

| आयकर अपीलिय अधिकरण न्यापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4341/Mum/2024
Assessment Year: 2020-21

Marsh India Insurance Brokers Private Limited 1201-02, Tower One India Bulls Centre Jupiter Mills Compound Senapati Bapat Marg Elphinstone Road (West) Mumbai - 400013 [PAN: AADCM4220G]	Vs	Assessment Unit, The National Faceless Assessment Centre, Delhi
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Madhur Agrawal, A/R
Revenue by :	Shri Pankaj Kumar, CIT D/R

सुनवाई की तारीख/Date of Hearing : 21/11/2024
घोषणा की तारीख /Date of Pronouncement: 25/11/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the NFAC, Delhi, dated 28/06/2024 framed u/s 143(3)/144C(13)/144B of the Act, pertaining to AY 2020-21.

2. The grievance of the assessee reads as under:-

"1. On the facts and in the circumstances of the case and in law, the learned AO has erred in considering the exempt dividend income as per the provisions of section 10(35) of the Act as taxable thereby increasing the total income.

2. On the facts and in the circumstances of the case and in law, the learned AO has erred in not considering the fact that Assessee has entered into a Unilateral Advance Pricing Agreement with the Central Board of Direct Taxes on 27 March 2024 for five consecutive years covering Financial Year ("FY") 2015-16 to FY 2019-20 along with roll back period commencing from FY 2011-12 to FY 2014-15, for the international transaction of payment for intra-group support services availed by the Assessee from its AEs and thereby making an addition of INR 41,58,47,076 to the total income of the Assessee.

3. *On the facts and in the circumstances of the case and in law, the learned AO has erred in denying the deduction claimed under section 80G of the Act amounting to INR 9,25,000 (being 50% of INR 18,50,000 being aggregate of Corporate Social Responsibility (CR) expenditure eligible for deduction under section 80G of the Act).*

4. *On the facts and in the circumstances of the case and in law, the learned AO has erred in levying the interest under section 234A of the Act amounting to INR 14,01,639 disregarding the fact that the return of income was filed within the due date, as extended by Hon'ble Central Board of Direct Taxes (CBDT) vide Notification No. 93/2020 [F. No. 370142/35/2020-TPL] dated 31 December 2020 and there was no tax liability which was not discharged by the appellant.*

5. *On the facts and in the circumstances of the case and in law, the learned AO has erred in levying the interest under section 234B of the Act amounting to INR 2,38,27,863.*

6. *On the facts and in the circumstances of the case and in law, the learned AO has erred in non-granting the credit for Dividend Distribution Tax (DDT) paid by the appellant amounting to INR 16,44,42,354 and levying consequential interest under section 115P of the Act at INR 8,43,66,024 for delay in payment of DDT.*

7. *On the facts and in the circumstances of the case and in law, the learned AO erred in initiating penalty proceedings under section 270A of the act for under reporting of income."*

3. At the very outset, addressing the issues raised vide Ground No. 1, the Id. Counsel for the assessee stated that since the claim was denied by processing the return u/s 143(1) of the Act, the assessee has moved an application for rectification u/s 154 of the Act which is pending disposal before the CPC, Bengaluru. On such concession, we are of the considered view that the said application of the assessee should be disposed off at the earliest and till the disposal of the rectification application, the AO should not take any adverse action against the assessee. Ground No. 1 is accordingly disposed off.

4. In respect of the issue relating to Transfer Pricing (TP) adjustments, the Id. Counsel for the assessee, pointed out that the quarrel has been settled through an unilateral Advance Pricing

Agreement (APA) made on 27/03/2024 between the CBDT and the assessee and one of the terms of the agreement is that the agreement shall apply to consecutive five (5) years commencing from 2015-16 to 2019-20, meaning thereby for AYs 2016-17 to 2020-21, which includes the assessment year under consideration. The assessee has also filed modified return of income on 25/06/2024 as per e-Acknowledgement No. 496226131350624.

4.1. With these facts on record, the AO is directed to re-decide the issue afresh considering the APA (*supra*) and the modified return of income (*supra*). Accordingly, Ground No. 2 is allowed for statistical purposes.

5. Ground No. 3 relates to the denial of deduction claimed u/s 80G of the Act. While scrutinising the return of income, the AO noticed that the assessee has debited Rs. 31,38,295/- on account of Corporate Social Responsibility (CSR). The assessee has added back the amount in its income being inadmissible expenses and, therefore, claimed deduction u/s 80G of the Act. The same was denied by the AO and the denial was confirmed by the DRP.

5.1. Before us, the Id. Counsel for the assessee stated that on identical set of facts, the Co-ordinate Bench in assessee's own case in AY 2018-19, allowed the claim of deduction.

The Id. D/R could not bring any distinguishing decision in favour of the revenue.

6. We have carefully considered the orders of the authorities below and the claim of the assessee and have also the benefit of the decision of the Co-ordinate Bench, where the Co-ordinate Bench has held as under:-

".....Where these two exceptions are provided in [Section 80G](#) of the Act, it can be inferred that the other contributions made [u/s. 135\(5\)](#) of the Companies Act are also eligible for deduction [u/s. 80G](#) of Income Tax Act subject to assessee satisfying the requisite conditions prescribed for deduction [u/s.80G](#) of the Act. In the present case the A.O. has not dealt on these aspects, prima facie, considered the contributions as not voluntary but a legal obligation and has accepted the genuineness of the contributions. We are of the opinion, that the matter has to be considered for examination and verification of facts subject to the assessee satisfying the requirements of claim [u/s.80G](#) of the Act. Accordingly, we restore the entire disputed issues to the file of A.O. for fresh examination and verification as discussed above and the assessee should be provided adequate opportunity of IT(TP)A No.2355/Bang/2019 hearing and shall co- operate in submitting the information and we allow the ground of appeal of the assessee for statistical purposes."

9. On perusal of above, it is clear that after considering the position taken by the Assessing Officer and the objections raised by the Appellant, the DRP concluded that even though deduction for CSR Expenses was not allowable under [Section 37](#) of the Act (in view of the Explanation 2 to [Section 37](#) of the Act inserted by the [Finance Act, 2014](#), with effect from 01.04.2015), there was no bar for allowance of the same under Assessment Year: 2018-19 [Section 80G](#) of the Act (except for the donations made to the Swachh Bharat Kosh and the Clean Ganga Fund), provided all the other conditions of Sec. 80G are fulfilled. Therefore, the DRP issued specific direction to allow deduction for INR.28,72,578/- under [Section 80G](#) of the Act after verifying whether the other conditions specified under Section 80G were fulfilled. As per mandate of [Section 144C\(13\)](#) of the Act, upon receipt of directions issued by DRP the Assessing Officer was required to complete the assessment in conformity with the directions issued by the DRP. We hold that the Final Assessment Order, dated 27.07.2022, passed by the Assessing Officer was not in conformity with the directions issued by the DRP and is therefore, set aside, being contrary provisions of [Section 144C\(13\)](#) of the Act. The issue is remanded back to the file of Assessing Officer with the directions to pass the Final Assessment Order in conformity with the directions issued by the DRP. Accordingly, Ground No. 2 raised by the Appellant is allowed while all other grounds raised by the Appellant are disposed off as being infructuous."

7. Respectfully following the decision of the Co-ordinate Bench (*supra*), we direct the AO to decide the dispute after verification as per the directions given in AY 2018-19 (*surpa*). Ground No. 3 is accordingly allowed for statistical purposes.

8. Vide Ground No. 4, the assessee has disputed the levy of interest u/s 234A of the Act on the ground that there was no delay in filing the

return of income and the return of income has been filed before the extended due date by CBDT Notification No. 93/2020, F. NO. 370142/35/2020 TPL dated 31/12/2020.

8.1. The AO is directed to verify whether the Board has extended the due date of filing the return of income and if so, verify whether the assessee has filed the return of income on or before the extended date and if found correct, not to levy interest u/s 234A of the Act. This Ground is also allowed for statistical purposes.

9. Ground No. 5 relates to the levy of interest u/s 234B of the Act which will be levied by the AO after giving appeal effect to our order as per the provisions of the law and Ground No. 6 relates to the non-granting of the credit for dividend distribution tax (DDT). The AO is directed to verify the claim of the DDT from the *challan* to be furnished by the assessee and if found correct, allow the credit. These Grounds are also allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 25th November, 2024 at Mumbai.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 25/11/2024

**S.S.P.*

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai