

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri Narendra Kumar Choudhry (JM) &
Shri Omkareshwar Chidara (AM)

ITA No. 2454/MUM/2025 (Assessment Year : 2020-21)

Nirmal Bang Securities P. Ltd. B-2, Marathon Innova, Ganpatrao Kadam Marg Opp. Peninsula Corporate Lower Parel West Mumbai-400 013.	Vs.	PCIT Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.
PAN : AAACN7369I		
Appellant		Respondent

Assessee by	:	Shri Anant N. Pai
Revenue by	:	Shri Leyaqt Ali Aafaqui
Date of Hearing	:	09/07/2025
Date of pronouncement	:	25/07/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, the appellant company took the following grounds of appeal :-

"1. Ground no. 1:- On facts and circumstances of the case and in law, the learned Principal Commissioner erred in passing his order u/s. 263 directing revision of the assessment order passed u/s. 143(3) by the learned Assessing Officer, when the said assessment order was neither erroneous nor prejudicial to the interests of the revenue.

The revision order u/s 263 therefore, requires to be quashed in appeal.

2. Ground no. 2:- On facts and circumstances of the case and in law, the learned Principal Commissioner, more particularly, erred in directing revision of the aforesaid assessment order on a debatable issue, which action was not permissible under his powers u/s 263.

The revision order u/s 263 therefore, requires to be quashed in appeal."

2. After perusing the assessment order passed by Ld. AO, it is observed that the appellant company claimed 80G deduction on the part of Companies Social Responsibility (CSR) expenses and the same was allowed while completing the assessment under section 143(3) of the I.T. Act. As the

Ld. AO has allowed the deduction under section 80G of the Act on this expense, the Ld. PCIT assumed Revisionary Jurisdiction under section 263 of the I.T Act to set aside the assessment order of the Ld. AO. Accordingly, a show-cause notice under section 263 of the Act was issued by Ld. PCIT stating that why the deduction allowed by Ld. AO should not be withdrawn in view of section 135 of the Companies Act and Explanation 2 of section 37 of the I.T. Act. The Ld. PCIT relied on the decision of Hon'ble Supreme Court in the case of Commissioner of Expenditure Vs. PVG Raju, Rajah of Vizianagaram (1 SCR 107) for the proposition that the CSR expenditure is mandatory whereas donation under section 80G of the Act is voluntary and hence not allowable to the appellant company. In the reply to the show-cause notice, the appellant company has stated that the amount spent over and above CSR expenses made under Swachch Bharat Kosh and clean Ganga Fund, the appellant can claim deduction under section 80G(2)(iiihk) and (iiihl) of the Act. Having not agreed with the view of the appellant company the Ld. PCIT has also mentioned that from the assessment order it is seen that the Ld. AO did not conduct any enquiries with respect to the issue of CSR expenses vis-à-vis section 80G of the Act and hence assessment order suffers from infirmity being erroneous and also prejudicial to the interest of Revenue for allowing the ineligible claim of deduction of Rs. 16,21,276/- under section 80G of the Act. Accordingly, the Ld. PCIT has set aside the order passed by Ld. AO to enquire the claim of section 80G deduction out of CSR and modify the assessment order as per the findings of this 263 order.

3. Aggrieved by the order of Ld. PCIT under section 263 of the Act, the appellant company filed an appeal with the grounds of appeal mentioned in page 1 of this order.

4. During the proceedings before the ITAT, the Ld. AR of the appellant has argued that L. PCIT is incorrect in setting aside the order of Ld. AO and

relied on the decision of ITAT in the case of FDC Ltd. (ITA No. 1031/Mum/2023 dated 2.8.2023).

5. Per contra, Ld. DR has argued that the Ld. PCIT has correctly assumed revisionary jurisdiction under section 263 of the Act. He has filed written submission dated 9.7.2025 in which it was stated that the assessment order passed by Ld. AO was not only erroneous but also prejudicial to the interest of Revenue. The Ld. DR has mentioned that the Ld. AO has verified business losses, set off, high liabilities vis-à-vis low income, large depreciation and substantial payments by way of penalties, during the assessment which was completed under section 143(3) of the I.T. Act and completed the assessment accepting the returned income without any verification. That is why the Ld. PCIT held that the order passed by Ld. AO is erroneous and prejudicial to the interest of Revenue. The Ld. DR has also stated that the deduction under section 80G of the Act was allowed to the appellant company without verification as per assessment order hence the PCIT has correctly set aside the matter for limited verification on this issue. The Ld. DR in his written submission has raised the following issues too and prayed that the appeal filed by the appellant may kindly be dismissed.

2. Grounds Taken by the Assessee

The assessee challenges the jurisdiction assumed by the learned PCIT under Section 263 of the Act. It is contended that the assessment order passed under Section 143(3) was neither erroneous nor prejudicial to the interest of the Revenue, and that the PCIT has exceeded his jurisdiction by seeking to revise an issue which is debatable in law. It is further contended that the deduction claimed under Section 80G in respect of CSR expenditure was a possible legal view supported by judicial precedents, and merely because the PCIT holds a contrary view does not render the assessment erroneous. Thus, it was submitted that the revision order passed u/s 263 is invalid in law and is liable to be quashed.

3. Assessee's Claim

The assessee claimed that although CSR expenses are not allowed as business expenditure under Section 37, a part of those expenses amounting to ^16,21,276/- was eligible for deduction under Section 80G, as the donations were made to approved institutions. The assessee argued that Section 80G operates independently and allows such deductions if the specified conditions are met, regardless of whether the payment was made under CSR obligations. The assessee also relied on recent Tribunal

decisions to support the view that such claims are allowable, and contended that the issue is at best debatable and cannot be the basis for revision under Section 263.

4. Revenue Rebuttal:

I. The Revenue respectfully submits that the Principal Commissioner was right in invoking the powers under Section 263 of the Income Tax Act in this case. The assessment order passed under Section 143(3) does not show any discussion or inquiry by the Assessing Officer on the deduction of Rs. 16,21,276/- claimed under Section 80G out of the CSR expenditure. This lack of inquiry on a key issue makes the assessment order erroneous. As held by the Hon'ble Supreme Court in *CIT v. Amitabh Bachchan* [(2016) 384 ITR 200 (SC)], if the Assessing Officer does not examine an important issue during assessment, the order can be revised under Section 263. This principle is also supported by *Malabar Industrial Co. Ltd. v. CIT* [(2000) 243 ITR 83 (SC)], where it was held that an order passed without proper inquiry or with incorrect application of law can be revised if it is also prejudicial to the interest of Revenue.

II. In this case, the issue of whether CSR expenses are eligible for deduction under Section 80G is not merely a difference of opinion. The Delhi ITAT, in a recent judgment in *Agilent Technologies (International) Pvt. Ltd.* [2024] 160 taxmann.com 238, has clearly held that no deduction under Section 80G is allowed for CSR contributions, as these are made to comply with a legal requirement under Section 135 of the Companies Act and are not voluntary in nature. Voluntariness is a key condition for claiming deduction under Section 80G, as also held by the Supreme Court in *PVG Raju, Rajah of Vizianagaram*. Hence, CSR expenses, being mandatory, do not qualify as donations under Section 80G.

III. The assessee has referred to some Tribunal decisions where similar deductions were allowed. However, in the present case, the Assessing Officer did not look into this issue at all or give any reasons for allowing the claim. There was no examination or discussion about whether the deduction for CSR expenses under Section 80G was actually allowable. So, this is not a case where two different legal views were considered— rather, the Assessing Officer passed the order without taking any view on this issue. Because of this lack of enquiry, the assessment order is both incorrect and harmful to the Revenue, as a deduction that may not be permitted under law was wrongly allowed without verification.

IV. For these reasons, the action of the PCIT in setting aside the assessment order for limited verification of the 80G claim on CSR expenditure is fully justified and well within the scope of powers under Section 263.

5. Prayer

In view of the above facts and legal position, it is respectfully prayed that the Hon'ble Tribunal may kindly uphold the revision order passed under Section 263 of the Income Tax Act, 1961 by the learned Principal Commissioner. The assessment order passed without any enquiry on the

issue of deduction under Section 80G in respect of CSR expenditure was clearly erroneous and prejudicial to the interest of the Revenue. The revision made by the PCIT was within the scope of jurisdiction and was necessary to ensure proper application of law. It is therefore prayed that the appeal filed by the assessee may kindly be dismissed.”

6. Rival submissions are heard and the written submissions filed by both parties are taken into consideration. From the submissions made by both the parties, it is observed that decisions are rendered in favour and against the appellant when the issue was discussed by the Ld. AO and the Ld. AO took a view. But, in this case, Ld. PCIT has observed that the Ld. AO has not discussed anything nor applied his mind on the issue of 80G and still the deduction under section 80G of the Act was allowed by the Ld. AO as claimed by the appellant. Hence, the Ld. PCIT has correctly assumed the revisionary jurisdiction under section 263 and set aside the order of Ld. AO for the purpose of limited verification of this issue and pass the order. There is considerable force in the argument of Ld. DR where it was submitted in his written submission that the appellant referred to some Tribunal decisions where similar deduction are allowed, but the Ld. AO did not look into this issue at all or give any reasons for allowing the claim. There was no examination or discussion about whether the deduction for CSR expenses under section 80G was actually allowable or not in the assessment order. So, this is not a case where two different legal views were considered, rather the Ld. AO passed the order without taking any view on this issue. The Ld. DR further argued that the Ld. AO passed the order without taking any view on this issue and because of this lack of enquiry, the assessment order is both incorrect and harmful to the Revenue. Now, let us see the cases-law of Hon'ble Supreme Court relied on by the Ld. DR. CIT Vs. Amitabh Bachchan 384 ITR 200 (SC) and Malabar Industrial Co. Ltd. Vs. CIT 243 ITR 83(SC). In the case of Malabar Industrial Co. Ltd. (supra), Hon'ble Apex Court upheld the view of ITAT that where no proper enquiries were caused by the Ld. AO and did not apply his mind, the assessment order was considered to be erroneous and prejudicial to the interest of Revenue. Similarly, in the case of

Amitabh Bachchan (supra) also, Hon'ble Supreme Court has held that if the Ld. AO has not examined the issue during the assessment, then the same can be revised by Ld. PCIT. The Hon'ble Supreme Court in the case of M/s. Malabar Industrial Co. Ltd. (supra) has discussed the cases of Smt. Tara Devi Agarwal, 88 IR 323 (SC) and Rampyari Devi Saraogi, 67 ITR 84 and came to the conclusion that if the Ld. AO has not caused proper enquiries and passed an order, the same is held as prejudicial to the interest of Revenue and upheld the Revisionary Jurisdiction of CIT. During the course of hearing, the Ld. AR of the appellant has relied on the case of FDC Ltd. (ITA No. 1031/Mum/2023, A.Y. 2018-19 dated 2.8.2023), where the issue of CSR expense vis-à-vis deduction under section 80G of the Act was discussed and held in favour of the appellant. But, what is to be seen in that case is that the Ld. AO took a view which was reversed by ITAT whereas in our case, the Ld. AO has not applied his mind to the issue of deduction under section 80G at all. In this case of FDC Ltd. (supra) itself, the ITAT took a decision that the Revision order of Ld. PCIT under section 263 of the Act as correct when the Ld. AO has allowed the claim of appellant without carrying out the due enquiries and verification by placing reliance on the decision of Hon'ble Bombay High Court in the case of Grasim Industries Ltd. Vs. CIT (321 ITR 92) where Bombay High Court has followed the decision of Malabar Industrial Co. (SC) and Max India Ltd. (SC). The Ld. AR of the appellant relied on the decision of ITAT in the case of FDC Ltd. (supra) has considered all these decisions and upheld the PCIT's order u/s. 263 on two issues, where the Ld. AO took a view and the ITAT held that the Revision under section 263 is correct on one issue, where the Ld. AO has not taken any view at all. Moreover, Explanation 2(a) to section 263 inserted w.e.f. 1.6.2015 clearly says that if the order is passed without making enquiries or verification which should have been made, then the PCIT can assume the jurisdiction under section 263 of the Act, deeming the order of Ld. AO to be erroneous and prejudicial to the interest of appellant.

7. In the impugned case also, as above, no enquiries were caused into the allowability of deduction under section 80G of the Act by the Ld. AO coupled with this fact, after taking into consideration the Explanation 2(a) of section 263 of the I.T. Act, the Revision order passed by Ld. PCIT is held as correct. The Ld. AO is directed to pass the assessment order after giving effective opportunity to the appellant. The appeal of the appellant is dismissed.

Order pronounced in the open Court on 25/07/2025.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai