

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.2454/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

M/s. Source Hov India Private Limited New No.59,61 & 63 Dowlath Towers, 8 th to 12 th floor, Taylors Road, Kilpauk, Chennai-600 010.	बनम/ Vs.	DCIT Corporate Circle-6(2) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCV-3563-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Vijayaraghavan (Advocate)- Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Ms.T.M. Suganthamala (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	10-12-2024
घोषणा की तारीख / Date of Pronouncement	:	10-12-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 31-07-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 144C(3) r.w.s 144B of the Act on 08-10-2021. The sole grievance of the assessee is denial of deduction of

Rs.38.54 Lacs u/s 80G for its contribution towards Prime Minister's National Relief Fund.

2. The Ld. AR advanced arguments supporting the case of the assessee whereas Ld. Sr. DR referred to the adjudication of Ld. CIT(A) in the impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

3.1 During assessment proceedings, it transpired that the assessee spent an amount of Rs.38.54 Lacs towards CSR expenditure but disallowed the same in statement of total income. However, the assessee claimed deduction thereof u/s 80G at 100% for contribution made to Prime Minister's National Relief Fund.

3.2 The assessee submitted that there was no such prohibition under the act to claim impugned deduction. It was specifically provided that such contribution would be considered as part of CSR expenditure. However, Ld. AO rejected the same on the ground that donation involves voluntary act without there being any legal obligation. CSR, on the other hand, imposes obligation of the part of corporate entity to incur expenditure out of profits by way of appropriation of profits as compliance expenditure and this cannot be allowed u/s 80G. The intention of the legislature was never to allow the said deduction since it would result into subsidizing the expenditure. Furthermore, CSR expenditure was not voluntary but mandatory in nature. Accordingly, the deduction was denied. The Ld. CIT(A) confirmed the same by relying upon the decision of Delhi Tribunal in the case of **Agilent Technologies international P. Ltd. (160 Taxmann.com 238)**. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. There is no dispute to the fact that CSR expenditure is considered as an application of income. The Explanation-2 to Sec. 37(1) as inserted by Finance Act 2014 w.e.f. 01-04-2015 specifically provide that such CSR expenditure shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession. The same is on the logic that the objective of CSR expenditure 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 deduction the same would result into subsidizing of around one-third of such expenses by the Government by way of tax expenditure. However, Clause 13 of the Finance Act, 2014 provide that though deduction of CSR expenditure is not available u/s 37, however, if the CSR expenditure is of the nature as described in Sec.30 to Sec.36 of the act, the deduction of the same would be allowed under those sections subject to fulfillment of conditions as specified therein. The same is amply clear from Circular No.1/2015 [F.NO.142/13/2014-TPL] dated 21-01-2015 as under: -

13.3 The provisions of section 37(1) of the Income-tax Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Income-tax 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 expenditures cannot be allowed under the provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, said section 37 has been amended to clarify that for the 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 have been incurred for the purpose of business and hence shall not be allowed as deduction under said section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Income-tax Act shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

It could thus be seen that there is prohibition on claiming such expenditure u/s 37. However, there is no such restriction for claiming deduction thereof u/s 30 to 36. In other words, It is quite possible to claim the deduction in other sections subject to fulfillment of conditions of those sections and allowability of CSR expenditure is not completely ruled out.

5. We further find that bouquet of activities that have been permitted under CSR Scheme, inter-alia, include contribution to Prime Minister's National Relief Fund or any other fund set up by the Government for socio economic development. The impugned donation as made by the assessee is one of the prescribed modes of CSR Activities.

6. We also find that Finance Act, 2015 has allowed tax benefits u/s 80G for donations made to Swachh Bharat Kosh and Clean Ganga Fund. The amendment and explanatory statement read as under: -

Tax benefits for Swachh Bharat Kosh and Clean Ganga Fund

Under the existing provisions of section 80G of the Income-tax Act, a deduction is allowed in computing the total income of a person in respect of donations made to certain funds and charitable institutions. The deduction is allowed at the rate of fifty percent of the amount of donations made except in the case of donations made to certain funds and institutions formed for a social purpose of national importance, where it is allowed at the rate of one hundred percent, such as the National Defence Fund set up by the Central Government, the Prime Minister's National Relief Fund, the Prime Minister's Armenia Earthquake Relief Fund, the Africa (Public Contributions-India) Fund, the National Children's Fund, the National Foundation for Communal Harmony etc.

"Swachh Bharat Kosh" has been set up by the Central Government to mobilize resources for improving sanitation facilities in rural and urban areas and school premises through the Swachh Bharat Abhiyan. Similarly, Clean Ganga Fund has been established by the Central Government to attract voluntary contributions to rejuvenate river Ganga.

With a view to encourage and enhance people's participation in the national effort to improve sanitation facilities and rejuvenation of river Ganga, it is proposed to amend section 80G of the Act so as to incentivise donations to the two funds. It is proposed to provide that donations made by any donor to the Swachh Bharat Kosh and donations made by domestic donors to Clean Ganga Fund will be eligible for a deduction of hundred per cent from the total income. However, any sum spent in pursuance of Corporate Social

Responsibility under sub-section (5) of section 135 of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor.

The existing provisions of section 10(23C) of the Act provide for exemption from tax in respect of the income of certain charitable funds or institutions like the Prime Minister's National Relief Fund ; the Prime Minister's Fund (Promotion of Folk Art); the Prime Minister's Aid to Students Fund; the National Foundation for Communal Harmony. Considering the importance of Swachh Bharat Kosh and Clean Ganga Fund, it is also proposed to amend section 10(23C) of the Act so as to exempt the income of Swachh Bharat Kosh and Clean Ganga Fund from income-tax.

These amendments will take effect retrospectively from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

It could be seen that though deduction has been granted for donation to these funds, however, it has specifically been made clear that any sum spent in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 towards these funds will not be eligible for deduction from the total income of the donor. We find that there is no such restriction for donation out of CSR funds to Prime Minister's National Relief Fund.

7. Considering all the above facts and circumstances of the case, we are of the considered opinion that the impugned deduction u/s 80G would be available to the assessee. The Ld. AR has cited many decisions of Tribunal taking a view favorable to the assessee. The same include the decision of Delhi Tribunal in **Interglobe Technology Quotient Pvt. Ltd. (ITA No.95/Del/2024 dated 28-05-2024)** as well as the decision of Mumbai Tribunal in **Jamnagar Utilities and Power P. Ltd. (ITA No.211/Mum/2024 dated 24-07-2024)**. Therefore, we take similar view in preference to view expressed in the earlier decision of Delhi Tribunal in **Agilent Technologies international P. Ltd. (160 Taxmann.com 238)**. Accordingly, we direct Ld. AO to allow impugned deduction u/s 80G.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 10th December, 2024.

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 10-12-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF