foundation	40,00,000	80G	50%	20,00,000
2	Aastha Charitable And Welfare Trust	20,00,000	80G	50%	10,00,000
3	School For Deaf Mutes Society	15,00,000	80G	50%	7,50,000
4	Andh Kanya Prakash Gruh	5,00,000	80G	50%	2,50,000
5	Samvedana	5,00,000	80G	50%	2,50,000
6	Family Planning Association of India	5,00,000	80G	100%	5,00,000
9	Samvedna Trust	51,000	80G	50%	25,500
10	Flat Day	10,000	80G	50%	5,000
	Total		57061000		28780500

7.1. The Assessing Officer issued further notice u/s. 142(1) dated 10-02-2021 since large deduction under Chapter-VIA from total income is claimed by the assessee, requested the assessee to provide (i) Section/Sub-Section wise details of deduction claimed under Chapter-VIA, (ii) details of earnings under the relevant heads against which deduction claimed, (iii) note on eligibility criteria claimed different sections of Chapter-VIA, (iv) details of bank accounts along with bank statements in support of the claim and (v) documentary evidence in respect of investment/expenditure /payment etc. made to claim the deductions.

7.2. In reply, vide assessee letter dated 18-02-2021 submitted as follows:

> 17. With respect to deduction under Chapter VI-A
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> > 1. During the year under assessment Company has claimed Rs2,80.87,500 us 80G of the I Tax Act, 1961. For details please refer Annexure-9.

2. Above deduction has been claimed from Business Income.

3. During the year under assessment company has made donations to various institutions (NGOs) which are engaged in education, health & other social activities.

4. Please refer receipts from parties which have mentioned our bank name & payment details.

5. For payments made, please refer Annexure-9.

7.3. Thus the Assessing Officer has considered the issue in detail 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.

7.4. 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.

7.5. 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;
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> > "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."
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> 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 suns 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 ld. 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 orders dated 06-02-2024 passed by Ld. PCIT for the Asst. Years 2017-18 and 2018-19 and we hereby allow the grounds of appeal raised by the assessee.

10. In the result, the appeals filed by the assessee are hereby allowed.

Order pronounced in the open court on 25 -10-2024

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad : Dated 25/10/2024

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.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद