IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.2045 & 2046/Bang/2024
Assessment Years: 2017-18 & 2018-19

M/s. Peak XV Partners Advisors Private Limited (Formerly known as Sequoia Capital India Advisors Private Limited) 111, 8th Cross, Paramount Gardens, Thalaghattapura, Kanakapura Main Road, Bangalore 560062 Karnataka. **PAN NO :AAACW3425G**	**Vs.**	DCIT Circle-6(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Kanchan Kaushal, A.R.
Respondent by	:	Shri Venkatesh V., D.R.

Date of Hearing	:	02.12.2024
Date of Pronouncement	:	03.03.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals at the instance of the assessee are directed against the orders of ld. CIT(A)/NFAC dated 29.8.2024 for the assessment year 2017-18 vide DIN & order No. ITBA/NFAC/S/250/2024-25/1068132124(1) and dated 30.8.2024 for the assessment year 2018-19 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1068185160(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act"). Since in both these appeals common issues are involved, they are clubbed together, heard together and disposed of by this common order for the sake

of convenience & brevity. For disposing the appeals, we take the grounds of appeal for the assessment year 2017-18 in ITA No.2045/Bang/2024 for the sake of convenience which are reproduced as below:

1. On the facts and in the circumstances of the case, the orders passed by the LAO and the Hon. CIT(A) are bad in law since the same were undertaken without appreciating the Appellant's submissions.

2. The Hon. CIT(A) erred in upholding the disallowances made by the LAO without considering that the same is not in accordance with the provisions of the Act to the extent they are prejudicial to the Appellant since the order is:
   a. Against the provisions of principles of natural justice and the rule of law;
   b. Against the provisions of the Income-tax Act, 1961 ('the Act') and the judicial precedence on the subject.

3. The Hon. CIT(A) erred in disallowing the claim made by the Appellant under section 80G of the Act, amounting to Rs. 57,79,500/-.

4. The Hon. CIT(A) erred in not following the decisions of the jurisdictional Income-tax Appellate Tribunal in respect of allowability of deduction towards Corporate Social Responsibility expenses under Section 80G of the Act.

5. The Hon. CIT(A) erred in holding that the receipts issued by donee-organisations totalling to Rs.50,50,000 do not contain the approvals under Section 80G of the Act, even though necessary supporting documents have been furnished by the Appellant.

6. The Hon. CIT(A) erred in not directing the LAO in considering the facts and circumstances of the case, to delete the levy of statutory interest under section 234A and 234C of the Act.

2. Brief facts of the case are that the assessee M/s. Peak XV Partners Advisors Pvt. Ltd. (formerly known as M/s. Sequoia Capital India Advisors Pvt. Ltd.) had filed its revised return declaring a gross total income of Rs.31,35,11,822/-. Subsequently, the case was taken up for scrutiny through CASS and accordingly notices u/s 143(2) as well as 142(1) of the Act were issued to the

assessee calling for details. In response to the notices issued the assessee has responded through e-filing portal and also forwarded the same in CD for record purposes. During the course of assessment proceedings, it was seen that the assessee company had made total donations/contributions amounting to Rs. 1,51,25,400/- towards its corporate Social Responsibility (CSR) as required u/s 135 of the Companies Act, 2013 for the assessment year 2017-18 out of which the donations/contributions amounting to Rs.1,15,59,000/- was eligible for deduction u/s 80G of the Act. Accordingly, an amount of Rs.57,79,500/- u/s 80G (being 50% of eligible donations made) was claimed as deduction under Chapter VIA of the Act in computing the net taxable income of the company. The details of donation paid during the year along with donation receipts and certificate/order of approval of the donee institutions u/s 80G of the Act are placed at pages 5 to 42 of the paper book. However, it is to be noted that the assessee company had voluntarily disallowed the entire donations/contributions paid towards Corporate Social Responsibility (CSR) activities u/s 37 of the Act while computing the income from business & profession.

2.1 The ld. AO however was of the view that the CSR expenditure cannot be allowed as a business deduction as it is nothing but an application of income. The AO was also of the view that allowing deduction for CSR expenditure u/s 80G of the Act would imply that Government would be contributing 1/3rd of this expenditure as revenue foregone which defeats the very intention and purpose of legislation. Further the ld. AO held that if CSR expenditure are not allowable u/s 37 of the Act, then the same also cannot be claimed as deduction u/s 80G of the Act and accordingly, the amount of Rs.57,79,500/- claimed by the assessee as deduction u/s 80G of the Act towards donations/contributions for the purpose of CSR

Activities was disallowed and added back to the income of the assessee company.

2.2 Aggrieved by the assessment completed u/s 143(3) of the Act dated 23.12.2019, for the assessment year 2017-18, the assessee has preferred an appeal before the ld. CIT(A)/NFAC.

2.3 The ld. CIT(A)/NFAC dismissed the appeal of the assessee firstly on the ground that out of the total CSR expenses claimed amounting to Rs.1,15,59,000/- u/s 80G of the Act, certain institutions receiving sums aggregating to Rs.50,50,000/- from the assessee company do not contain the approvals u/s 80G of the Act and the remaining institutions receiving the sums aggregating to balance of Rs.65,09,000/- (Rs.1,15,59,000/- (-) Rs.50,50,000/-) have approvals u/s 80G of the Act. Therefore, the issue of deductibility u/s 80G of the Act should be restricted to Rs.32,54,500/- being 50% of Rs.65,09,000/- as against the deduction claimed of Rs.57,79,500/- being 50% of Rs.1,15,59,000/-. Further, ld. CIT(A)/NFAC was of the opinion that tax provision should be interpreted strictly and beneficial provisions of tax statutes should be interpreted liberally. The ld. CIT(A) held that any donation/contribution made by the assessee company **in excess** of 2% (of the net profits of the 3 preceding years) to CSR activity as optional donation/contribution and not mandatory donation/contribution though such excess donations/contribution is made under CSR activity, because the excess of 2% is not mandated by the Companies Act. But in the instant case, the entire donations/contribution made to CSR activity did not cross 2% (of the net profits of the 3 preceding years) and therefore, there is no excess donation/contribution so as to treat them as optional donations and to grant the benefit u/s 80G of the Act. Indeed, such donations/contributions made to CSR activity in excess of 2%

(of the net profits of the 3 preceding years) do qualify for higher deduction at 100% and not 50% even as claimed by the assessee. In view of the above observations, ld. CIT(A)/NFAC dismissed the appeal of the assessee.

2.4 Aggrieved by the order of ld. CIT(A)/NFAC, the assessee filed the present appeal before this Tribunal. The assessee has filed detailed note and synopsis along with the paper book containing 51 pages along with case law compilation containing 112 pages.

2.5 The solitary issue that is raised whether the ld. CIT(A)/NFAC is justified in rejecting the claim of deduction u/s 80G of the Act for donations/contributions made towards its corporate social responsibility especially when the assessee company suo-motto disallowed the claim of expenditure U/s 37 of the Act.

3. Before us, ld. A.R. of the assessee vehemently submitted that the assessee company has already made the voluntary disallowance as per explanation 2 to section 37(1) of the Act and they are entitled to claim deduction u/s 80G of the Act. The assessee company satisfied the requisite condition prescribed for deduction u/s 80G of the Act. Further, the ld. A.R. of the assessee submitted that the disallowance of CSR expenditure u/s 37(1) of the Act and the benefit accruing to the assessee under Chapter VIA (section 80G in this context) are independent provisions, which must not be inter-linked. Further, the ld. A.R. of the assessee relied upon the various case laws pronounced by this coordinate bench in the past in favour of the assessee.

4. The ld. D.R. on the other hand supported the order of the authorities below and vehemently submitted that if the statutory payment towards CSR expenditure are allowed as deduction u/s

80G of the Act, then it will defeat the very intention and purpose of the legislation. If the income tax act specifically provides that CSR expenditure is not an allowable expenditure u/s 37 of the Act, then the same also cannot be claimed as deduction u/s 80G of the Act.

5. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that the assessee company made total donations/contributions amounting to Rs.1,51,25,400/- towards its corporate social responsibility (CSR) activities as required u/s 135 of the Companies Act, 2013 out of which the donations/contributions amounting to Rs.1,15,59,000/- was eligible for deduction u/s 80G of the Act. The donation paid towards CSR activity of Rs.1,51,25,400/- was duly disallowed by the assessee company u/s 37 of the Act while computing the income from business/profession. However, an amount of Rs.57,79,500/- (being 50% of the eligible donations amounting to Rs.1,15,59,000/-) was claimed as deduction under Chapter VIA of the Act (U/s 80G) in computing the taxable income of the company. The ld. CIT(A) in Para 7.3.3.6 of the Appellate order passed u/s 250 of the Act was of the observation that in respect of CSR expenses claimed of Rs.1,15,59,000/- against which the assessee claimed 50% i.e. Rs.57,79,500/- as deduction u/s 80G of the Act, certain institutions do not contain the approvals u/s 80G of the Act and remaining institutions have approval u/s 80G of the Act. In this regard, ld. A.R. of the assessee drawn our attention to CBDT Circular No.7/2010 dated 27.10.2010 (placed at pages 47 to 48 of the PB) and submits that any new approval obtained u/s 80G(5) of the Act on or after 1.10.2009 would be a one time approval, which would be valid till it is withdrawn. We have gone through the above circular and the relevant extract of the above circular is reproduced below for ease of reference and convenience as follows:

"5. As regards approvals granted upto 1-10-2009 under section 80G by the Commissioners of Income-tax Directors of Income-tax, proviso to section 80G(5)(vi) clarified that any approval shall have effect for such assessment year or years not exceeding five assessment years as may be specified in the approval. The above proviso was deleted by the Finance (No. 2) Act, 2009. The intent behind the deletion of above proviso as explained in the explanatory memorandum to Finance (No. 2) Bill, 2009 was as under.

"Further as per clause (vi) of sub-section (5) of section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule I IAA of the Income-tax Rules, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval.

Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bona fide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetuity. Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund. This amendment will take effect from 1st day of October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn."

It appeals that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1.10.2009, especially in view of the fact that no corresponding change has been made in Rule 11A(4). To remove any doubts in this regard, it is reiterated that any approval under section 80G(5) on or after 1.10.2009 would be a one time approval which would be valid till it is withdrawn."

5.1 As can be seen above, the existing approval u/s 80G(5)(vi) of the Act expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. Further, any new approval obtained u/s 80G(5) of the Act on or

after 1.10.2009 would be a one time approval, which would be valid till it is withdrawn. Therefore, in view of the above circular, we are of the opinion that this ground of the ld. CIT(A)/NFAC is not tenable.

5.2 Further, we take a note of the fact that section 37(1) of the Act pertains solely to the computation of income from business or profession and its scope is confined to allowing or disallowing expenditure incurred for business purposes. On the other hand, section 80G of the Act provides deduction for donation made to specified funds and institutions while computing the taxable income of the assessee. The disallowance of CSR expenditure under explanation 2 to section 37(1) of the Act applies only in the context of determining its income from business and does not preclude an assessee from claiming deduction under Chapter VIA (which includes section 80G) for eligible donation.

5.3 While CSR expenditure is mandatory u/s 135 of the Companies Act, 2013, the assessee retains discretion over the recipients of such contributions. When such contributions are made to approved institutions or fund u/s 80G of the Act, they qualify as donation "for the purpose of that section, even if incurred under a statutory obligation". The term "donation" u/s 80G of the Act includes both voluntary contributions and mandatory payments made to specified entities. The mandatory nature of CSR expenditure does not dilute its eligibility for deduction u/s 80G of the Act, as the deduction depends on the nature of recipient and compliance of the conditions specified u/s 80G of the Act.

5.4 We also note that the coordinate bench of this Tribunal in the case of Allegis Services (Inia) Pvt. Ltd. vs. ACIT in ITA No.1693/Bang/2019 dated 29.4.2020 held as under:

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 subsection (1) of section 37, so as to clarify that for purposes of subsection (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 subsequent years.

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 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 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 and insurance premiums.*

- *Section 31, provides deduction on repairs and insurance of plant, 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, plants and ships.*
- *Section 34 states conditions 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 or company 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 as donations 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 available under Section 80G for all those sums that do not fall under 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 the hands of assessee. The point of claim under these provisions are different.*

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 by Ld.Sr.DR.*

18. *In present facts of case, Ld.AR submitted that all payments forming 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 section 80G 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. Accordingly grounds raised by assessee stands allowed for statistical purposes.*
In the result appeal filed by assessee stands allowed."

5.5 In view of the above elaborated discussion and following findings of the coordinate bench of this Tribunal in the above-mentioned case, we hereby set aside the orders of ld. AO and direct him to delete the addition made in both these assessment years. Hence, the grounds of appeal of the assessee in both these years are allowed.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 3rd Mar, 2025

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 3rd Mar, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.