

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

I.T.A. No. 3047/Mum/2024
(Assessment Year: 2018-19)

I.T.A. No. 3755/Mum/2023
(Assessment Year: 2020-21)

ACIT-3(3)(1), Room No. 522, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Sikka Ports and Terminals Ltd. 3 rd Floor, Maker Chambers IV, 222, Nariman Point, Mumbai-400021. PAN: AABCR3878B
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Nimesh Vora & Moksha
Mehta, AR

Revenue / Respondent by : Shri Dr. Kishor Dhule, CIT-DR

Date of Hearing : 12.12.2024

Date of Pronouncement : 30.12.2024

ORDER

Per Padmavathy S, AM:

These appeals by the Revenue are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 31.08.2023 for the 2020-21 and dated 22.03.2024 for AY 2018-19. The common issues contended by the Revenue in these appeals pertain to CIT(A) allowing the claim of the assessee under section 80G of the

Income Tax Act, 1961 (the Act) towards the CSR spending and deleting the disallowance made under section 14A of the Act.

ITA No.3755/Mum/2023 – AY 2020-21

2. The facts pertaining to AY 2020-21 are that the assessee filed a return of income for AY 2020-21 on 09.02.2021 declaring a total income of Rs. 6,84,40,34,785/- under the normal provisions of the Act and Rs. 12,89,59,36,700/- under section 115JB of the Act. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessee for the year under consideration has claimed deduction under section 80G to the tune of Rs. 16,92,50,000/- towards donations made to Reliance Foundation for Rs. 27,01,00,000/- and to M/s Shyam Kothari Foundation for Rs. 6,84,00,000/-. The Assessing Officer (AO) disallowed the claim made by the assessee for the reason that the CSR Spending of the assessee is to comply with the provisions of section 135 of the Companies Act, 2013 which mandates the CSR Spending and therefore the same cannot be treated as a voluntary donation eligible for deduction under section 80G of the Act. On further appeal, the CIT(A) allowed the deduction claimed by the assessee by holding that –

6.2 Decision:- I have perused the assessment order, grounds of appeal, submission filed by the appellant and arguments made during the course of VC. I find from the assessment order that the appellant had made donations of Rs.33,85,00,000/- to various parties to fulfil the obligation u/s 135 of the companies Act, 2013 towards corporate social responsibility (CSR). The appellant had added back CSR expenditure of Rs.33,85,00,000/- in the computation of total income as per explanation 2 of section 37 of the IT Act but claimed 50% deduction u/s 80G under chapter VI-A of the IT Act. The deduction u/s 80G was disallowed by the AO on the ground that allowability of CSR expenditure u/s 80G is against the amendment to section 37(1) & (2) of the IT Act.

During the course of appellate proceedings, the appellant submitted that nothing contained in the provisions of section 80G of the Act debar deduction in respect of donations which have been made in the nature of CSR activities. It is further contended that if the intent of legislators was to deny deduction u/s 80G of the Act for those donations made in the nature of CSR activities, it could have brought amendment in section 80G of the Act similar to the one brought out in explanation 2 to section 37(1) of the Act wherein it has specified that expenditure in the nature of CSR activity shall not be deemed to an expenditure incurred by the assessee for the purpose of business or profession. Therefore the appellant, relying on various ITAT decisions including the decision of Hon'ble Jurisdictional ITAT Mumbai in the case of M/s. NaikSeafoods Pvt Ltd Vs. Pr.CIT (ITA No.490/MUM/2021) claimed that the appellant is entitled for deduction u/s 80G even if the donations are part of CSR expenditure.

Considering the facts of the case, submission filed by the appellant and decision of Hon'ble Jurisdictional ITAT Mumbai in the case of M/s. NaikSeafoods Pvt Ltd Vs. Pr.CIT (ITA No.490/MUM/2021), I find that the appellant is eligible for the deduction u/s 80G of Rs.16,92,50,000/-. Therefore the addition made by the AO is deleted and the ground of appeal raised by the appellant is allowed.

3. The ld. DR vehemently argued that the amount spent by the assessee towards the CSR Spending cannot be treated as donation eligible for deduction under section 80G of the Act since spending is done in compliance with the provisions of section 135 of the Act and not voluntary in nature. The ld. DR further submitted that the intention of the legislature is to stop the companies from claiming deduction towards CSR Spending and that is a reason for bringing in the amendment in section 37 of the Finance Act, 2014 wherein the CSR Spending was not allowed to be claimed as a deduction. Therefore, the ld. DR argued that by claiming deduction under section 80G, the assessee is indirectly getting the deduction of minimum 50% of the amount which is not the intention of the legislature. The ld. DR drew our attention to the FAQ issued by Ministry of Corporate Affairs vide Circular dated 25.08.2021 wherein in Question No. 3.11, it is specifically mention that no specific exemption have been extended to CSR

Expenditure. The Id. DR drew our attention to Rules pertaining to the CSR Spending as per the section 135 of the Companies Act, 2013 where it has been mentioned that the CSR Board would monitor the CSR Spending of the company in pursuance to the CSR Policy of the company. It is therefore, argued by the Id. DR that the spending towards CSR is controlled by the Board and therefore it loses the character of donation which is normally given without any conditions attached. The Id. DR also submitted that the money spent by the Corporate towards CSR Spending is made mandatory to enable the Government utilized the funds to the social welfare and that by claiming the benefit under section 80G of the Act, the Government is deprived of the fund to the extent of deduction if indirectly allowed under section 80G of the Act. The Id. DR therefore, argued that the intention behind removing the allowability of deduction under section 37 for CSR Spending is negated, if the deduction under section 80G is to be allowed as contended by the assessee. The Id. DR in this regard placed reliance on the decision of the Hon'ble Delhi Bench of the Tribunal in the case of *Agilent Technologies (International) Pvt. Ltd. vs. ACIT [2024] 160 taxmann.com 238 (Del. Trib.)* where it has been held that no deduction under section 80G is allowable on the amount incurred for the purpose of CSR.

4. The Id. AR on the other hand submitted that for the purpose of allowing deduction under section 80G of the Act, there is no requirement for the assessee to establish that the contribution made is voluntary and not mandatory and therefore the contribution made as per the requirement of section 135 of the Companies Act cannot be denied to benefit of section 80G merely for the reason that it is not voluntary. On the reliance placed by the Id. DR on the circular dated 25.08.2021, the Id. AR submitted that the said circular is not applicable to assessee and that the circular issued prior to the said circular on 12.01.2016 is applicable in assessee's

case. The Id. AR drew our attention to Question No.6 of the said circular where it has been stated that "while no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development project, skill development projects, agricultural extension project, etc. which find place in Schedule-7 already enjoyed exemption under different sections of the Income Tax Act, 1961". Therefore, the Id. AR argued that what gets restricted is the claim of CSR Spending as an expenditure under section 37 and not the claim of exemption/deduction under any other section of the Act. The Id. AR further submitted that though section 135 of the Companies Act mandates the quantum of CSR Spending, it does not mandate to whom and how the amount to be spent and the assessee at its discretion can choose the mode of spending towards CSR Spending. Therefore, the Id. AR argued that the contributions are very much voluntary in nature with respect to the specific donations and therefore, it is eligible for deduction under section 80G of the Act. The Id. AR submitted that section 80G does not put any condition for the donation to be voluntary in nature for the purpose of claiming deduction. The Id. AR drew the attention of the Court to the decision of the Hon'ble Supreme Court in the case of Commissioner of Expenditure, Tax vs. PVG Raju (1975) 101 ITR 465 (SC) where the Hon'ble Apex Court has defined the term 'voluntary' and has held that it is not a pre-requirement for a contribution to be treated as a donation. With regard to the reliance placed by the Id. DR on the decision of the Delhi Tribunal in the case of Agilent Technologies (International) Pvt. Ltd. (supra), the Id. AR submitted that the applicability of provisions of section 80G has not been discussed in detail in the said decision.

5. We heard the parties and perused the material on records. The assessee during the year disallowed a sum of Rs.33,85,00,000 under section 37 of the Act towards the CSR Spend in compliance with section 135 of the Act. Since the institutions to which the said amounts are given are registered under section 80G of the Act, the assessee claimed 50% i.e.16,92,50,000 of the same as deduction. The argument of the revenue is that the payment are made to comply with the mandate under the Companies Act, and therefore it cannot be treated as donations which are "voluntary" payments. The further argument of the revenue is that when the statute has denied the direct claim of the CSR spend under section 37, the assessee claiming the deduction indirectly under section 80G is against the intention of the legislature and cannot be allowed. The assessee's contention is that there is no restriction under section 80G to the effect that the contribution should be voluntary and that the CSR spend is an application of income which is eligible for deduction from the gross total income of the assessee as per the provisions of section 80G.

6. The word "donation" has not been defined under the Act. However the Hon'ble Supreme Court in the context of Expenditure Tax Act in the case of P.V.G. Raju (supra) has described the meaning of the word "donation" in the following words

'When a person gives money to another without any material return, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. We do not require lexicographic learning nor precedential erudition to understand the meaning of what many people do every day, viz., giving donations to some fund or other, or to some person or other.' Indeed, many rich people out of diverse motives make donations to political parties. The hope of spiritual benefit or political goodwill, the spontaneous affection that benefaction brings, the popularization of a good cause or the prestige that publicized bounty fetches -these and other myriad consequences or feelings may not mar a donation to make it a grant for a quid

pro quo. Wholly motiveless donation is rare, but material return alone negates a gift or donation.'

7. Therefore to examine if CSR spending of the assessee would be a donation it is essential to examine whether the donations given by the assessee to M/s.Reliance Foundation and M/s Shyam Kothari Foundation without any material return and without any consideration and whether it was a grant for *quid pro quo*. It is not the case of the revenue that the assessee has made contributions to these institutions with an intention get something in return. The only contention of the revenue is that the contributions are made as part of a mandate and not voluntary. However, the Hon'ble Supreme Court in the above case has laid down the basic principle that a payment made without any material return and without any consideration and not for *quid pro quo* is a donation. Therefore in our considered view, the payment made whether voluntarily or as part of a mandate does not negate the intention of the contribution made. The reliance placed by the Id DR on the decision of Agilent Technologies (International) Pvt. Ltd (supra) is factually distinguishable. The DRP whose order was upheld in the said case, had placed reliance on the decision of the Hon'ble High Court in the case of DCIT vs Hindustan Darr Oliver Ltd (1994) 45 TTJ Mumbai 552 where the payment made was held as not a donation since it was found that the intention behind making the donation was to get reserved seats in the college run by the institute to whom the payments are made as part of CSR spending. As already mentioned, the revenue is not contending that the assessee in the present case has made payments to get something material in return.

8. Now coming to the intention of legislature while amending the provisions of section 37 whereby the CSR spend are not allowed to be claimed as a deduction

under the said section. Finance (No.2) Act, 2014 brought in the amendment to section 37 by inserting Explanation 2 to the said section w.e.f.01.04.2015. It is relevant to look at the provisions of section 37 of the said Act which read as under

"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 [* *] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (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 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. "

9. The "Explanatory Notes to the provisions of Finance (No.2) Act, 2014" issued by the Central Board of Direct Taxes *vide* its Circular No.01/2015 dated 21.1.2015 explaining the aforesaid amendment, read as under:

"13. Corporate Social Responsibility (CSR)

13.1 Corporate Social Responsibility (CSR) Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income.

13.2 CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of

around one-third of such expenses by the Government by way of tax expenditure.

*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 existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify 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 Income-tax Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.***

13.4 Applicability:-This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years."

(emphasis supplied)

10. The intention behind insertion of the explanation as explained above is that the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold and that if such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure. However, it is pertinent to note that in para 13.3 above, it has been mentioned that though, the expenditure incurred towards CSRs is not an expenditure incurred for the purpose of business, if the spend is of the nature described in section 30 to section 36 of the Act deduction shall be allowed under those sections subject to fulfilment of conditions, specified therein. For example if the contribution is made

to a scientific research association, or to a university or to a college or other institution to be used for scientific research etc., which are approved under section 35 of the Act as part of CSR spending then deduction can be allowed subject to the fulfillment of conditions prescribed under section 35 of the Act. This explanatory note though self-contradictory i.e. denying deduction under section 37 but allowing the assessee to claim deduction under section 30 to 36, also makes it clear that there is no bar regarding the admissibility of CSR expenditure under any other provision of the Act, except under section 37(1) of the Act. In other words, the intention of the legislature is not to restrict the right of the assessee to claim deduction towards the CSR spend if the payment is otherwise allowable under a specific provision of the Act. Further wherever the intention is to restrict the claim of deduction under any other provisions of the Act the same is explicitly provided for to that effect by the legislature. This view is supported by the Explanatory Memorandum Finance Bill 2015 which brought in the specific restriction for claiming deduction under section 80G of the Act towards the CSR spend towards donation to Swachh Bharat Kosh and Clean Ganga Fund. Therefore we are unable to appreciate the contention that the CSR spend being claimed as a deduction under section 80G of the Act is against the intention of the legislature which restricts the same to be claimed as a deduction under section 37 of the Act.

11. The next issue is whether the impugned payments are otherwise eligible for deduction under section 80G of the Act. We have already established that the payments made by the assessee are donations and therefore if the other conditions for the deduction under section 80G is are fulfilled then there should not be any restriction for the assessee to claim the deduction. Before holding so we will address the contention of the revenue that the payments made towards CSR spend

are monitored and controlled by the assessee and are not voluntary. In this regard it is relevant to note that though there is a statutory obligation of CSR expenditure under section 135 of Companies Act 2013, there are many prescribed modes and activities under Schedule VII of the Companies Act for spending the CSR expenditure, (the list is not exhaustive but inclusive). Further neither section 135 of the Companies Act nor Schedule VII to the Companies Act nor the CSR Rules, mandates donations to the institutes/funds prescribed under section 80G of the Act. Therefore, in our considered view there is merit in the submission of the Id AR that though the quantum of CSR spend is mandatory there is no mandate on how amount is to be spent or to whom the contribution is to be made. Accordingly the act of the assessee to choose to M/s.Reliance Foundation and M/s Shyam Kothari Foundation which are eligible to accept donations under section 80G of the Act is voluntary and is not mandated by section 135 of the Companies Act 2013. Further from the perusal of CSR Rules as applicable in assessee's case, we notice that the monitoring of the CSR spend is to ensure that the same is as per the CSR policy of the company and it does not provide for monitoring the utilization of the funds by the third party donees. In any case the donations made for a specific cause does not result denial of deduction which is otherwise allowable as per the provisions of section 80G of the Act. The Kolkata Bench of the Tribunal in the case of L&T Finance Ltd vs DCIT [2024] 167 taxmann.com 503 (Kolkata - Trib.), has elaborately discussed the allowability of CSR spend as a deduction under section 80G of the Act and it is relevant to take note of the following observations made regarding monitoring of CSR spend by the donor i.e.assessee –

12.2. The contribution made by a company toward the discharge of it's CSR to a registered charitable institution, in our view, is akin to corpus donations. Section 11(1)(d) of the Income Tax Act speaks of the specific or corpus, donations, although it has not been defined under Income Tax Act, 1961. Corpus donations are

donations wherein, the donor makes the donations to the donee for a specific purpose or object. Prior to the amendment made by amended CSR Rules of 2021, Rule 7 of the erstwhile CSR Rules permitted corpus contributions to charitable institutions as eligible CSR expenditure. Further, the Ministry of Corporate Affairs vide Circular No.21/2014 dated 18th June 2014 had also clarified that contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure, if such a donee institution or the said corpus has been created exclusively for a purpose related to the activities provided under the CSR framework. However, under the old rules, the mechanism to monitor and ensure that such donation has been actually spent on CSR activity was missing. The donor company would get absolved of its liability of CSR by just donating to the eligible trust/society/company, without ensuring that the amount has been actually spent by the donee on such specific object or purpose (CSR activity) for which it was donated. Therefore, Rule 7 of the CSR Rules, which permitted corpus contributions as eligible CSR expenditure, has been substituted and under the amended CSR Rules of 2021, corpus contributions to any entity shall not be admissible as CSR expenditure. The object and purpose of the aforesaid amendment is to ensure that the expenditure made is actually utilised towards CSR activities.

12. One more point that needs to be considered while deciding the deduction under section 80G for CSR spend is that the restriction on the allowability of the said spend as provided in Explanation 2 to section 37 is for computing the business income under the provision of Section 28-44DB whereas the deduction under section 80G is claimed under Chapter VIA i.e. after computing the Gross Total Income. The provisions of section 80G does not impose any condition that the contribution should be voluntary and therefore when the CSR spend is evaluated independently under the provisions of the Act, in our considered view there is no restriction for the assessee to claim deduction under section 80G provided the CSR spend meets the conditions specified therein. In other words, the provisions of section 37 computation provision whereas section 80G is a beneficial provision which allows deduction towards payments made by the assessee for charitable purposes and therefore these two sections are independent of each other. Let us assume a situation when a company which is not required to comply with the

provisions of section 135 of the Companies Act 2013 makes a donation or a company makes donations in excess of 2% even then the payment may get disallowed under section 37 but in that case the revenue would not impose any restriction to evaluate the payment for claiming deduction under section 80G. If the same analogy is applied to the CSR spend in our view the assessee should be able to claim deduction under section 80G if the other conditions are fulfilled. Denying the claim for the reason that there is a specific mention under section 37 for disallowance and that the payments are made in compliance with section 135 of the Companies Act in our view is not legally tenable unless there is an explicit provision for e.g. contributions towards 'Swacha Bharat Kosh' and 'Clean Ganga Fund'. This view of ours is supported by the decision of the coordinate bench of the Tribunal in the case of Blue Dart Express Limited vs PCIT (ITA No.1101/Mum/2024 dated 03.09.2024) where in the context of revision under section 263 of the Act, the bench has considered the issue of allowing deduction under section 80G towards CSR spend and held that –

10. On merits also, we find that view of ld. AO is correct in law. Claiming a deduction from computation of business income as provided from sections 28 to 44DB is different from claiming a deduction under chapter VIA of the Act which is allowed from Total Income. As per Explanation 2 to Section 37, CSR expenditure is not allowable as deduction while computing the business income under the provision of Section 28-44DB, whereas deduction u/s.80G is allowed while computing the total income under Chapter VIA. There is no pre-condition that claim for deduction u/s.80G on a donation should be voluntary. It is independent of computation of business income as it is allowed from Gross Total Income. The assessee had disallowed the CSR expenses while computing business income. Further, there is no dispute that the assessee has filed complete details of donation and also filed the certificate u/s.80G which was enclosed before the AO. Section 80G (1) of the Act provides that in computing total income of the assessee, they shall be deducted in accordance with the provision of Section, such sum paid by the assessee in the previous year as a donation. Deduction under Chapter VIA provides deduction from the gross total income which is computed after making necessary allowances /

disallowances in accordance with Section 28-44BB of the Act including Explanation to Section 37(1). Thus, Section 37(1) and Section 80G of the Act are independent and the principles governing what is not allowable u/s. 37(1) have been provided in the section itself. Even in section 80G also, what is not allowable has also been provided under the Act. For instance, Section 80G specifically mentions two clauses, viz., section 800(2)(a)(iihk) and (iihl), i.e., contributions towards 'Swacha Bharat Kosh' and 'Clean Ganga Fund', where donation in the nature of CSR Expenditure is not allowable as deduction under section 80G of the Act. Therefore, the disallowances for deduction under section 80G vis-à-vis CSR can be restricted to contributions made to these Funds mentioned in Section 800(2)(a)(iihk) and (iihl) only. It is an undisputed fact that the assessee has not claimed any deduction against the aforesaid clauses of 80G (2)(a) of the Act and as such entire donation claimed by the assessee is allowable u/s 80G. The Ministry of Corporate Affairs ("MCA") has issued "FAQs" through General circular no. 01/2016 dated January 12, 2016 (FAQ No. 6) and has clarified on the issue as follows:

"Question No. 6: What tax benefits can be availed under CSR? Answer: No specific tax exemptions have been extended to CSR expenditure per se. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemptions have been extended to expenditure incurred on CSR, spending on several activities like Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agriculture extension projects etc, which fund place in Schedule VII, already enjoys exemptions under different sections of the Income-tax Act, 1961."

11. This clarification being issued by the Ministry of Corporate Affairs, Government of India clarifies that donation covered under CSR Expenses which not are eligible for the deduction under section 80G of the Income-tax Act, 1961, but are allowed under different sections. Ergo, there is nothing that if any expenditure is disallowable u/s 37 the same cannot be allowed under other provisions of Act, if the conditions of allowability are satisfied. Thus, allowing the claim of deduction u/s.80G by the ld. AO cannot be held to be unsustainable in law or amounts to erroneous and prejudicial to the interest of the Revenue. Thus order of the Ld. PCIT is reversed on this point.

12. Thus, we hold that ld. PCIT is not correct in law in cancelling the assessment order by the ld. AO on this issue. Accordingly, the order of the ld. PCIT is quashed. Consequently, the appeal of the assessee is allowed.

13. In view these discussions and considering the judicial precedence in this regard, we are of the view that there is no infirmity in the order of the CIT(A) in allowing the deduction under section 80G to the assessee towards donations made to M/s.Reliance Foundation and M/s.Shyam Kothari Foundation by placing reliance on the decision of the coordinate bench in the case of M/s. Naik Seafoods Pvt Ltd Vs. Pr.CIT (ITA No.490/MUM/2021). Accordingly the grounds raised by the revenue are dismissed.

14. The AO during the course of assessment noticed that the assessee has made large investments during the year under consideration and accordingly called on the assessee to show cause why disallowance under section 14A r.w.r 8D cannot be made. The assessee submitted that during the year under consideration the assessee has not earned any exempt income and therefore the provisions of section 14A cannot be invoked. The assessee placed reliance on various judicial precedence in this regard. The AO however did not accept the submissions of the assessee and held that the amendment to section 14 by Finance Act 2022 is clarificatory having retrospective impact. Accordingly the AO proceeded to make a disallowance of Rs.22,205 under section 14A r.w.r 8D.

15. We heard the parties and perused the material on record. The Hon“ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 Vs. M/s Era Infrastructure India Ltd: [ITA No. 204 of 2022, decided on 20.07.2022] has held that the amendment to section 14A is prospective to be applicable from AY 2022-23 and onwards. Similar view has been consistently held by the coordinate bench. Considering the judicial precedence we are of the view that the

CIT(A) has correctly deleted the disallowance made by the AO under section 14A of the Act. The grounds of the revenue raised in this regard are dismissed.

ITA No. 3047/Mum/2023 – AY 2018-19

16. For AY 2018-19 the revenue has raised grounds pertaining to CIT(A) allowing deduction under section 80G towards CSR spend and deleting the disallowance made under section 14A by the AO. After hearing the parties and on perusal of records, we notice that the facts pertaining to these issues are identical to the facts of issues in AY 2020-21. Therefore in our considered view, our decision of the AY 2020-21 is mutatis mutandis applicable to AY 2018-19 also. Accordingly the grounds raised by the revenue contending these two issues are dismissed

17. In result the appeals of the Revenue for AY 2020-21 and AY 2018-19 are dismissed.

Order pronounced in the open court on 30-12-2024.

Sd/-

(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Sd/-

(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai