

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 1695/Ahd/2024  
(Assessment Year: 2022-23)

<b>Madhu Silica Foundation</b> Plot No.147, GIDC Indl. Estate, Vartej, Bhavnagar, Gujarat, 364060	Vs.	<b>The Income Tax Officer</b> Ward 1(8), Bhavnagar
[PAN No.AAPCM1326D]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, A.R.
<b>Respondent by:</b>	Shri Prathvi Raj Meena, CIT. D.R.
<b>Date of Hearing</b>	20.11.2024
<b>Date of Pronouncement</b>	04.12.2024

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 06.09.2024 passed for the Assessment Year 2022-23.

2. The assessee has raised the following grounds of appeal:-

- “1. The Ld. CIT(A) has erred in law and on facts of the R case in confirming the addition of Rs. 9,60,00,000/- as an unexplained cash credit u/s. 68 of the Act.
2. In the facts and circumstances of the case, S. 68 of the Act has no application as the amounts have been received towards CSR which cannot be considered as unexplained.
3. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions,

- 2 -

*explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

4. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.*
5. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty proceedings u/s. 271AAC of the Act.”*

3. The brief facts of the case are that the assessee, a company, filed its return of income for the Assessment Year 2022-23, declaring a total income of "Nil". During the course of the assessment proceedings, the Assessing Officer noted that the assessee received a sum of Rs. 6,51,37,000 on March 29, 2022, and another sum of Rs. 3,08,63,000 on March 30, 2022, from Madhu Silica Pvt. Ltd. These amounts were supposedly received for the purpose of assessee's Corporate Social Responsibility (CSR) activities. The AO noticed that the assessee did not have its books of account audited and failed to furnish the required Audit Report and Form No. 10B for the Assessment Years 2020-21 and 2021-22. Further, the assessee did not provide detailed information about the donations received and the expenditures incurred over the past three years. Moreover, the assessee did not have registration under Section 12AA of the Income Tax Act, nor did it provide any supporting documents concerning the utilization of the CSR funds. Given the assessee's failure to substantiate the genuineness of the transactions with documentary evidence, the AO treated the total amount of Rs. 9,60,00,000 received from Madhu Silica Pvt. Ltd. as unexplained cash credits under Section 68 of the Income Tax Act. The AO imposed tax on this amount at the rate of 60% as per Section 115BBE of the Income Tax Act.

- 3 -

4. In appeal, Ld. CIT(Appeals) observed that the assessee was incorporated only on October 25, 2021, and received large sums from Madhu Silica Pvt. Ltd. for CSR activities in March 2022, just a few months after its incorporation. The AO had highlighted in assessment order that the assessee was not registered under Section 12AA and had its application for approval under Section 80G had also been rejected. As a result, the AO had concluded that the assessee was not eligible to receive such large amounts under CSR and that these sums were not being utilized for the intended CSR purposes. Before Ld. CIT(Appeals), the assessee submitted that the assessee i.e. was Madhu Silica Foundation is an entity incorporated by Madhu Silica Pvt. Ltd. to act as the implementing agency for the CSR funds. The assessee submitted that as an implementing agency the assessee did not require registration under Section 80G or Section 12AA, and that it had obtained CSR-1 registration for this purpose. During the course of appeal, the assessee was requested to provide copies of bank account, financial statements, and evidence supporting the CSR expenditures incurred by the assessee. Upon reviewing the bank account of the assessee, Ld. CIT(Appeals) observed that the assessee received two substantial amounts from Madhu Silica Pvt. Ltd. (MSPL) on the final day of financial year 2021-22, which is relevant for the assessment year 2022-23. The first amount was for a sum of Rs. 6,51,37,000 and the second was Rs. 3,08,63,000. Shortly after, on April 27, 2022, the sum of Rs. 3,08,63,000 was transferred from the assessee 's account to a separate account named 'Unspent CSR Account of Madhu Silica Foundation.' The remaining amounts of Rs. 3,25,00,000 and Rs. 3,00,00,000 were subsequently invested in fixed deposits (FDs) on October 4, 2022. The assessee earned interest on these fixed deposits, with tax duly deducted at source. Throughout financial year 2022-23, the fixed

- 4 -

deposits were redeemed and reinvested, and the same process continued into the financial year 2023-24 as well. Further, the amount of Rs. 3,08,63,000 was transferred from one account to another under the same name, 'Unspent CSR Account of Madhu Silica Foundation.' From this sum, the assessee debited a total of Rs. 1,72,66,000 in the financial year 2022-23 to various individuals. In totality, the assessee received Rs. 9,60,00,000 from MSPL under the pretext of CSR funds on the last day of FY 2021-22, relevant to AY 2022-23. **However, instead of using the funds for CSR activities, the appellant invested the entire amount in fixed deposits. The interest earned on these deposits was subsequently taxed.** The assessee submitted before Ld. CIT(Appeals) that the CSR expenditure had already been taxed in the hands of MSPL and therefore taxing it again in the hands of the assessee would result into double taxation. To verify this, the assessee was asked to submit the income tax return (ITR) of Madhu Silica Foundation Pvt. Ltd. for the AY 2022-23, as well as the return filed by MSPL for the same period. However, the assessee only provided the return of income for Madhu Silica Foundation and not the return filed by MSPL. Ld. CIT(Appeals) was of the view that the assessee received the CSR fund from MSPL, but no CSR activities were carried out during the financial year 2021-22, relevant to AY 2022-23. **The amount received was simply kept in fixed deposits, and no portion of the funds was spent on actual CSR activities. This raised suspicions that the funds were being diverted from MSPL to its own group entity, i.e. the assessee, under the pretext of CSR expenditure, effectively circumventing the true purpose of CSR funds.** Accordingly, Ld. CIT(Appeals) held that the AO had rightfully invoked the provisions of Section 68 of the Income Tax Act and treated the receipt of Rs. 9,60,00,000 as unexplained cash credits. This

- 5 -

was for the reason that the assessee failed to provide adequate evidence to substantiate that the funds were utilized for CSR activities, as required by law. The appeal of the assessee was dismissed.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). The Counsel for the assessee submitted that during the assessment proceedings, the AO did not question the identity, genuineness of the transaction, or the creditworthiness of MSPL i.e. the person giving this amount. Moreover, the AO accepted that the assessee was incorporated by MSPL as an implementing agency for CSR activities, following the relevant provisions of the Companies Act and Rules under CSR compliance. It was also submitted that the funds received were not donations but rather funds earmarked for CSR expenditure to be carried out by the assessee. These funds could only be used with the prior approval of MSPL, or as per any agreement made between the two entities. **Further, it was submitted that MSPL had not claimed any deduction for these funds from its taxable income, either as an expenditure or as a donation.** The assessee further submitted that, as an implementing agency, the assessee was not required to registration under Section 80G or 12AA of the IT Act for the purpose of carrying out CSR activities. Instead, it only required CSR-1 registration, which the appellant had duly obtained as required under the Companies Act. The Counsel for the assessee submitted that documentary evidence supporting the assessee's position was filed before the Tax Department which included the bank statement of the assessee, MCA's certificate for CSR activities, the certificate of incorporation of the assessee, ledgers of MSPL and the assessee, the Annual Report, the Trust Deed of the assessee and approval under Section 12AB(1)(b)

- 6 -

of the Act, which were all provided during the proceedings before the Assessing Officer /Ld. CIT(Appeals). The Counsel for the assessee submitted that according to Section 68 of the IT Act, the initial burden is on the assessee to establish the identity, genuineness, and creditworthiness of the lender, which in this case was MSPL. The assessee successfully discharged this burden by providing sufficient documentary evidence, thus satisfying the requirements under the law. Once this initial onus was discharged, the burden shifted to the Revenue Authorities. The assessee submitted that the subsequent events, such as the utilization of the funds or the registration requirements, were irrelevant for the purpose of making addition under Section 68 of the Act, as the section only focuses on the receipt of money and not its subsequent utilization. Therefore, since the assessee had fulfilled the statutory requirements under section 68 of the Act by proving the identity and credibility of MSPL, the addition made by the AO under Section 68 was liable to be deleted.

6. In response, the Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order. The DR submitted that Ld. CIT(Appeals) has specifically observed that during the impugned year under consideration, it was only at the fag end of the year that the amount was received by the assessee. Further, it was submitted before us that the requisite approval for acting as CSR agency had not been received by the assessee at the time the funds were received by the assessee during the impugned year under consideration. It was only in the subsequent year that the approval for utilising the funds which were received by the assessee, was obtained. Further, from the facts placed on record, Ld. CIT(Appeals) also observed that the

assessee has not been able to substantiate that it had duly fulfilled its obligation towards utilising the funds which were received, for carrying out corporate social responsibility even in the subsequent years. Therefore, looking into the instant facts, Ld. CIT(Appeals) had correctly confirmed the addition in the hands of the assessee under section 68 of the Act.

7. We have heard the rival contentions and perused the material on record. For the purpose of invoking the provisions of section 68 of the Act, it is required that the person receiving the amount is unable to establish the identity, creditworthiness of the person giving the funds to the assessee or is not able to establish the genuineness of transaction. On going to the facts of the instant case, we observe that in the instant facts, the assessee has been able to establish the identity of the person giving the funds to the assessee during the impugned year under consideration, being the company which had incorporated the assessee company to carry out its CSR activities. Therefore, the identity of the person giving the amount to the assessee and its creditworthiness are not under dispute per se. This brings us to the next question, which is that in case the assessee has not obtained the necessary approvals for carrying out CSR activities at the time of receipt of funds, or that, the assessee is not able to establish that the funds so received had been duly utilised for carrying out CSR activities, does this call for addition under section 68 of the Act, in the hands of the assessee on the ground that the genuineness of transaction has not been established by the assessee. Before us, the counsel for the assessee drew our attention to Form number 10 Ab dated 16-01-2024 issued in favour of the assessee, granting approval under section 12AB(1)(b) for assessment years 22-23 to 2026-27. Accordingly, we

observe that albeit subsequently, the requisite approvals for undertaking CSR activities had been duly obtained by the assessee, for the impugned assessment year.

8. The next question which needs to be addressed is that in case the assessee is not able to utilise the funds for carrying out the CSR activities, then whether this would have implications under section 68 of the Act. In our view, the contents of section 68 of the Act are quite specific and non-utilisation of amounts received towards CSR activities, though may have subsequent penal implications under the Companies Act, however, so far as applicability of section 68 of the Act, is concerned, we are of the view that the provisions of section 68 would not apply to the instant situation. Further, the counsel for the assessee submitted before us that in the event, the assessee was unable to utilise the funds for CSR activities, even then this amount would only partake the character of “loan” and not the “income” of the assessee and the assessee is under an obligation to return this amount back to the parent company, from whom the funds were received. Further, it was submitted before us by the counsel for the assessee that the amounts received by the assessee for CSR activities, had been utilised for the above purposes by the assessee, during the subsequent assessment years. However, looking into the specific provisions of section 68 of the Act, in our view, section 68 has no applicability of the instant set of facts for the reasons that the identity and creditworthiness of the lender has been duly established, the purpose for which the amount was given to the assessee has also been established and the same has not been doubted, the assessee had also obtained the requisite approvals for carrying out CSR activities for the impugned year under consideration, the lender has also not

- 9 -

claimed deduction in respect of this amount from its taxable income and also there is no specific assertion that this amount has flown back to the lender in any form whatsoever. Accordingly, in our considered view, Ld. CIT(Appeals) erred in facts and in law in confirming the applicability of section 68 of the Act to the facts of the instant case.

9. In the result, the appeal of the assessee is allowed.

<b>This Order pronounced in Open Court on</b>	<b>04/12/2024</b>
---	-------------------

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated /12/2024

Sd/-  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

*Sr. PS*

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad