

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1643 & 1644/Chny/2024
निर्धारण वर्ष /Assessment Years: 2017-18 & 2018-19

TVS Motor Company Ltd.,
12, "CHAITANYA",
Khader Nawaz Khan Road,
Nungambakkam,
Chennai – 600 006.
[PAN: AAACS 7032B]

Vs. The Principal Commissioner of
Income Tax-3,
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 08.10.2024

घोषणा की तारीख /Date of Pronouncement

: 03.01.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeals filed by the assessee for Assessment Years
(AYs) 2017-18 & 2018-19 arises out of the identical orders of Learned
Principal Commissioner of Income Tax-3, Chennai [hereinafter "PCIT"]
dated 31.03.2024.

ITA No.1643/Chny/2024 for A.Y 2017-18

2. The effective ground of appeal in this appeal of assessee is against the order of Ld. PCIT holding the assessment order passed by the A.O erroneous and prejudicial to the interest of revenue and remitting back the issue of deduction allowed u/s 80G to the file of A.O with certain directions.

3. The assessee-company has filed its return of income declaring total income of Rs. 243,08,12,340/- on 30.11.2017, which was further revised to Rs. 228,11,16,190/- on 29.03.2019. The A.O passed assessment order u/s. 143(3) r.w.s 144C(3) of the Act assessing total income of Rs.256,95,33,700/- by making TP addition of Rs.28,84,17,52. The Ld. PCIT called for the assessment record and found that the assessee has claimed 50% deduction u/s. 80G of the Act on the donation paid of Rs. 19,29,96,850/- and the A.O has allowed deduction without any verification by calling for the receipts and verifying them. The Ld. PCIT therefore, held the order passed by the A.O erroneous and prejudicial to the interest of revenue as per Explanation-2 to Section 263 of the Act and set aside the assessment order to the A.O for verification. The Ld. PCIT has also found that the

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assessee has claimed 80G deduction on payments made to certain trusts of Rs. 9,19,50,000/- under the head CSR expenditure, and the A.O allowed the deduction without even verifying whether these trusts have CSR-1 registration with the MCA to be implementing agency. The Ld. PCIT therefore, on this account also held the order passed by the A.O erroneous and prejudicial to the interest of revenue and directed A.O to not allow the 80G deduction on CSR Expenditure.

4. The Ld. Authorized Representative (A.R) of the assessee has submitted that the claim of deduction has been disclosed in Form 3CD as well as in ITR and therefore AO has allowed the claim after verification while passing the assessment order, therefore the assessment order cannot be said erroneous in so far prejudicial to the interest of revenue and cannot be revised. The Ld AR on the direction of Ld PCIT to not allow 80G deduction relating to CSR expenditure submitted that contribution which is considered as a part of CSR obligation as per Section 135 of the Companies Act is not allowable u/s. 37 of the Act in view of the explanation, but there is no bar in claiming the deduction under any other section such as u/s. 80G of the Act, if the deduction is otherwise allowable under that section. The Ld. AR has relied on the decision of ITAT Mumbai in the case of Glenmark

Pharmaceuticals Ltd. vs. PCIT in ITA No.2503/Mum/2024 dated 28.08.2024 (Mumbai-Trib.), Delhi tribunal in the case of Teradata India Pvt Ltd in ITA No 1248&2337 Del/2022 Dated 13.10.2023 and Hyderabad Tribunal in the case of Power Mech Projects Ltd vs. DCIT 156 Taxmann.com 575(Hyd.-Tri) .

5. The Ld. Departmental Representative (DR), on the other hand, has relied on the order Ld PCIT and submitted that the assessment order is erroneous so far as prejudicial to interest of revenue in view of Explanation 2 of Section 263 of the Act as the A.O has not conducted necessary verification.

6. We have heard the rival submissions, and perused the materials available on record. The A.O has passed order u/s. 143(3) r.w.s 144C(3) of the Act assessing total income of Rs. 256,95,33,722/- after making TP adjustment suggested by the TPO of Rs.28,84,17,532/-. On perusal of the record, the Ld PCIT has found that the A.O has not made any enquiry in respect of claim of deduction under section 80G of the Act, he therefore held the order erroneous so far as prejudicial to the interest of revenue. As per Explanation-2 to section 263 of the Act, an order passed by A.O is deemed to be erroneous in so far as it

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is prejudicial to the interest of revenue, if in the opinion of Principal Commissioner the order is passed without making enquiry or verification which should have been made. The Ld. PCIT after examining the case record has found that the A.O has not examined the claim of deduction u/s 80G, by calling for receipt etc , We are therefore of opinion that the Ld PCIT has correctly invoked jurisdiction u/s 263 of the Act holding the assessment order erroneous so far as prejudicial to the interest of revenue. Coming to the direction issued in the order u/s 263 of the Act, the Ld. PCIT, while remitting matter back to file of AO, in respect of 80G deduction of Rs.19,29,96,850, has directed A.O to allow the claim after verification of receipts. We do not find any infirmity in the above direction and therefore uphold the same. As regard to direction of Ld. PCIT not allowing the claim of deduction u/s. 80G of the Act relating to CSR expenditure of Rs.9,19,50,000/-, we do not agree with the direction of Ld PCIT. The issue of deduction u/s. 80G in respect of CSR expenditure has come up before ITAT, Mumbai Bench in the case of Glenmark Pharmaceuticals Ltd. vs. PCIT, Delhi Bench in the case of Teradata India Pvt. Ltd. in ITA No. 1248 & 2337/Del/2022 dated 13.10.2023 and Hyderabad Bench in the case of Power Mech Projects Ltd vs DCIT 156 Taxmann.com 575 (Hyd-Tri) and it has been consistently held that 80G deduction on such

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donation cannot be denied. We therefore, direct AO to verify the receipts and eligibility of the Donee and allow the claim of deduction under section 80G in accordance with law. In view of the above, the appeal filed by the assessee in ITA No.1643/Chny/2024 is partly allowed.

ITA No.1644/Chny/2024 for A.Y 2018-19

7. We find that identical issue and direction of Ld. PCIT on the deduction u/s. 80G of the Act in respect to CSR expenditure in A.Y 2018-19 and therefore, similar direction is applicable to this case also.

8. The Ld PCIT after examining the case record for A.Y. 2018-19 has found that assessee is eligible for 35(2AB) deduction on R & D expenditure of Rs.28511.24 Lakhs as against the claim of Rs.334,03,51,446, but AO has not examined the same. Assessee has computed the disallowances on this account at Rs.6.73 crores and claimed that balance is allowable as business expenditure. The Ld. PCIT has set aside the issue and directed AO to verify the assessee's claim that balance amount is allowable as business expenditure and allow such deduction as per law. We do not find any infirmity in the above direction and uphold the same. Thus, the appeal filed by the assessee in ITA No.1644/Chny/2024 is also partly allowed.

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9. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced on 3rd January, 2025.

Sd/-
(एबी टी. वर्की)
(**ABY. T. Varkey**)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(जगदीश)
(**Jagadish**)
लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 3rd January, 2025.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF