IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

BEFORE DUVVURU RL REDDY, VP
AND
SHRI RAJESH KUMAR, AM

ITA No. 1960/KOL/2024
(Assessment Year:2020-21)

M/s Philips India Limited 3rd Floor, Tower-A, DLF Park, 08 Block AF, Major Arterial Road, New town (Rajarhat), Kolkata-700156, West Bengal **(Appellant)**	**Vs.**	**DCIT, Circle 11(1)** Aaykar Bhavan, P-7, Chowringhee Square, Kolkata-700069, West Bengal **(Respondent)**

PAN No. AABCP9487A

Assessee by	:	Shri Ketan Ved, AR
Revenue by	:	Shri A. Kundu, CIT DR

Date of hearing: 07.03.2025
Date of pronouncement : 11.03.2025

O R D E R

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the objection of the Dispute Resolution Panel-2, New Delhi (hereinafter referred to as the "Ld. DRP"] dated 04.10.2023 for the AY 2020-21.

02. Ground no. 1 is general in nature and therefore, need no specific adjudication.

03. Ground No.2, is against the orders of ld. DRP upholding the adjustment of ₹59,26,41,000/- on account of provision of software development services by the assessee to its Associated Enterprises by not accepting the Arm's Length Price as recorded by the assessee in the books of accounts.

04. The facts in brief are that the assessee filed the return of income on 13.02.2001, declaring income at ₹251,22,39,330/-, which was revised on 25.03.2022, to ₹263,59,62,360/-. The case was selected for scrutiny and statutory notices duly issued and served upon the assessee. The assessee, Philips India Limited, is a subsidiary company of the Netherlands-based Koninklijke Philips N.V. (KPNV). The company business segment comprises of (a) Personal Health (b) health care systems which includes development services. The company has manufacturing facilities in Pune, Maharashtra and software development center in Bangalore. The company exports Healthcare equivalent under contact manufacturing. The company sells its products in India through independent distributors and modern trade. The ld. AO observed that the assessee had entered into international transactions u/s 92 of the Act and accordingly, reference was made to the Transfer Pricing Officer to determine the Arms Length Price u/s 92CA of the Act. The Transfer Pricing Officer accordingly, computed the TP adjustment of ₹59,26,41,000/- on account of software developments and the ld. AO in the draft assessment added the same after brushing aside the reply of the assessee.

05. In the ld. DRP proceedings, the ld. Dispute Resolution Panel also confirmed the order of the ld. Transfer Pricing Officer on this issue and accordingly, the ld. AO passed the final assessment order dated 29.07.2024, after considering the ld. Dispute Resolution Panel's direction and thus, made the addition of ₹59,26,41,000/-.

06. After hearing the rival contentions and perusing the materials available on record, we find that that the assessee is engaged in providing software development and software services to its AEs by

functioning as captive software service center for the group. During the instant assessment year the assessee has earned mark up of 9.94%. The assessee applied Transactional Net Margin Method (TNMM) method for determining the Arms Length Price of the international transactions, which was not disputed by the ld. Transfer Pricing Officer and the profit level indicator (PLI) were also accepted by the ld. Transfer Pricing Officer as against the margin of 9.94%. The Transfer Pricing Officer computed the adjustment as under:-

Particulars	**Amount (In INR 000)**
Operating Cost (including Intra-group service charges)(A)	1,26,37,526
Less: Availing of services for this segment (as per Form 3CEB) disallowed by the TPO (B)	93,486
Operating Cost (Excluding IGS charges) [C=A-B]	1,25,44,000
Arm's length mark-up (D)	15.48
Arm's length service fee (E=C*D%)	1,44,85,858
Actual Sales of PSC (F)	1,38,93,217
Adjustment u/s 92C for PSC (G = E-F)	5,92,641

The AO computed 15.48% post Dispute Resolution Panel order by taking into account the following comparable companies:-

Sr. No.	**Name of the company**	**Appellant/ Transfer Pricing Officer comparable**	**Margin (OP/OC)**
1.	Mindtree Ltd.	TPO	12.66%
2.	Great Software Laboratory Pvt. Ltd.	TPO	15.48%
3.	Sasken Technologies Ltd.	TPO	17.20%
4.	Sagarsoft (India) Ltd.	TPO	19.57%
5.	Tata Elxsi ltd.	TPO	28.02%
6.	Evoke Technologies Pvt. Ltd.	Appellant	3.18%
7.	Infomile technologies	Appellant	7.40%
35th Percentile			12.66%
Median			15.48%
65th Percentile			17.20%

07. After hearing the rival contentions and perusing the materials available on record, we find that there are two comparables namely Tata Elexi Limited, which has the Profit Level Indicator of 28.02% and

Sasken Technologies Ltd., which have profit level indicator at 17.20%. The counsel of the assessee argued in detail as to why Tata Elxsi ltd is not comparable to the assessee as has been held in the f9ollowing decisions:

i. Wipro GE Healthcare (P.) Ltd. vs. ACIT [2023] 154 taxmann.com 97 (Bangalore - Trib.)[17-05-2023]

ii. Infineon Technologies India (P.) Ltd. vs. Deputy Commissioner of Income-tax [2024] 159 taxmann.com 245 (Bangalore - Trib.)[10-01-2024]

iii. Mavenir Systems (P.) Ltd. vs. Deputy Commissioner of Income Tax [2023] 152 taxmann.com 655 (Bangalore - Trib.)[23-03-2023]

iv. Infor (India) (P.) Ltd. vs. Assistant Commissioner of Income-tax [2022] 143 taxmann.com 68 (Hyderabad - Trib.)[25-08-2022]

08. Similar in the case of Sasken Technologies Ltd., the assessee submitted that the same should not be considered as comparable for the following reasons:

"Functionally not comparable - Sasken is engaged in providing diversified services such as product engineering and digital transformation providing concept-to-market, chip-to-cognition R&D services.

Engaged in R&D activities and owns intangible property The company is consistently investing in technology and innovation. During the year, the company has invested to explore the emerging technologies such as computer vision, artificial intelligence, machine learning, blockchain etc. Further, company owns intangible assets in the nature of computer software, unlike the Appellant who does not own any such intangibles.

Lack of segmental information No separate data that provides segment wise breakup and revenue from software development services available [Refer page No. 7732 of the Paperbook-Part 11 of 11 and page no. 112 of the annual report

Judicial precedence:

Mavenir Systems (P.) Ltd. [2023] 152 taxmann.com 655 (Bangalore - Trib.) [AY 2017-18]

The Hon'ble ITAT has held that the said company cannot be considered as a comparable for benchmarking transaction in the software development segment due to the reasons identical to those raised by the Appellant before the lower authorities viz. this company is involved in R&D activities and own huge patents which is not akin to a captive service provider.

Prayer:

In view of the foregoing, we have to request the Bench to direct the TPO to exclude the aforementioned companies from the list of comparable.

On exclusion of the aforesaid companies, the average margin earned by the comparable companies will work out to be 11.66%, accordingly, the margin of the Appellant i.e. 9.94% [refer page no. 40 of TP order falls within +/-three percent. Accordingly, there would be no transfer pricing adjustment worked out as under:

Sr. No.	Name of company	Margin% (OP/OC)
1	Mindtree Ltd.	12.66%
2	Great Software Laboratory Pvt Ltd.	15.48%
3	Sagarsoft (India) Ltd	19.57%
4	Evoke Technologies Pvt Ltd.	3.18%
5	Infomile Technologies Ltd.	7.40%
Count		**5**
Average		**11.66%**
Appellant's margin		**9.94%**

09. We note that the Tata Elexi is engaged in diversified and engineering services to the consumer electronics, broadcast and communications, transport, visualization, provide system integration and support services for enterprise customers unlike business operation of the software development segment of the assessee wherein it is engaged in providing results, information, etc. relevant to the business of the Associated Enterprises generated from such software development activities. We note that the same is not functionlly comparable. The said comparable undertakes R&D activities and own the intellectual property in the form of technology and brand and thus cannot be

compared with the assessee. The case of the assessee find support from the case of the Wipro GE Healthcare (P.) Ltd. vs. ACIT (*supra*). Similarly, we note that the second comparable taken by the AO post Dispute Resolution Panel order i.e. Sasken Technologies Limited is also not comparable to the assessee for the reason that the same is not functionally comparable and is engaged in the R&D activities and owns intangible properties which is not there in the case of the assessee. Moreover, the comparable lacks, the segmental information. The case find support from the decision of Mavenir Systems (P.) Ltd. vs. DCIT (*supra*), wherein the Hon'ble ITAT has held that the company is not functionally comparable due to its having R&D activities and own huge patents which is not akin to captive service provider and the relevant paras no. 4.4 to 6.3 of the same are extracted below:-

"4.4 Sasken Communication Technologies Ltd.

4.4.1 It is submitted that this comparable has been excluded by the Ld.TPO as it is involved in R&D activities and owns huge patents. We have hereinabove excluded Infosys Ltd., L&T Infotech Ltd. for the reason that they are into research and development activities and owns huge intangibles which is not akin to a captive service provider. Applying the same principle, we do not find any infirmity in exclusion of Sasken Communication Technologies Ltd. by the Ld.TPO.

Accordingly, we reject this comparable sought for exclusion by assessee.

Accordingly ground no. 1.6 raised by assessee stands partly allowed.

5. Ground no. 1.7 has been raised by assessee seeking the correction in the margins of the comparable companies. It is submitted that assessee has filed all the relevant details in respect of the comparables that needs to be verified by the Ld.TPO/AO.

We thus direct the Ld.AO/TPO to recompute the margins in accordance with law.

Accordingly this ground stands allowed for statistical purposes.

6. Ground no. 2 is related to the transfer pricing adjustment with respect to outstanding receivables. Primarily the Ld.AR has objected by submitting that no interest is attributable as the same was not charged by the AEs on any delayed payment by the assessee. However, assessee submitted that only two invoices payment were delayed to be paid by the AE with respect to 15 days and one day. In

any event, if at all any interest is to be computed, LIBOR rate is to be applied as submitted by the Ld.AR. The Ld.DR relied on the order passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

Admittedly attributing interest to the delayed payment is an international transaction.

6.1 The Ld.AR submitted that the Ld.TPO proposed transfer pricing adjustment in respect of outstanding receivables in respect of trade creditors being the AEs by using 6 months LIBOR rate and CUP as the most appropriate method. The Ld.TPO thus proposed adjustment at 5.8749% amounting to Rs. 3,37,183/-.

6.2 The Assessee wishes to submit that the delayed/outstanding receivables should not be considered as a separate international transaction. Further, it is humbly submitted that determination of ALP in respect of delayed receivables from inter-company transactions is not required since ALP of inter-company transactions of provision of services has been already determined and no separate adjustment is necessary in this regard.

6.3 The Ld.AR placed reliance on decision of Hon'ble Delhi Tribunal in Kusum Healthcare (P). Ltd v. Asstt. CIT [2015] 62 taxmann.com 79 deleted addition by considering the above principle, and subsequently Hon'ble Delhi High Court in Pr. CIT v. Kusum Health Care (P.) Ltd. [2018] 99 taxmann.com 431/[2017] 398 ITR 66, held that, no interest could have been charged as it cannot be considered as international transaction. He also placed reliance upon decision of Hon'ble Delhi Tribunal in case of Bechtel India (P.) Ltd. v. Dy. CIT [2016] 66 taxmann.com 6 which subsequently upheld by Hon'ble Delhi High Court vide order dated 21/07/16 in ITA No. 379/2016, also upheld by Hon'ble Supreme Court vide order dated 21/07/17, in CC No. 4956/2017."

010. We note that in case both the above comparables are excluded out of the comparable companies, the average mean of the comparable companies will work out to 11.66%, whereas the margin of the appellant is 9.44% which falls within 3% and therefore, no TP adjustment is required to be made. Accordingly, we direct the ld. Transfer Pricing Officer/ AO to exclude these two companies. The ground no.2 is allowed.

011. The issue raised in ground no.3 is against the transfer pricing adjustment of ₹108,79,48,589/- on account of Intra Group Services ('IGS') received by the assessee.

012. We note that this is a recurring issue in the case of the assessee which has been decided by the co-ordinate Bench in favour of the assessee in ITA No. 226/KOL/2021, vide order dated 06.09.2022 for A.Y. 2016-17 . The operative part of the decision is as under:-

"3. Issue raised in ground no. 2 is against the direction of DRP on determination of arms' length price in respect thereof for intra group services received by the appellant assessee.

4. The Ld. Counsel for the assessee at the outset submitted that the issue is recurring one right from A.Y.2009-10 to 2015-16 and is covered in favour of the assessee by the decisions of the Co-ordinate Benches of the Tribunal deciding the issue in favour of the assessee in all the assessment years. The Ld. A.R took the Bench through the decisions attached in the Paper book and prayed that the ground may be allowed following the said decisions of the Co-ordinate Bench in the assessee's own case.

5. The Ld. D.R. on the other hand fairly agreed that the issue is squarely covered by the decisions of Co-ordinate Benches in assessee's own case however relied on the order of DRP.

6. Having heard rival submissions and perusing the material on record including the decisions of the coordinate benches in assessee's own case in the earlier assessment years, we find that the issue is squarely covered in favour of the assessee. Therefore, taking a consistent view , we allow ground no. 2 by setting aside the direction of the DRP and directing the TPO/AO to delete the adjustment/addition."

013. Accordingly, we direct the ld. AO to delete the addition by respectfully following the decision of the co-ordinate Bench in A.Y. 2016-17. The ground no.3 is allowed.

014. Ground no. 4, is against the transfer pricing adjustment of ₹94,41,22,563/- on account of advertisement, marketing and promotion expenses.

015. We note that the impugned issue is recurring one and has been decided by the co-ordinate Bench in assessee's own case for A.Y. 2010-11 to 2016-17. The operative part of the decision in ITA No. 226/KOL/2021 for A.Y. 2016-17 is extracted below:-

"7. Issue raised in ground no. 3 is in respect of determination of arm's length price and an adjustment made on account thereof towards advertisement, marketing and promotion expenses.

8. Having heard rival submission and perusing the material on record we find that issue is squarely covered by the decisions of the Co-ordinate Benches in earlier assessment years in assessee's own case from AY 2010-11 to 2015-16. Accordingly we set aside the DRP direction on this issue and direct the AO/TPO to delete the adjustment made and consequently ground no. 3 is allowed."

016. Considering the facts of the instant assessment year being similar to ones as decided by the co-ordinate Bench in assessee's own case, we hold that the advertisement, marketing and promotion expenses do not an international transaction and accordingly, the TP adjustment made by the ld. Transfer Pricing Officer/ AO is directed to be deleted. The ground is accordingly allowed.

017. Ground no.5 is general in nature which is qua the Rule of consistency and does not require any specific adjudication.

018. Ground no. 6 is in regard to the determination of arms' length price in respect of the provisions of Contract, Research & Development Services (CRDS) to the Associated Enterprises (AE). It was submitted by the Ld. AR of the assessee that the assessee is engaged in the provisions of CRDS to this AE. It provides service based on the specification provided by the AE. The assessee applied cost plus mark up 9.59% as per the service agreement as compensation for its services. The TPO and the DRP when adjudicating the issue had considered seven companies as comparable, which are as under:

Sr. No.	Name of the company	Appellant/TPO comparable	Margin (OP/OC)
1	Aurigene Discovery Technologies Ltd.	TPO	39.76%
2	Cliantha Research Ltd.	TPO	21.05%
3	Raptim Research	TPO	36.30%
4	Aragen Life Sciences Pvt. Ltd.	TPO	17.21%
5	TCG Lifesciences Ltd.	TPO	30.40%
6	Fermish Clinical Technologies Pvt. Ltd.	TPO	3.82%

7	Reliance Life Sciences Pvt. Ltd.	TPO	-25.77%
	35th percentile		17.21%
	Median		20.40%
	65th percentile		21.05%

019. After considering the said comparable, the median was computed at 30.40%. The assessee has challenged the comparables specifically being one Aurigene Discovery Technologies Ltd. (ADTL) and the second being TCG Life Sciences Ltd. (TCG). It was the submission that the assessee as mentioned earlier it is engaged in the provisions of contract, research and development services in software development and software services. However, ADTL, on functionality itself, is engaged in undertaking research relating to drug discovery for its customers. Long term collaboration with customers for drug discovery and licensing of intellectual property which cannot be compared to a routine contract research and development service provider for medical devices like the assessee. Similarly, with regard to TCG, it was a submission that for functionality itself, it is a contract research company in the AE an early drug discovery and development which also cannot be compared to a routine contract of research and development service provided by the assessee for medical devices. TCG is engaged in providing contract, research and manufacture of chemical combined developments whereas the assessee does not do such activities. Also, in the case of TCG more than 80% of the total revenue is derived from the sale of drugs and the supplemental profit and loss in respect of the research and development activity is not available. The Ld. AR has referred to various case laws such as (a) Akzo Noble Car Refinishes India (P) Ltd. [2018] 97 taxmann.com 111 (Delhi), (b) Akzo Noble Car Refinishes India (P) Ltd. [2018] 90 taxmann.com 15 (Delhi) and (c) Evonik Degussa India Private Limited

Vs. DCIT (OSD), Circle-3(1) [ITA No. 7767/Mum/2012, AY 2008-09] to support his arguments.

020. It was the submissions that if the said two companies which are functionally different and not comparable with the assessee's business are excluded, then, the average would come to 10.52% as against 9.59% disclosed by the assessee and the same would be within the acceptable variation and consequently, the transfer pricing adjustment was liable to be deleted.

021. In reply, the Ld. DR vehemently supported the order of the DRP. It was the submission that the two comparable which are being objected to by the assessee were very much comparable in so far as both the companies were also undertaking research and they were also in the same line as the medical field. It was the submission that the submissions of the assessee have already been considered by the TPO and the DRP and the same have already been rejected and nothing new has been pointed out by the assessee, which would call for any modification to the order of the TPO or DRP. It was the submission that the adjustment as made is liable to be upheld.

022. We have considered the submissions of both the parties. The assessee admittedly, doing contract, research and development for medical devices. ADTL, as has been mentioned in its Annual Report is undertaking research relating to contract discovery for its customers and licensing of the intellectual property rights in respect of researched drug discovery. This has nothing to do with any activity which is software related. The activities are purely related to the manufacturing of drugs more specifically, the discovery of new drugs through research and development. It ,admittedly, is not a comparable with the assessee in regard to the functionality. Coming

to TCG, it is noticed that TCG is also into early drug discovery and development, which has been, mentioned earlier cannot be considered as the same as a research and development in respect of medical devices. Further, in the case of TCG, the revenue generated from the sale of products are admittedly 80% of the total revenue of TCG which also makes it incomparable with the assessee in so far as the supplemental profit and loss in respect of the research and development activity of TCG are not available. Consequently, we are of the view that both ADTL and TCG cannot be taken as a comparable while computing the transfer pricing adjustment in regard to the contract, research and development services. The said two companies are excluded. Admittedly, the average comes to only 10.52% which is well within the 3% margin which is permissible. Consequently, the addition made on account of the said transfer pricing adjustment stands deleted. Consequently, ground nos. 6 the assessee's appeal stand allowed.

023. The issue raised in ground no.7, is against the disallowance of expenses of ₹7,50,50,000/- u/s 14A of the Act in relation to earning of exempt income.

024. The facts in brief are that during the year under consideration, the appellant has not earned any exempt income, however, the ld. AO computed the disallowance u/s 14A read with section 8D of the Rules, at ₹7,50,50,000/- by applying the rate of 1% on the average investments. The ld. Dispute Resolution Panel in its direction vide order dated 30.06.2024, upheld the action of the ld. Assessing Officer.

025. After hearing the rival contentions and perusing the materials available on record, we note that there is no exempt income during the year and therefore, no disallowance is called for u/s 14A of the Act

read with Rule 8D of the Rules. The case of the assessee was squarely covered by the decision of the co-ordinate bench in assessee's own case in A.Y. 2016-17 in ITA No. 226/KOL/2021 dated 6th September, 2022, wherein the co-ordinate Bench held that no disallowance is required to be made where the assessee has not earned any exempt income. Besides the case of the assessee find support from the decisions of PCIT Vs. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (HC Delhi), Syama Prasad Mookerjee Port Vs. DCIT [2024] 162 taxmann.com 122 (Kolkata-Trib.), DCIT Vs. SP Port Maintenance (P) Ltd. [2024] 164 taxmann.com 752 (Mumbai-Trib.), ACIT VS. Mitsui & Co. India (P.) Ltd. [2023] 155 taxmann.com 19 (Delhi- Trib.). Considering the above decisions , we are inclined to direct the ld. AO to delete the addition. Hence, ground no.7 is allowed.

026. The issue raised in ground no.8 is against the direction of ld. Dispute Resolution Panel confirming the addition of ₹27,08,766/- by the ld. AO in the draft assessment order u/s 41(1).

027. The facts in brief are that the ld. AO observed during the course of assessment proceedings that assessee has written off creditors but has not shown the corresponding income as deemed income u/s 41(1) of the Act in the return of income. Accordingly, the assessee was issued notice u/s 142(1) dated 15.12.2021, which was replied on 07.02.2023. In the said reply the assessee submitted that ₹6,24,98,886/-, pertained to provisions/liabilities which are no longer required and have been written back and have been included in the Profit and Loss account and consequently, offered to tax in the return of income filed. Therefore, no separate addition is required to be made. The ld. AO after perusing the reply of the assessee rejected the same and computed the amount not disclosed as income as per the

information available on insight portal of the department aggregating to ₹27,08,766/-. Accordingly, the same was added to the income of the assessee, which was confirmed by the ld. Dispute Resolution Panel.

028. After hearing the rival contentions and perusing the materials available on record including the return filed by the assessee ,copy of which is available at page no.7889 of the Paper Book, we note that the amount of ₹6,24,98,886/-as shown by the assessee in the profit and loss account included an amount of ₹27,08,766/- pertaining to cessation of trading liabilities. The ld. AO once again added the amount u/s 41(1) of the Act, which was confirmed by the ld. Dispute Resolution Panel resulting into double addition of the same amount. Consequently, we set aside the order of the ld. Dispute Resolution Panel / AO and direct the ld. AO to delete the addition. The ground no 8 is allowed.

029. The issue raised in ground no.9 is against the disallowance of lease rental of ₹62,13,65,603/-.

030. The facts in brief are that in the computation of income, the assessee has claimed deduction of ₹62,13,65,603/- on account of lease rental of the assets taken on financial lease. The ld. AO accordingly called upon the assessee to file his submission which was filed on 13.01.2022, in which he submitted that the depreciation claimed on the assets taken on lease has been added back while computing the total income and the assessee has correspondingly claimed lease rental from income excluding the interest as allowable deduction while computing the total income. The submission of the assessee did not find in favour of the ld. AO and he added the same to the income of the assessee which was confirmed by the ld. Dispute Resolution Panel.

031. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered by the decision of the co-ordinate Bench in assessee 's own case from AO 200-10 to 2016-17, which are already available in the Paper Book. Accordingly, we set aside the ld. Dispute Resolution Panel direction and direct the ld. AO to delete the addition. Accordingly, the ground no.9 is allowed.

032. The issue raised in ground no.10, is against the disallowance of deduction u/s 80G of the Act.

033. The facts in brief are that during the year the assessee claimed deduction u/s 80G of ₹4,84,70,669/-. Accordingly, the ld. AO called upon the assessee to furnish the details thereto which was supplied by the assessee vide his submission dated 31.01.2022, wherein the assessee furnished all the details in respect of the donations made. The ld. AO observed that the assessee has incurred expenses amounting to ₹11,00,15,130/- on account of corporate social responsibility in accordance with Companies Act, 2013, out of this amount, the assessee has claimed deduction 4,84,70,669/- u/s 80G of the Act. According to the ld. AO, CSR expenses are not allowable as claimed either directly or indirectly and therefore, the said claim was disallowed, which was affirmed by the ld. Dispute Resolution Panel in his direction.

034. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate Bench in case of JMS Mining (P.) Ltd. Vs. PCIT [2021] 130 taxmann.com 118 (Kolkata-Trib), wherein it was held that explanation 2 to section 37(1) which denies deduction for CSR expenses by way of business

expenditure is applicable only to the extent of computing 'business income' under Chapter IV-D. The said Explanation cannot be extended or imported to CSR contributions which is otherwise eligible for deduction under any other provision or Chapter i.e. under section 80G. Similarly, the Co-ordinate Bench in the case of M/S. Allegis Services (India) vs. CIT [ITA No.1693/Bang/2019] held that benefit of claim under Chapter VI A, which is considered for computing 'Total Taxable Income" cannot be denied merely because such payment forms part of CSR, as it would lead to double disallowance, which is not the intention of Legislature. Further the Tribunal held that, apart from two restricted contribution (i.e. the Swachh Bharat Kosh and the Clean Ganga Fund), other contributions made under section 135(5) of the Companies Act are eligible for deduction under section 80G of Act without examining the intent behind the donation made by the Company. The case of the assessee also find force from the decision Britannia Industries Ltd. vs. DCIT [2024] 161 taxmann.com 393 (Kol. Trib.). Considering the facts of the assessee case in the light of the above decisions, we are inclined to set aside the ld. Dispute Resolution Panel direction and direct the ld. AO to allow the deduction u/s 80G of the Act. The ground no.10 of the appeal is allowed.

035. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11.03.2025.

Sd/-	Sd/-
(DUVVURU RL REDDY)	(RAJESH KUMAR)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Kolkata, Dated: 11.03.2025
Sudip Sarkar, Sr.PS & JD, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata