IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.763/MUM/2022
(Assessment Year : 2017–18)

Goldman Sachs (India) Securities Pvt. Ltd.,
951-A, Rational House, Appa Saheb Marathe
Marg, Prabhadevi, ……. Appellant
Mumbai - 400025
PAN – AAFCA6819F

v/s

The National Faceless Assessment Centre, Delhi ……. Respondent
New Delhi

Assessee by : Shri Madhur Agrawal
Revenue by : Ms. Neena Jeph, CIT-DR

Date of Hearing – 11/09/2024	Date of Order – 09/12/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal challenging the impugned final assessment order dated 25/02/2022, passed under section 143(3) read with section 144C(13) read with section 144B of the Income Tax Act, 1961 ("*the Act*"), pursuant to the directions dated 24/01/2022 passed under section 144C(5) of the Act by the learned Dispute Resolution Panel-1, Mumbai-2 ("*learned DRP*"), for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds: –

"Based on the facts and circumstances of the case, Goldman Sachs (India) Securities Private Limited (hereinafter referred to as 'the Appellant) respectfully craves, leave to prefer an appeal under section 253(1) of the Income-tax Act, 1961 (hereinafter referred to as 'Act'), against the order dated 25 February 2022 passed by the Additional /Joint / Deputy/ Assistant Commissioner of Income Tax/Income-tax Officer, of National Faceless Assessment Centre, Delhi, under section 143(3) read with section 144C(13) read with section 144B of the Act, in pursuance of the directions issued by Dispute Resolution Panel - I, Mumbai (hereinafter referred to as 'learned DRP"), on the following grounds, which are independent of and without prejudice to each other.

On the facts and in the circumstances of the case and in law, the learned Assessing Officer (hereinafter referred to as the 'learned AO' learned Transfer Pricing Officer (hereinafter referred to as the 'learned TPO) erred and Hon'ble DRP further erred:

Transfer pricing grounds - Adjustment under Section 92CA of the Act

1. In making an upward transfer pricing adjustment to the extent of Rs 19,80,000 by re-computing the Arm's Length Price (ALP) of the international transaction pertaining to provision of non-binding investment advisory and support services (IA services) by the Appellant to its associated enterprises (AEs), inter alia, on following grounds:

a) Rejecting the transfer pricing documentation maintained by the Appellant in accordance with provisions of the Act read with the Income-tax Rules, 1962 (Rules); and

b) Including the carried interest received by the employees of the Appellant in the cost base of the Appellant for the purpose of charging cost plus mark-ups for provision of lA services;

2. In making an upward transfer pricing adjustment to the extent of Rs 33,21,07,736 by re-computing the Arm's Length Price (ALP) of the international transaction pertaining to provision of Information Technology enabled Services (ITeS) by the Appellant to its associated enterprises (AEs), inter alia, on following grounds:

a) Rejecting the transfer pricing documentation maintained by the Appellant in accordance with provisions of the Act read with the Rules;

b) Cherry picking and not following a scientific search process in identifying companies and not providing the search criteria/ strategy adopted for identifying such additional comparable companies;

c) Rejecting the following functionally similar companies selected as comparables by the Appellant in the transfer pricing documentation:

- *Sundaram Business Services Limited*
- *Microland Limited (Segmental)*
- *Datamatics Financial Services Limited*
- *Vitae International Accounting Services Private Limited*

d) Rejecting R Systems International Limited (BPO Segment) merely on account of different financial year (FY):

e) Rejecting Allsec Technologies Ltd and Jindal Intellicom Private Limited, by applying export turnover filter:

f) Rejecting Cosmic Global Limited, iSN Global Solutions Private Limited, Informed Technologies India Limited and Suprawin Technologies Limited, by applying turnover filter;

g) Rejecting Informed Technologies Limited, on account of negative margin earned by the comparable company;

h) Considering MPS Limited, as comparable companies to the Assessee without recording the reason for rejecting Assessee's contentions as submitted during the TP proceedings.

i) Adopting the following companies in the final set of comparables whose functions are different to those performed by the Assessee and despite it having insufficient segmental information:

- *MPS Limited*
- *Manipal Digital Systems Private Limited*

j) Considering the MPS Limited with supernormal profits as comparable to the Assessee

Corporate tax grounds

3. In disallowing the amortization cost in respect of employee stock option plans (ESOP) granted to its employees [hereinafter collectively referred as 'ESOP cost'] amounting to Rs. 38,28,70,712 incurred by the Appellant, on the basis that the ESOP costs are notional/ contingent in nature.

In disregarding the order of Hon'ble ITAT in the Appellant's own case for AY 2008-09, AY 2009-10, AY 2010-11 AY 2011-12, AY 2012-13, AY 2014-15 and AY 2015-16 where the amount of ESOP cost was allowed as a deductible expenditure in the year of amortization.

Without prejudice to the above, where your Honours seek to uphold the action of the learned AO, a deduction with respect to the amount actually paid for the value of shares delivered should be granted to the Appellant. In this regard, the learned AO has erred in disregarding the directions of the Hon'ble DRP with respect to allowability of the amount actually paid by the Appellant for the ESOP cost during the year under consideration.

4. In disallowing 5% of the following eligible business expenditure which are debited to the profit and loss account amounting to Rs 3,79,50,079 (i.e. 5% of Rs. 75,90,01,585) stating that the Appellant ought to have provided sufficient details:

Particulars	*Amounts (in Rs)*
Stock exchange settlement cost	*24.00,97.455*
Professional fees	*6,09,51,406*
Publication and subscription related expenses	*12,59,46,040*
Communication and technology related expenses	*33,20,06,684*
Total	*75,90,01,585*
Disallowance to the extent of 5%	*3,79,50,079*

The learned AO has erred in not appreciating the details submitted by the Appellant during the course of assessment proceedings (eg. Ledger extracts, sample copy of invoices etc.) and has alleged that the said copy of invoices does not tally with the transaction level details of the relevant expenses.

Without prejudice to the above, the learned AO has erred in law and in fact to make an ad-hoc disallowance to the extent of 5% of eligible business expenditure although the Hon'ble DRP has agreed with the contentions of the Appellant that there is no provision under the law basis which certain percentage of the eligible business expenditure can be disallowed by the learned AO arbitrarily without providing any rationale or technical basis to this effect.

5. In disallowing an amount of Rs. 94,42,316 pertaining to gratuity without appreciating the fact that the amount of Rs. 91,22,591 relates to payment made by the Appellant towards gratuity liability and Rs. 3,19,725 relates to reversal of excess provision made in the books of accounts which has already been disallowed in computing the income chargeable to tax in the previous AY's under section 40A(7) of the Act.

The learned AO has erred in disregarding the actuarial valuation report submitted by the Appellant during the assessment proceedings evidencing the payment/ reversal of gratuity.

6. In disallowing an amount of Rs. 63,94,246 pertaining to leave encasement paid on or before the due date of filing return of income which is also disclosed in the tax audit report at clause 26(i)(B)(a) without considering the first proviso to section 43B of the Act which allows the deduction of leave encasement incurred during the year and paid on or before the due date of filing of return of income.

7. In disallowing an amount of Rs. 41,48,164 on account of employees' contribution to provident fund which was deposited before the due date of filing the return of income without appreciating the provisions of section 43B of the Act and various judicial pronouncements in favour of Appellant.

8. In not granting a deduction of Rs. 5,96,20,000 under Chapter VI-A of the Act on account of the donations made under section 80G of the Act and disregarding the donation receipts submitted by the Appellant evidencing the eligibility for deduction under section 80G of the Act.

Further, the learned AO failed to appreciate the fact that voluntary contribution is not a mandatory requirement as per the provision of section 80G of the Act

and has erred in not providing an opportunity to the Appellant to file a submission in this regard.

9. In not granting the credit of Dividend distribution tax (DDT) paid by the Appellant amounting to Rs. 1,02,19,33,618 as claimed in the return of income by the Appellant and levying consequential interest under section 115P of the Act amounting to Rs. 62,33,79,507.

10. In levying the additional interest under section 234C of the Act without appreciating that the interest under section 234C of the Act is to be calculated on the returned income filed by the Appellant as per the provisions of the Act.

11. In computing the consequential interest under section 234B of the Act.

12. In initiating penalty proceedings under section 270A of the Act."

3. During the hearing, the learned Authorized Representative ("*learned AR*"), at the outset, referred to the letter dated 01/04/2024 filed by the assessee seeking withdrawal of the grounds no. 1 and 2, raised in assessee's appeal, pertaining to transfer pricing adjustment in view of the Advance Pricing Agreement ("*APA*") entered with the CBDT, which also covers the year under consideration. In the afore-noted letter, the assessee submits that since the APA agreement signed between the CBDT and the assessee covers international transactions, it wishes to suo-moto withdraw grounds no.1 and 2 pertaining to transfer pricing adjustment. Accordingly, in view of the above, grounds no.1 and 2 raised in assessee's appeal are dismissed as withdrawn.

4. The issue arising in ground no.3, raised in assessee's appeal, pertains to the disallowance made on account of Employee Stock Option Plan ("*ESOP*") expenses.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the perusal of the financial statement of the assessee, it was observed that employee cost

include the cost of Restrictive Stock Unit and Stock Option's Plan under the Goldman Sachs Group Inc. Further, it was noticed that the Stock Incentive Plan has been charged to the profit and loss account over the period of vesting. Accordingly, the assessee was asked to submit the details of such expenditure and also the foreign exchange difference on the same debited to the profit and loss account. Further, the assessee was asked to show cause as to why the same should not be disallowed in the current assessment year on similar grounds as disallowed in earlier years. In response, the assessee submitted that this issue is recurring in nature and has been decided in its favour by the Tribunal for the assessment years 2008-09, 2009-10, 2011-12, 2012-13, 2014-15 and 2015-16. The assessee further submitted that Goldman Sachs Group Inc. has a global stock award plan wherein the benefits of such plan are extended to the employees of the subsidiaries/associated companies. It was further submitted that during the year the assessee has debited an amount of INR 38,75,59,875 in the profit and loss account towards ESOP. As regards the deductibility of the expense, the assessee submitted that Restrictive Stock Units are part of the compensation program of the employees of the assessee and under this plan, the award will typically vest to the employees over a no. of specified years, starting from the date of grant, subject to the fulfilment of the vesting conditions. Further, it was submitted that the Restrictive Stock Unit entitled the employees of the assessee, on fulfilment of certain conditions, to receive shares of Goldman Sachs Group Inc. and after the expiry of the vesting period, shares of the Goldman Sachs Group Inc. would be delivered to the employees, for which the assessee would be required to make a payment to the Goldman Sachs Group Inc. This

payment by the assessee to Goldman Sachs Group Inc. is determined with reference to the value of the shares as on the date of delivery of the shares to the employees. The assessee further submitted that as per the accounting policy regularly followed by it and its group globally, the grant price on the date of the grant of Restrictive Stock Unit is amortized in the books of the assessee over the period of vesting of the award. At the end of each year, the outstanding shares are marked to market for the fluctuations in the stock price from the grant price and the difference, if any, is debited/credited to the profit and loss account of the assessee. It is submitted that as it is required to pay the aforesaid sum to Goldman Sachs Group Inc. on account of the grant of the Restrictive Stock Units to its employees, such payment is considered as part of the salary cost in the year in which it is incurred in accordance with the method of accounting followed and represents revenue expenditure incurred by the assessee wholly and exclusively for the purpose of its business and not a capital expenditure. Apart from the decisions rendered by the Tribunal in assessee's own case, the assessee also placed reliance upon the decision of the special bench of the Tribunal in Biocon Ltd. v/s DCIT (ITA No. 248/Bang/2010).

6. The Assessing Officer ("*AO*") vide draft assessment order dated 27/04/2021 passed under section 143(3) read with section 144C(1) of the Act disagreed with the submissions of the assessee and held that the assessee has failed to furnish any breakup of the actual expenses paid and amortise expenditure including the amount of INR 38,75,59,875 debited to the profit and loss account. Thus, in the absence of proper details for verification, the

ESOP cost of INR 38,75,59,875 was disallowed and added to the total income of the assessee.

7. The learned DRP, vide its directions dated 24/01/2022, inter-alia, after noting that this issue is recurring in nature, rejected the objections filed by the assessee following its directions rendered in assessee's own case for the preceding years. In conformity, the AO passed the impugned final assessment disallowing the ESOP cost of INR 38,75,59,875 claimed by the assessee. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. We find that while considering a similar issue pertaining to the deduction of ESOP expenses on account of the grant of Restrictive Stock Units by the assessee to its employees, the coordinate bench of the Tribunal in assessee's own case in Goldman Sachs (India) Securities Pvt Ltd v/s ACIT, in ITA No. 6912/Mum./2012, vide order dated 22/07/2016, for the assessment year 2008-09, observed as under: -

> *"71.We have considered the submissions of the parties and perused the material available on record. We have noted that identical issue of deduction claimed on account of ESOP arose for consideration in assessee's own case for assessment year 2009-10 before the Tribunal in ITA No. 222/Mum./2014. The Tribunal vide order dated 30th November 2015, held as under:-*
>
> > *"12.3. Before us, the Ld. Senior Counsel drew our attention to the decision of the Special Bench of the Bangalore Tribunal in the case of Biocon Ltd. 144 ITD 21 (Bang) wherein on similar facts the discount on issue of ESOP was allowed as deduction.*
> >
> > *12.4. The Ld. DR could not bring any distinguishing decision in favour of the Revenue. Respectfully following the decision of the Special Bench (supra), we hold that discount on issue of employees stock options is allowable as deduction in computing the income under the head profits and gains of business of profession. Ground No. 5 & 6 are accordingly allowed."*
>
> *72. No material difference in facts having been brought to our notice by the learned Departmental Representative, respectfully following the decision of the*

co-ordinate bench as referred to above, we allow assessee's claim of deduction and delete the addition made by the Assessing Officer."

9. We find that similar findings were rendered by the coordinate bench of the Tribunal in assessee's own case for the assessment year 2010-11, in ITA No. 1546/Mum./2015, vide its order dated 17/02/2022. The relevant findings, in the aforesaid decision, are reproduced as follows: –

"50. In the light of the submissions of the parties before the Bench we find that the specific findings of facts have not been upset by the Revenue. The facts as enumerated and the position qua the specific plan as appreciated by the DRP in para 5.2.1 we note remains unrebutted. Considering the judicial precedent in para 5.2.2 to para 5.2.4 which also remaining unrebutted, we find no infirmity with the conclusions drawn. For the sake of completeness, we reproduce the relevant findings on facts being upheld by us:

5.2 <u>Discussion & Direction of the DRP:</u>

The AO had discussed the issue in para 5.1 to 5.5 of the draft assessment order. He has noticed from note 2(vii) of Schedule 14 to final accounts that employee costs include the cost of restrictive stock unit (RSU) and stock option plan under the Goldman Saohs Groups Inc. The assessee was directed to furnish RSU/Option agreement vide order sheet noting of the AO dated 17.02.2014. Expenditure along with exchange difference on the same was charged to the P & L account. The AOs in the earlier year i.e. A.Y.2008-09 and 2009-10 had disallowed the expenditure and it was also confirmed by the DRP in both the years. Therefore, the show cause was issued to disallow the expenditure charged during the current assessment year. The AO was of the view that the employees will be issued shares free of cost without the employees actually exercising the same and therefore the cost pertaining to RSU should not be regarded as contingent/notional and should be allowed as deduction in the year of vesting w/s 37(1) of the Act. The AO had referred to the decision of ITAT in the case of Ranbaxy Laboratories Lid. On an identical issue the DRP has confirmed the action of the AO in A.Y. 2008-09 and 2009-10 and since there is no change in the facts in the current year and hence amount debited to P & L account amounting to Rs:60,63,49,187/- was disallowed and added as income.

5.2.1 We have carefully considered the submission of the assessee. There are several types of RSU plans for instance in one of the plan issued during year 2006 (2006 year end plan) provides for option vesting of 40% of the stocks granted and the balance 60% vested after a period of 3 years i.e. in the year 2007 (20%) 2008 (20%) and 2009 (20%). Accordingly the assessee amortized 40% of the cost in the first year of the plan and the balance 60% cost is amortized over the vesting period of three years. As per the accounting policy the grant price on the date of grant of RSU is amortized in the books of assessee in accordance with vesting schedule as laid down in the plan. The method of accounting is in accordance with the accounting standards in India.
The facts in the present case reveal that:

- *The Assessee pays a sum to GSGI upon the delivery of the RSUs (pertaining to shares of GIGI) to employees of the Assessee.*

- *The sum payable by the Assessee to GSGI is determined with reference to the value of the shares of GSGI as on the date of vesting of the RSUs.*

- *As the Assessee is required to pay aforesaid sum to GSGI on account of the grant of the RSUs to its employees, such payment being an actual expenditure for the Assessee is considered as part of the compensation cost of the employees in the year in which it is incurred in accordance with the method of accounting followed*

5.2.2 Therefore, the ESOP expenses should not be regarded contingent or notional and it should be allowed as deduction u/s 37(1) of the IT. Act. The appellant had relied on the decision of DCIT v Accenture Services P Lid [ITA No. 4540/M/08 order dated 23" March 2010] and Nordisk India Private Limited v DCIT -12(2) (ITA No. 1275/Bang/2011) (Bang Trib).

51. The departmental grounds, accordingly, fail."

10. The learned Departmental Representative ("*learned DR"*) could not show us any reason to deviate from the aforesaid decisions rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. This issue is recurring in nature and has been decided in favour of the assessee by the coordinate bench of the Tribunal in the preceding assessment years. Thus, respectfully following the orders passed by the coordinate bench of the Tribunal in the assessee's own case cited supra, we uphold the plea of the assessee and delete the disallowance made on account of ESOP expenses. As a result, ground no.3 raised in assessee's appeal is allowed.

11. The issue arising in ground no. 4, raised in assessee's appeal, pertains to the disallowance of expenditure debited to the profit and loss account.

12. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the perusal of the profit and loss account and the return of income filed by the assessee, it was

observed that the assessee has claimed and debited major expenses under various heads, the details of which are as under: –

Stock exchange settlement cost	- INR 24,97,00,455
Professional fees	- INR 6,09,51,406
Publication and subscription related expenditure	– INR 12,59,46,040
Communication and technology related expenditure	- INR 33,20,06,684

13. Accordingly, the assessee was asked to substantiate its claim with supporting ledger extracts and a few sample bills/vouchers as applicable to each head of expenses, to adduce its verifiability as claimed. Further, the assessee was asked to give complete details of TDS, as deducted against various heads of expenses, as debited to the profit and loss account to adduce the provisions of TDS claim as per the Act along with applicable disallowance on account of non-deduction of TDS, if any with relevant claims of such expenses involving the applicability of TDS. In response, the assessee merely furnished the list of expenses. With regard to publication and subscription expenses of INR 12,59,46,040, the assessee stated that there is an increase in the publication and subscription-related expenses on account of an increase in employee headcount using these publications, multiple additions in the no. of vendors providing these publications, inflation in the expenses charged by vendors for the provision of publications and subscriptions. However, the assessee neither produced supporting documents/bills/vouchers nor any ledger extracts. With regard to the stock exchange settlement cost, the assessee submitted that it is registered as a stockbroker with SEBI and the stock exchange settlement cost includes the amount payable to the stock exchange in the normal course of business. It was further submitted that such expenditure is incurred in order to be able to trade on the stock exchange in

the capacity of a stock broker. However, the assessee only gave the breakup of these expenses and did not produce any bills/vouchers or any other supporting evidence/documents. As regards the communication and technology-related expenses and professional expenses, the assessee merely submitted a list of expenses without supporting documents or ledger extracts. Accordingly, the AO vide draft assessment order considered it appropriate to disallow 5% of the expenditure and made a disallowance of INR 3,79,50,079.

14. The learned DRP, vide its directions dated 24/01/2022, inter-alia, directed the AO to verify the expenses in question on a test check basis, and allow the same if the expenses are verified. The AO, vide impugned final assessment order, held that pursuant to the learned DRP's directions, the assessee submitted few invoices/bills and on perusal of same it is noticed that none of these expenses are tallied with the journal entries submitted by the assessee before the learned DRP as additional evidence. The findings of the AO, vide impugned final assessment order, on this issue are as follows: –

> *"(i) Assessee submitted a plain journal extract running into 225 pages covering the 4 heads of expenses. On perusal of this plain journal extract involving computer printouts uploading it only refers journal Id/ reference etc. However, the same was-not duly enclosed with relevant invoice/ bills reflecting third party acknowledgement / confirmation on such sample bills at least one each for each party for each month of transaction to adduce its verifiability. Further, these extracts is also including negative transactions/ negative amounts in quite a big number of transactions and same is not understandable whether it is a contra entry/ adjustments against such party under the relevant head involving non-related to assessee/ its business activities. Apparently assessee could not submit anything in reconciling/ explaining these '() bracketed/ negative amounts with relevant to such parties adjustments. On perusal, it appears without these adjustments grand total of expenses under these 4 major heads is not tailliable. Hence assessee claim that additional submissions made involving full details is neither reasonable nor acceptable. Hence nothing specific is submitted by the assessee even before Hon'ble DRP as claimed on the issues of expenses sought during the assessment proceedings.*

(ii) Further in the submissions, assessee claims that the learned AO failed in considering e-TDS returns filed by the assessee while disallowing 5% of referred business expenditure. AO has nothing to do with the e-TDS returns of the assessee as it covers entire TDS deductions of the assessee for the full year. As discussed above on the issue of TDS and expenses, it was categorically asked to give a detailed note on the TDS deductions as made for each head of expenses as applicable under the law along with omissions if any, attracting provisions of I.T Act for disallowance U/s 40(a)(ia) etc.

(iii) This clarification was not given by the assessee for all expenses or at least to the 4 major heads of expenses as applicable narrating nature of expenditure incurred under these heads and relevant applicability/ non- applicability of TDS provisions as the case may be. Hence on one side assessee could not give any sample bills and vouchers at least in few cases on other side assessee could not adduce any TDS provisions applicability/ non-applicability with e-TDS returns. Furthermore, now before Hon'ble DRP, assessee is reflecting contra adjustments against the overall ledger to arrive at grand total for each above major head of expenses involved in disallowance. Hence considering all these discrepancies, it is clear that assessee's submissions and claims are neither fully reconcilable with supporting explanation justification as per the I.T. Act or amenable for verification with sample bills of each such parties involved during the year.

(iv) Following the directions of the Hon'ble DRP the assessee vide letter dated 09.02.2022 was again requested to provide supporting bills and vouchers with due reconciliation of overall ledger for major parties involved on a test check basis few bills/vouchers for each month of the year to reconcile the discrepancies noticeable on additional submissions for its verification and consideration. In reposse to the letter issued assessee submitted few bills/invoices. On verification of these invoices/bills, it is seen that none of the expenses tallied with the journal entries submitted by the assessee which was submitted as Additional Evidence before Hon'ble DRP.

6.7. Accordingly assessee could not give bare minimum ledger extract of above four major expenses namely Stock exchange settlement cost, professional fees,
Publication and Subscription related Expenses, Communication & technology related expenses. When the same is categorically asked for reconciliation and verification of expenses on test check basis, assessee ought to have provided overall ledger extracts with party wise breakup tallying the totals and few bills/vouchers for each major parties involved staggering month wise etc. to adduce genuineness of incurring of such high expenses as debited in the P&L account under these heads. In the absence of its verifiability, in spite of availing sufficient time and opportunities during the draft assessment proceedings, considering the discrepancies involved in additional submissions filed before Hon'ble DRP as analyzed supra and also keeping in view assessee's failure to substantiate the genuineness of claims as per Hon'ble DRP directions on test check basis clearly makes it non verifiable on its correctness of incurrence in its totality of full expenses claimed under these major heads as reasoned and discussed in the DAO and accordingly the same is added as non-verifiable expenses on test-check basis as per the directions of Hon'ble DRP."

Being aggrieved, the assessee is in appeal before us.

15. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR filed the details of expenditure along with bills/vouchers and other details pertaining to the expenditure debited to the profit and loss account. It is evident from the record that the learned DRP directed the AO to verify the expenses on a test-check basis. However, the AO, vide impugned order, sustained the addition primarily on the basis that the invoices/bills submitted by the assessee do not tally with the journal entries submitted before the learned DRP. The learned AR submitted that all the details pertaining to the expenditure debited to the profit and loss account are available with the assessee and if given an opportunity all these details will be produced before the AO for necessary examination. Having considered the submissions, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after the necessary examination/verification of the details pertaining to the expenditure incurred by the assessee. Needless to mention, no order shall be passed without affording reasonable opportunity of hearing to the assessee. Further, the assessee is also directed to produce any other information as may be sought by the AO for complete adjudication of this issue and also to cooperate in the assessment proceedings. With the above directions, the impugned final assessment order on this issue is set aside and ground no.4 raised by the assessee is allowed for statistical purposes.

16. The issue arising in ground no.5, raised in assessee's appeal, pertains to the disallowance of gratuity payment made by the assessee.

17. The brief facts of the case pertaining to this issue, as emanating from the record, are: In the present case, while passing the draft assessment order the AO, through the computation, made an addition on account of gratuity payment amounting to INR 94,42,316. In its objections filed before the learned DRP, the assessee submitted that the assessee submitted that the amount of INR 91,22,591 relates to the payment made by the assessee towards the gratuity liability and INR 3,19,725 relates to the reversal of excess provision made in the books which were disallowed in computing the income chargeable to tax in the previous assessment years under section 40A(7) of the Act. The learned DRP, vide its directions dated 24/01/2022, directed the AO to verify the facts and if it is found that any of the two conditions prescribed under section 40A(7) of the Act are satisfied allow the expenses of INR 91,22,591. Further, as regards the provision of INR 3,19,725 claimed to have been disallowed in the computation of income and written back, the AO was directed to verify the claim of the assessee that it has not availed the deduction of this amount in any previous year and allow the same if found to be true.

18. The AO, vide impugned final assessment order, in the absence of any proof upheld the addition made on account of gratuity payment. Being aggrieved, the assessee is in appeal before us.

19. We have considered the submissions of both sides and perused the material available on record. In the present case, during the year under consideration, the assessee claimed the deduction of INR 94,42,316 on account of payment towards gratuity liability while filing its return of income. As per the assessee, it made a payment of INR 2,23,34,145 during the year under consideration on the basis of the actuary valuation report, which forms part of the paper book from pages 533-545. Further, the assessee made a payment of INR 57,67,700 during the assessment year 2018-19 but after the due date of filing the return of income for the assessment year 2017-18, therefore claimed during the year under consideration. The assessee vide submission dated 13/09/2024 provided the computation of the amount of INR 94,42,316 claimed during the year under consideration by the assessee towards gratuity payment, which is as follows: -

Particulars	*Amount*	*Reference*
Payment made during AY 2017-18	*2,33,34,145*	*Reference Refer table 6 of actuarial valuation report on page 540 of the Paperbook. We have re-attached the same as Annexure 2, refer table 6 on page 9*
Add: Payment made during AY 2018-19 but upto the due date of filing return of AY 2017-18	*57,67,700*	*Refer page 556 of the Paperbook where total payment of INR 83,56,556 is mentioned, out of which a deduction of INR 25,88,856 was claimed as a deduction in AY 2018-19 and balance of INR 57,67,700 is claimed in AY 2017-18. We have re-attached the copy of COI along with ROI for AY 2018-19 as Annexure 3, refer page 2 where such amounts have been explained.*

Total payment made	*2,91,01,845*	
Less: Allowance claimed in the return of AY 2016-17	*(1,99,79,254)*	*Refer page 547 of the Paperbook where the computation of income for AY 2016-17 along with the ROI is attached. The copy of the same is re-attached as Annexure 4, refer page 2 where such amounts have been explained.*
Effective amount of deduction on payment to be claimed in the return of A.Y. 2017-18	*9,122,591*	
Add: Reversal of excess provision which was disallowed in previous years	*3,19,725*	*Refer page 420 and page 541 of the Paper book, where the actuarial report evidences this reversal. The copy of the same is re-attached as Annexure 2 above, refer to table 6 on Page 9 of actuarial report.*
Total amount of deduction claimed	*94,42,316*	

20. In order to support the aforesaid details, the assessee has also filed various documents. It is evident from the record that due to lack of evidence/proof, the AO made the addition on account of gratuity vide impugned final assessment order. Therefore, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after the necessary examination/verification of the details filed by the assessee. Needless to mention, no order shall be passed without affording reasonable opportunity of hearing to the assessee. Further, the assessee is also directed to produce any other information as may be sought by the AO for complete adjudication of this issue and also to cooperate in the assessment proceedings. With the above directions, the impugned final assessment order

on this issue is set aside and ground no.5 raised by the assessee is allowed for statistical purposes.

21. The issue arising in ground no.6, raised in assessee's appeal, pertains to the addition made on account of leave encashment paid by the assessee on or before the due date of filing the return of income.

22. The brief facts of the case pertaining to this issue, as emanating from the record, are: As per the assessee, it made a payment of INR 63,94,246 towards leave encashment for the assessment year 2017-18 on or before the due date of filing the return of income. The learned DRP, vide its directions dated 24/01/2022, held that since the assessee had not paid the amount in question within the relevant previous year, i.e. 2016-17, therefore the claim cannot be allowed under section 43B of the Act. In conformity, the AO vide impugned final assessment order made an addition of INR 63,94,246 on account of leave encashment. Being aggrieved, the assessee is in appeal before us.

23. We have considered the submissions of both sides and perused the material available on record. As per the assessee, the payment towards leave encashment amounting to INR 63,94,246 was made by the assessee on or before the due date of filing the return of income. It is evident from the record that the lower authorities denied the deduction claimed under section 43B of the Act on the basis that the assessee has not paid the amount in question during the relevant previous year. It is the plea of the assessee that as per section 43B(f) any sum payable by the assessee as an employer in lieu of any

leave at the credit of his employee is allowable only in computing the income of that previous year in which such sum is actually paid. By placing reliance upon the provisions of first proviso to section 43B of the Act, the learned AR submitted that this section is applicable to any sum which is actually paid by the assessee on or before the due date applicable in its case for furnishing the return of income under section 139(1) of the Act in respect of the previous year in which the liability to pay such sum was accrued. Thus, as per the assessee, since the payment of INR 63,94,246 towards leave encashment was made on or before the due date of filing the return of income, the same is allowable under section 43B(f) of the Act. In order to substantiate the aforesaid claim, reference was made to clause 26 of the Tax Audit Report, at page 520 of the paper book, which specifically provides that leave encashment amounting to INR 63,94,246 was paid on or before the due date for furnishing the return of income for the previous year 2016-17. Therefore, having considered the aforesaid facts, we are of the considered view that the assessee is entitled to claim deduction under section 43B(f) read with first proviso to section 43B of the Act in respect of leave encashment paid by it for the year under consideration. We direct accordingly. As a result, the impugned order on this issue is set aside and ground no.6 raised in assessee's appeal is allowed.

24. The issue arising in ground no.7, raised in assessee's appeal, pertains to disallowance on account of the late payment of employees' contribution to Provident Fund.

25. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that in the present case, the assessee made a deposit of employees' contribution to Provident Fund amounting to INR 41,48,164 on 18/04/2017 when the due date to deposit was 15/04/2017. Accordingly, the learned DRP rejected the objections filed by the assessee on this issue. In conformity, the AO vide impugned final assessment order made an addition of INR 41,48,164 under section 36(1)(va) of the Act. It is the plea of the assessee that due to a technical glitch the payment of employees' contribution to Provident Fund could not be made on or before the due date. Upon enquiry, we find that the concerned authority neither granted any specific exemption to the assessee in this regard nor extended the due date for making the payment due on 15/04/2017. We find that the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v/s CIT, reported in [2022] 448 ITR 518 (SC) held that the payment towards employees' contribution to Provident Fund after the due date prescribed under the relevant statute is not allowable as a deduction under section 36(1)(va) of the Act. Therefore, respectfully following the decision of the Hon'ble Supreme Court cited supra, we find no merits in assessee's submissions. Accordingly, the disallowance made under section 36(1)(va) of the Act is upheld. As a result, ground no.7 raised in assessee's appeal is dismissed.

26. The issue arising in ground no.8, raised in assessee's appeal, pertains to the denial of deduction claimed under section 80G of the Act on Corporate Social Responsibility ("*CSR*") expenses.

27. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that during the year under consideration, the assessee claimed the deduction of INR 5,96,20,000 on account of donations made under section 80G of the Act. As per the assessee, it claimed the deduction of INR 5,96,20,000 under section 80G of the Act on account of donations amounting to INR 11,92,40,000 paid to the entities eligible for deduction under section 80G(1)(ii) of the Act and accordingly, the deduction for 50% of the qualifying amount was claimed under section 80G of the Act. In support of the aforesaid submission, reference was also made to the donation receipts, which form part of the paper book on page 656. The learned DRP directed the AO to verify that the donations were eligible for deduction under section 80G(1)(ii) of the Act, and if found to be so, allow the claim of the assessee. The AO, vide impugned final assessment order, denied the claim of the assessee on the basis that the entire expenditure claimed under section 80G of the Act involve mandatory CSR expenses as mandated under the provisions of the Companies Act and these expenses involve non-voluntary contribution, which are not akin to voluntary donations qualified/referred under section 80G of the Act. The AO further held that the applicability of the provisions of section 80G of the Act and its eligibility for compulsory CSR expenses is neither reconcilable nor covered by the provisions of section 80G of the Act.

28. The grievance of the assessee is against the denial of deduction under section 80G of the Act in respect of CSR expenditure. In the present case, it is undisputed that the assessee has not claimed the CSR expenditure under

section 37(1) of the Act, and its claim is only restricted to section 80G of the Act. We find that a similar issue came up for consideration before various coordinate benches of the Tribunal. We find that in Allegis Services (India) Private Ltd. V/s ACIT, in ITA No. 1693/Bang./2019, the deduction in respect of CSR expenditure under section 80G of the Act was denied by the Revenue on a similar basis as in the present case. While deciding the issue in favour of the taxpayer, the coordinate bench of the Tribunal, vide order dated 29/04/2020, observed as follows: -

> *"We have perused submissions advanced by both sides in light ofrecords placed before us.*
>
> *10. Section 135 of Companies Act, 2013 requires companies with CSR obligations, with effect from 01/04/2014.*
>
> *Finance (No.2) Act, 2014 inserted new Explanation 2 to sub- section (1) of section 37, so as to clarify that for purposes of sub- section (1) of section 37, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.*
>
> *11. This amendment will take effect from 1/04/2015 and will,accordingly, apply to assessment year 2015-16 and subsequentyears.*
>
> *12. Thus, CSR expenditure is to be disallowed by new Explanation 2 to section 37(1), while computing Income under the Head Income form Business and Profession'. Further, clarification regarding impact of Explanation 2 to section 37(1) of the Income Tax Act in Explanatory Memorandum to The Finance (No.2) Bill, 2014 is as under:*
>
> > *"The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditure cannot be allowed under the existing provisions of section 37 of the Income-tax Act.*
> >
> > *Therefore, in order to provide certainty on this issue, it is proposed to clare that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and, hence, shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in*

section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein."

13. From the above it is clear that under Income tax Act, certain provisions explicitly state that deductions for expenditure would be allowed while computing income under the head, 'Income from Business and Profession" to those, who pursue corporate social responsibility projects under following sections.

- *Section 30 provides deduction on repairs, municipal tax andinsurance premiums.*
- *Section 31, provides deduction on repairs and insurance ofplant, machinery and furniture.*
- *Section 32 provides for depreciation on tangible assets like building, machinery, plant, furniture and also on intangible assets like know-how, patents, trademarks, licenses.*
- *Section 33 allows development rebate on machinery, plantsand ships.*
- *Section 34 statesconditions for depreciation and development rebate.*
- *Section 35 grants deduction on expenditure for scientific research and knowledge extension in natural and applied sciences under agriculture, animal husbandry and fisheries. Payment to approved universities/research institutions orcompany also qualifies for deduction. In-house R&D is eligible for deduction, under this section.*
- *Section 35CCD provides deduction for skill development projects, which constitute the flagship mission of the present Government.*
- *Section 36 provides deduction regarding insurance premium on stock, health of employees, loans or commission for employees, interest on borrowed capital, employer contribution to provident fund, gratuity and payment of security transaction tax.*

Income Tax Act, under section 80G, forming part of Chapter VIA, provides for deductions for computing taxable income as under:

- *Section 80G(2) provides for sums expended by an assessee asdonations against which deduction is available.*

  a) Certain donations, give 100% deduction, without any qualifying limit like Prime Minister's National Relief Fund, National Defence Fund, National Illness Assistance Fund etc., specified under section 80G(1)(i).

  b) Donations with 50% deduction are also availableunder Section 80G for all those sums that do not fallunder section 80G(1)(i).

Under Section 80G(2) (iiihk) and (iiihl) there are specific exclusion of certain payments, that are part of CSR responsibility, not eligible for deduction u/s80G.

14. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, 'Income form Business and Profession", where as monies spent under section 80G are claimed while computing "Total Taxable income" in thehands of assessee. The point of claim under these provisions aredifferent.

15. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 of the Act, for computing income under the head, "Income from Business and Profession".

16. For claiming benefit under section 80G, deductions are considered at the stage of computing "Total taxable income". Even if any payments under section 80G forms part of CSR payments(keeping in mind ineligible deduction expressly provided u/s.80G), the same would already stand excluded while computing, Income under the head, "Income form Business and Profession". The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "Total Taxable Income" cannot be denied to assessee, subject to fulfillment of necessary conditions therein.

17. We therefore do not agree with arguments advanced byLd.Sr.DR.

18. In present facts of case, Ld. AR submitted that all paymentsforming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Profession". It has been submitted that some payments forming part of CSR were claimed as deduction under section80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

19. On the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G(1) of the Act.

20. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its calim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility."

29. We further find that the coordinate bench of the Tribunal in Societe Generale Securities India (P.) Ltd. vs. Principal Commissioner of Income-tax, reported in [2023] 157 taxmann.com 533 (Mumbai – Trib), while affirming the claim of deduction under section 80G of the Act in respect of CSR expenditure, observed as follows: –

> *"6. After computing the business income, while computing the total income of the assessee, the assessee is invoking the benefit under Chapter VIA by claiming deduction of the sums under section 80G of the Act. According to the revenue, when once such sum went to satisfy the requirement of section 135 of the Companies Act, the benefit gets exhausted and such an amount is no more available for the purpose of claiming deduction under section 80G of the Act. There is no express provision to support the contention of Revenue. On the other hand, section 80G (2) (iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as a part of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G (2) (iiihk) and (iiihl) of the Act. Explanation 2 to section 37(1) of the Act which denies deduction for CSR expenses by way of business expenditure is applicable only to extent of computing 'business income' under Chapter IV-D of the Act and; it could not be extended or imported to CSR contributions which was otherwise eligible for deduction under Chapter VI-A of the Act.*
>
> *7. Where the deduction under section 80G of the Act is also disallowed, since CSR qualifying donations are not 'voluntary contributions', it will be a double jeopardy in the case of assessee. Assessee cannot be denied the benefit of claim under Chapter VIA of the Act, which is considered for computing 'Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, it would lead to double disallowance, which is not the intention of Legislature at all. Legislature on this matter simply dealing with the computation of total income under chapter IVD pertaining to "Income under the head Business and Profession" and not at all dealt with the eligibility of assessee to claim deduction u/s. 80G of the Act, falling in chapter VIA of the Act. It is further observed that genuineness of the transactions and identity of the donees are also not under challenge. All the payments were made through proper banking channel and appropriate donation receipts were also produced before the lower authorities and before us also."*

30. Thus, respectfully following the aforementioned decisions, we are of the considered view that the claim for deduction under section 80G of the Act in respect of CSR expenses cannot be denied. In the present case, the lower authorities denied the deduction claimed by the assessee under section 80G of the Act without verifying the conditions as laid down in the said section. Therefore, respectfully following the aforesaid decisions rendered by the coordinate bench of the Tribunal, we remit this issue to the file of the jurisdictional AO to verify the conditions necessary for claiming deduction under the said section. The assessee is also directed to file all the details for the purpose of claiming deduction under section 80G of the Act. We further direct that if the conditions as laid down in section 80G are found to be satisfied then deduction be granted to the assessee. With the above directions, the impugned final assessment order on this issue is set aside. Accordingly, ground no.8 raised in assessee's appeal is allowed for statistical purposes.

31. Ground no.9 raised in assessee's appeal pertaining to dividend distribution tax was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

32. The issue arising in ground no. 10, raised in assessee's appeal, pertains to the levy of interest under section 234C of the Act.

33. The brief facts of the case pertaining to this issue, as emanating from the record, are: The AO vide impugned final assessment order levied interest amounting to INR 6,93,313 under section 234C of the Act.

34. During the hearing, the learned AR submitted that the interest under section 234C of the Act should be computed on the returned income filed by the assessee instead of assessed income. On the other hand, the learned DR vehemently relied on the computation made by the AO.

35. We have considered the rival submissions and perused the material available on record. As per provisions of section 234C of the Act, the interest is levied either on failure to pay the advance tax by the assessee or on shortfall in payment of advance tax as compared to tax due on returned income. Thus, it is pertinent to note that section 234C refers to the term "*returned income*" in comparison to section 234B which refers to the term "*assessed tax*" for levying interest. Accordingly, we direct the AO to compute the interest under section 234C of the Act on the returned income of the assessee. Accordingly, ground no. 7 raised in assessee's appeal is allowed for statistical purposes.

36. Ground no.11 raised in assessee's appeal pertains to the levy of interest under section 234B of the Act, which is consequential in nature. Therefore, the same needs no separate adjudication.

37. Ground no.12 raised in assessee's appeal pertains to the levy of penalty under section 270A of the Act, which is premature in nature and therefore is dismissed.

38. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 09/12/2024

Sd/- **AMARJIT SINGH** **ACCOUNTANT MEMBER**	**Sd/-** **SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 09/12/2024

Prabhat

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai