IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

AND

SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

I.T.A. No. 2034/Mum/2025
Assessment Year: 2020-21

B. Arunkumar Capital & Credit Services Pvt. Ltd. 154/C, Mittal Court, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021 **PAN:AAACB2156M**	Vs.	**Principal Commissioner Of Income Tax 3** Room No.612, 6th Floor, Aayakar Bhawan, Maharishi Karve Marg, Mumbai-400020
(Appellant)		**(Respondent)**

Appellant by	Shri Nitesh Joshi, & Shri Ashwin Kashinath
Respondent by	Ms. Sudha Ramchandran,CITD.R.

Date of Hearing	07.05.2025
Date of Pronouncement	25.07.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by the assessee arises out of order dated 13/03/2025 passed by PCIT, Mumbai-3 for assessment year 2020-21 on following grounds of appeal :

"1. The Ld. Principal Commissioner of Income-tax-3, Mumbai erred in invoking the jurisdiction under Section 263 of the Income-tax Act, 1961 ('the Act') and passing the order dated 13th March 2025 setting aside the assessment order passed u/s. 143(3) of the Act, without appreciating that the assessment order dated 6th September 2022 passed under Section 143(3) r.w.s. 1448 of the Act is not erroneous in so far as it is prejudicial to the interest of the Revenue and thus the order passed u/s. 263 of the Act is without jurisdiction.

2. The Ld. Principal Commissioner of Income-tax-3, Mumbai erred in directing the Assessing Officer to disallow the claim of deduction of Rs. 29,00,000/- under Section 80G of the Act on the ground that the donation classified as 'Corporate Social Responsibility' expenditure is not eligible for deduction under Section 80G of the Act.

3. The Appellant craves leave to add to, alter, amend or delete the grounds of appeal"

Brief facts of the case are as under:

2. The assessee is a Non-banking Financial Company with the Reserve Bank of India, carrying on the business of Finance and Investments. The assessee is engaged primarily into giving loans and advances and filed its return of income on 01/02/2021, declaring total income at Rs. 13,76,54,420/-. The case was selected for scrutiny under CASS and notice u/s. 143(3) r.w.s.144B was issued on 06/09/2022.

2.1 On examination of the records, Ld.PCIT found that the faceless Assessing Officer (FAO) did not verified certain issues while passing the assessment order.

2.2 The Ld.PCIT noted that, the assessee debited Rs.61,00,000/- on account of CSR Expenditure and added the same to the total income in its computation of income as the

same is not allowable u/s. 37(1) of the Act. However, claimed Rs.31,50,000/- out of the CSR Expenditure, as deduction u/s. 80G of the Act. The Ld.PCIT noted in the computation of income that, the assessee added back Rs.2,50,000/- towards donations and The remaining deduction claimed u/s. 80G of the Act of Rs.29,00,000/- was considered out of the CSR expenditure. The Ld.PCIT noted that, the Ld.AO allowed assessee's claim of deduction u/s. 80G of the Act, which should not have been allowed.

2.3 The Ld.PCIT was of the opinion that assessing officer failed to examine the issue regarding allowability of deduction u/s.80G of the Act on donations made out of CSR expenditure. He thus invoked the provisions of section 263 of the Act and the show caused notice dated 27/02/2025 was issued to the assessee. Copy of the notice is scanned and annexed here with as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Mumbai-3

To,
B ARUNKUMAR CAPITAL & CREDIT SERVICES PVT LTD
154/C, MITTAL COURT VIDHAN BHAVAN MARG, NARIMAN POINT , Nariman Point S.O Mumbai
MUMBAI 400021 , Maharashtra
India

PAN/TAN:	AY:	DIN & Notice No :	Dated:
AAACB2156M	2020-21	ITBA/REV/F/REV1/2024-25/1073780693(1)	27/02/2025

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s **263** of the **THE INCOME TAX ACT, 1961** – Assessment Year **2020-21**.

In this regard, a hearing in the matter is fixed on **11/03/2025** at **03:00 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: **Incometaxindiaefiling.gov.in**

The assessee has filed its Return of income for the AY 2020-21 on 01.02.2021 declaring total income of Rs.133,76,54,420/- under normal provisions of the Act. The same was processed u/s. 143(1) of the Act. Subsequently, the case of the assessee company was selected for scrutiny under CASS and the Scrutiny assessment was completed on 06.09.2022 u/s. 143(3) r.w.s. 144B of the Act determined the assessed income at Rs.13,76,54,420/- under normal provisions and Rs.13,44,62,894/- book profit u/s. 115JB of the Act.

2. From perusal of the financials of the assessee company, it is noticed that the assessee had debited an amount of Rs.61,00,000/- as expenditure on CSR activities in its profit and loss account. The same amount was added back while computing taxable income as the same is not allowable u/s. 37(1) of the Act. However, the assessee has claimed Rs.31,50,000/- out of the CSR Expenditure as deduction u/s. 80G of the Income Tax Act on above CSR expenditure, which was not in order. Further, in the computation of income the assessee has added back an amount of Rs.2,50,000/- towards donations. Hence, the remaining deduction claimed u/s. 80G of the Act of Rs.29,00,000/-, considered to be out of

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:612,6th Floor, AAYAKAR BHAVAN, MAHARISHI KARVE ROAD, MUMBAI, Maharashtra, 400020
Email: MUMBAI.PCIT3@INCOMETAX.GOV.IN, Office Phone:02222001409

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN- Document Identification No.

the CSR expenditure, is not allowable to the assessee. It is seen from the assessment records that the assessing officer allowed assessee's claim of deduction u/s. 80G of the Act, which should not have been allowed.

3. The assessment order dated 06.09.2022 for the year under consideration is passed in this case by the AO without making any proper enquiry and verification on the issues as discussed earlier in pare no. 2 above which should have been made and corresponding additions/disallowances after making such enquiries, which ought to have been made. Therefore, the order passed u/s. 143(3) r.w.s. 144B of the Act is deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue.

4. In view of the above reasons, it is proposed to revise the assessment order u/s. 143(3) r.w.s. 144B dated 06.09.2022, u/s. 263 of the Income Tax Act, 1961 being erroneous in so far as it is prejudicial to the interest of the Revenue.

5. You are hereby given an opportunity to represent your case as to why the proposed action u/s. 263 should not be pursued and necessary order be passed on the issues discussed above as well as other issued that may come to the notice of the undersigned during this proceeding. You or any duly authorized person can appear on the date and time mentioned in this Notice at Room No. 612, Aayakar Bhavan, MK Road, Mumbai-400020 or you may file written submission which will be considered while passing the revision order. Failure to comply will lead to the conclusion that you have nothing to offer and you are agreeable to the proposed action as deemed fit on the material available on record or gathered during this proceeding.

KISHAN KUMAR VYAS
PCIT, Mumbai-3

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

"

3. In response to the above notice, the assessee filed its reply dated 10/03/2025 and submitted as under :

"3. It is submitted that there is no pre condition that to claim deduction under section 80G a donation should be voluntary. It is incorrect to

state that donations eligible for deduction u/s. 80G cannot be obligatory. Claim u/s. 80G of the Act is independent of computation of business income.

4. In computing the business income in accordance with the provisions of section 37(1) of the Act, both CSR Expenses of Rs.61,00,000/- and donations of Rs.2,50,000/- both aggregating to Rs.63,50,000/- has been correctly disallowed.

5. Complete details of CSR expenditure, eligible donations aggregating to Rs.63,00,000/- are enclosed herewith. Documents evidencing the genuineness of donations i.e. Donation Receipts, Bank Statement reflecting payment and Certificate u/s 80G of the Act are enclosed."

3.1 The assessee also relied on following decision in support of its claim :

"(i) Synergia Lifesciences PVT Ltd/ v. DCIT [ITA No. 938/ Mum/ 2023] dated 20.06.2023

(ii) Sling Media (P) v. DCIT [135 taxmann.com 164 (Bang.)]

(iii) Infineria India (P) Ltd. vs. JCIT [137 taxamnn.com 197 (Bang.)]

(iv) FNF India (P) Ltd. v. ACIT [133 taxmann.com 251 (Bang.)]

(v) JMS Mining (P) Ltd. v. Pr.CIT [130 taxmann.com 118 (Kol.)]"

3.2 The assessee also placed reliance on the decision of coordinate bench of this *Tribunal* in case of *Naik Sea Foods Pvt. Ltd. Vs. PCIT in ITA no. 490/Mum/2021* dated 26/11/2021 and decision of *Inter Gold India Pvt. Ltd. Vs. PCIT in ITA No. 4400/Mum/2023* dated 05/08/2024 and *Societe Generale Securities India Pvt. Ltd. Vs. PCIT in ITA no. 1921/Mum/2023* dated 20/11/2023 wherein it was held that claim of deduction u/s.80G in respect of expenditure classified as CSR was valid considering the fact that, assessing officer took up plausible view, section 263 of the Act could not be invoked.

4. The Ld.PCIT after considering the submissions of the assessee was of the opinion that the assessment order is passed

without application of mind as the assessing officer has not made any inquiries into the issue of the claim of deduction u/s.80G of the Act in respect of expenditure incurred on CSR the relevant extract of the observations of PCIT are as under :

> *"6. The order passed u/s. 143(3) r.w.s 1448 of the Act dated 06.09.2022 is erroneous as the AO has not made enquiries into the issue of claim of deduction u/s 80G of the Act in respect of expenditure incurred on CSR. The assessing officer has not examined the issue of allowability of deduction claimed u/s. 80G of the Act, when the donations are made out of CSR expenditure. The AO has not specifically enquired into the allowability of the claim of the deduction U/S.80G of the Act, therefore, there is lack of enquiry on this specific claim of the assessee. It is observed that the AO has passed the order u/s. 143(3) r.w.s 144B of the Act on incorrect assumption of fact and law that the deduction u/s.80G of the Act is correctly claimed by the assessee. Therefore, the order passed u/s. 143(3) r.w.s 1448 of the Act dated 06.09.2022is erroneous to that extent.*
>
> *6.1 As stated above, the order passed u/s. 143(3) r.w.s 144B of the Act dated 06.09.2022 is erroneous in so far as it is prejudicial to the interest of the revenue. The phrase prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain ((1957) 31 ITR 872 (Cal)], the High Court of Karnataka in CIT v. T. Narayana Pai ((1975) 98 ITR 422 (Kant)], the High Court of Bombay in CIT v. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)] and the High Court of Gujarat in CIT v. Minalben S. Parikh [(1995) 215 ITR 81 (Guj)) treated loss of tax as prejudicial to the interests of the Revenue. The High Court of Madras in Venkatakrishna Rice Co. v. CIT [(1987) 163 ITR 129 (Mad)] interpreting "prejudicial to the interests of the Revenue". The High Court held:*
>
> > *"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income-tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration."*

6.2 It is pertinent to mention that the Hon'ble SC in the case of CIT Vs Paville Projects P Ltd(2023) 149 taxmann 115(SC) held that the scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the Income-tax Officer, the Revenue islosing tax lawfully payable by a person, it will certainly be prejudicial to the interests of t Revenue.

6.3 Therefore, considering the facts, the judicial pronouncements, it is held that the ord passed u/s 143(3) r.w.s. 1448 of the Act dated 06.09.2022 is erroneous so far as it prejudicial to the interests of revenue.

6.4 The assessee has mainly contended that there is no reference regarding inadmissibility or restriction for claiming deduction under section 80G for any donation made which qualifies as CSR expenditure.

6.5 In none of the asseessee's submission before the assessing officer also, the assessee made any reference to this issue and argued that the donations being part of CSR expenditure are still eligible for deduction u/s 80G. So, it cannot be inferred that the assessing officer has applied his mind on this aspect. In any case, the assessing officer's failure to consider this issue despite it being in contravention of the provisions of the Act in view of the Explanation 2 to section 37(1) read with Explanatory notes to the Finance Bill 2014, caused erroneous allowance of deduction u/s 80G and made the order prejudicial to the interests of revenue.

6.6 It is important to note that CSR expenditure has to be mandatorily incurred by certain specified companies as per provisions of Section 135 of the Companies Act. It is a statutory obligation cast upon certain companies to share certain portion of profits to the activities towards social responsibilities. In other words, it is part of profit appropriation to the society at large which, in the new scenario of CSR regime, is one of the strategic stake holders of the company. It is for this reason that this expenditure was clarified to be an expenditure not incurred fully and wholly for the purpose of business through Explanation (2) u/s 37 (1) of the Act

6.7 In this connection it is relevant to reproduce the provisions of the section 37 of the income-tax Act and section 135(5) of the Companies Act, 2013.

Section 37 of the Income-tax Act, 1961 reads as under: -

"Any expenditure (not being expenditure of the nature described in section 30 to 36 and not being in the nature of capital expenditure or personal expenditure of the assessee) laid out for or expended wholly and exclusively for the purpose of the business or Profession shall be allowed in computing the Income chargeable under the head Profit and gains of business and Profession:

Explanation2: For the removal of doubts, it is hereby declared that for the purpose of sub section (1) any expenditure incurred by an assessee on the activities relating to the corporate social responsibilities 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 purpose of the business or profession."

Section 135(5) of the Company Act 2013 reads as under: -

"The Board of every Company referred to in Sub section (1) shall ensure that company spends, in every financial year, atleast 2% of the average net profit of the company made during the three immediately preceding financial years or where the company has not completed three financial years. Since its incorporation, during such immediately preceding financial years, in pursuance of its CSR Policies."

6.8 The legislative intent of introduction of this Explanation is elaborated in the Explanatory Notes to the Finance Bill2014which is reproduced below:

"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 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."

6.9 As may be seen, it is made clear at the beginning itself that it is an application of income. Though called as expenditure, as it being an

outflow for the company, it is strictly not an expenditure. Therefore, no deduction what so ever can be allowed for appropriation of profits. It is trite law that what cannot be allowed in view of specific provisions cannot be allowed indirectly unless specifically provided in the Act, thereby defeating the purpose of the section. The other argument that only two funds mentioned in section 80G to which donations given as part of CSR expenditure are not eligible, is also not tenable. It does not imply that donations to other funds towards CSR are eligible for deduction. Further, it is to be noted that in the orders relied upon by the assessee there is no discussion on the Explanatory Notes to the Finance Bill2014, wherein reference was made to the CSR expenditure as application of income and the same was not explicitly considered.

6.10 Further, on the same issue, the Department has preferred appeals before the Hon'ble High Court against the orders of the Hon'ble ITAT. In some of the cases where the Department has preferred appeals before the Hon'ble High Court are enumerated as below

Sr. No	*Name of the Case*	*PAN*	*ITAT Order No.*	*High Court Lodging No.*
1.	*Blue Cross Laboratories Pvt. Ltd*	*AAACB1549G*	*1806/Mum/2023*	*ITXAL/30782/2024*
2.	*Worley Services Industries Pvt. Ltd.*	*AAACH0456J*	*554/Mum/2024*	*ITXAL/4392/2025*

6.11 From the above, it is clear that the assessee has made CSR expenses to the extent of Rs.61,00,000/- and disallowed the same in the computation of income u/s 37(1) of the Act.Further, the assessee has claimed an amount of Rs.29,00,000/- in the guise of donation and claimed deduction u/s. 80G on it. Though, it is a disallowable expenditure, the assessee company claimed the same as a deduction u/s 80G and the FAO in the order under section 143(3) r.w.s. 144B of the Act dated 06.09.2022 has allowed it. Therefore, the order of the FAO passed u/s. 143(3) r.w.s 144B of the Act dated 06.09.2022, is erroneous in so far as it is prejudicial to the interest of the revenue.

7. In light of the above discussions, the arguments of the assessee are not tenable and the order u/s 143(3) r.w.s. 144B of the Act dated 06.09.2022 is set aside u/s 263 of the Act and AO is directed to disallow the deduction u/s.80G of the Act in respect of donation claimed out of CSR expenditure after due verification and giving opportunity of being heard to the assessee."

Aggrieved by the order of the Ld.PCIT the assessee is in appeal before this *Tribunal.*

5. The Ld.AR submitted that, both the issues raised in the present appeal are in respect of whether the assessment order passed on 06/09/2022 was erroneous in so far as prejudicial to the interest of the revenue as the Ld.AO allowed the claim of the assessee u/s.80G amounting to Rs.29,00,000/- that form part of CSR expenses. The Ld.AR submitted that, assessee had debited Rs.61,00,000/-as expenditure on CSR activities in its profit and loss account. The same amount was added back while computing taxable income as the same was not allowable u/s. 37(1) of the Act. However, the assessee claimed Rs.31,50,000/- out of the CSR Expenditure, as deduction u/s.80G of the Income Tax Act. Further, in the computation of income the assessee has added back an amount of Rs.2,50,000/- towards donations. Hence, deduction u/s. 80G of the Act was claimed at Rs.29,00,000/-, which was out of the CSR expenditure.

5.1 Ld.AR submitted that, the documents evidencing the genuiness of donation being the bank statement reflecting the payment and certificate under 80G were filed before the Ld.PCIT. He also placed reliance on circular no. 1/2016 dated 12/01/2016 being the frequently asked question(FAQ) issued by Ministry of Corporate Affairs (MCA) that clarifies 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"

5.2 The Ld.AR vehemently relied on the decision of coordinate bench of this *Tribunal* in case of *Sir Dorabji Tata Trust Vs. DCIT reported in (2020) 122 taxmann.com 274*had considered a similar issue wherein the scope of section 263 was analysed.

5.3 The Ld.AR submitted that, the assessing officer was under mandate to verify the issue pertaining to unsecured loans though the case of assessee was selected for complete scrutiny. He placed reliance on the notice issued u/s.143(2) of the Act at page 50-51 of the paper book. Referring to page 61-62 the Ld.AR submitted that, questioner issued along with notice u/s.142(1), following details were sought.

ANNEXURE

In connection with the ongoing scrutiny assessment in your case for the Assessment year:2020-21, you are requested to furnish the below specified details:-

1. Detailed note on nature of business activities carried out during the year as well as during last three years.
2. Detailed statement of computation of total income for the financial year:2019-20.
3. With respect to the unsecured loan kindly submit the below specified details:
   a) Business purpose for which each of the loans were taken and income earned by utilization of funds.
   c) Provide documentary evidence to substantiate the identity of the lenders and ITR of last 3 years of the lenders to substantiate the creditworthiness of the lenders.
   d) Kindly provide documentary evidence to substantiate the genuineness of the above specified transaction.
   e) Kindly provide the bank statements highlighting the loan transactions including acceptance and repayment during the year and also interest payment during the year.
   f) Copy of the confirmation in respect of claim of unsecured loan from Cheay Investments Pvt. Ltd.

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi

5.4. Further the assessment order also acknowledges the fact that the assessment was picked up for complete scrutiny only to verify large squared up loans during the year. He placed reliance on the following observations on coordinate bench of this *Tribunal* in case of *Sir Dorabji Tata Trust (supra).*

> *18. We find that the case of the Commissioner hinges on, what he perceives as, lack of inquiry, the inadequacy of inquiry, or taking up the pertinent line of inquiry but not following it to its logical conclusion. Learned Departmental Representative has also been very gracious to submit that none doubts the philanthropic work being done by the assessee trust but the short question before us really is whether or not the due verifications have been carried out by the Assessing Officer. The stand of the learned Commissioner has simply been reiterated by the Departmental Representative, and a lot of emphasis is placed on the fact in the light of Explanation 2 to Section 263 once Commissioner is of the view, as he has been on the facts of this case, that "the order is passed without making inquiries or verification which should have been made", the order is required to be treated as erroneous and prejudicial to the interest of the revenue. Therefore, we must examine the nature of*

inquiries conducted by the Assessing Officer and whether these inquiries were so deficient as to render the order 'erroneous and prejudicial to the interests of the revenue', within meanings of that expression assigned under section 263.

19. The question that we also need to address is as to what is the nature of scope of the provisions of Explanation 2(a) to Section 263 to the effect that an order is deemed to be "erroneous and prejudicial to the interests of the revenue" when Commissioner is of the view that "the order is passed without making inquiries or verification which should have been made".

20. Undoubtedly, the expression used in Explanation 2 to Section 263 is "when Commissioner is of the view," but that does not mean that the view so formed by the Commissioner is not subject to any judicial scrutiny or that such a view being formed is at the unfettered discretion of the Commissioner. The formation of his view has to be in a reasonable manner, it must stand the test of judicial scrutiny, and it must have, at its foundation, the inquiries, and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be. If we are to proceed on the basis, as is being urged by the learned Departmental Representative and as is canvassed in the impugned order, that once Commissioner records his view that the order is passed without making inquiries or verifications which should have been made, we cannot question such a view and we must uphold the validity of revision order, for the recording of that view alone, it would result in a situation that the Commissioner can de facto exercise unfettered powers to subject any order to revision proceedings. To exercise such a revision power, if that proposition is to be upheld, will mean that virtually any order can be subjected to revision proceedings; all that will be necessary is the recording of the Commissioner's view that "the order is passed without making inquiries or verification which should have been made". Such an approach will be clearly incongruous. The legal position is fairly well settled that when a public authority has the power to do something in aid of enforcement of a right of a citizen, it is imperative upon him to exercise such powers when circumstances so justify or warrant. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise a power which is invested in aid of enforcement of a right—public or private—of a citizen. [L Hirday Narain v. ITO [1970] 78 ITR 26 (SC). As a corollary to this legal position, when a public authority has the powers to do something against any person, such an authority cannot exercise that power unless it is demonstrated that the circumstances so justify or warrant. In a democratic welfare state, all the powers vested in the public authorities are for the good of society. A fortiorari, neither can a public authority decline to exercise the powers, to help anyone, when circumstances so justify or warrant, nor can a public authority exercise the powers, to the detriment of anyone, unless circumstances so justify or warrant. What essentially follows is that unless the Assessing

Officer does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be, Commissioner cannot legitimately form the view that "the order is passed without making inquiries or verification which should have been made". The true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing Officer is expected to be.

21. That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 "it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills [(1896) 2 Ch 279,], in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read

Assessing Officer in the present context) "is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound.". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bona fide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bona fide, and as long as the path adopted by the Assessing Officer is taken bona fide and he has adopted a course permissible in law, he cannot be faulted-which is a sine qua non for invoking the powers under section 263. In the case of Malabar Industrial Co Ltd. v. CIT [2000] 109 Taxman 66/243 ITR 83, Hon'ble Supreme Court has held that "Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bona fide in a real-life situation. It is also important to bear in mind the fact that lack of bona fides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances. On a similar note, a co-ordinate bench of the Tribunal, in the case of Narayan Tata Rane v. ITO [2016] 70 taxmann.com 227 (Mum.) has observed as follows:

> *"20. Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld. Pr. CIT cannot*

be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-a-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have claimed out or not. It does not authorise or give unfettered powers to the Ld. Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made."

22. Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under section 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. There can be three mutually exclusive situations with regard to exercise of powers under section 263, read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications. The first situation could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under section 263, the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. The second category of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in the exercise of his powers under section 263, can set aside an order, for lack of proper inquiry or verification, and ask the Assessing Officer to conduct such inquiries or verifications afresh.

5.5. The Ld.AR thus submitted that, the view adopted by the Ld.AO in respect of deduction claim u/s.80G is plausible view and the assessing officer was not required to verify anything and the were mentioned u/s.143(2) notice. He thus submitted that the assessment order thus passed cannot be treated to be erroneous in so far as prejudice to the interest of the revenue to fall within the ambit of section 263 of the Act.

5.6. The Ld.AR also placed reliance on the memorandum to the finance (no. 2) bill, 2014 pertaining to the corporation social responsibility that reads as under :

> *"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 spendcertain 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. 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.*
>
> *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 anapplication 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 Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

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

5.7. He thus submitted that, it is all by virtue of this amendment that explanation to section 37(1) inserted was as to clarify the purpose of section 37(1) that expenditure incurred by an assessee for activities relating to CSR referred in section 145 of the Companies Act 2013, shall not to be deemed to be a expenditure incurred for the purpose of its business or profession. He thus submitted that, the CSR expenditure is therefore to be disallowed under the Explanation 2 to section 37(1) while computing income under the head income from business profession. He thus submitted that the memorandum clarifies the impact of Explanation 2 to 37(1), wherein the legislature clearly indicated its mind regarding allowablity of deduction under those sections subject to fulfilment of conditions if any specified therein.

5.8. The Ld.AR submitted that, even though the expenditure under the head CSR is disallowed u/s. 37(1), there is no such embargo to consider if the same is allowable u/s.80G of the Act. He submitted that, if the assessee is denied this benefit merely because such payment formed part of CSR expenditure, would

lead to double disallowance which is not the intention of legislature.

5.9. The Ld.AR thus submitted that, on merits also the claim of the assessee is allowable and therefore there is no loss of revenue to the department in order to justify the initiation of 263 proceeding merely because the assessing officer did not carried out any investigation on this issue.

5.10. On the contrary, the Ld.DR vehemently supported the order passed by the Ld.PCIT. He also placed reliance on the decision of *Hon'ble Delhi Tribunal* in case of *Agilent Technology (international)Pvt. Ltd. vs. ACIT* reported in*(2024) 160 taxmann.com 238.* He submitted that, the test of voluntariness is not satisfied in respect of the expenditure incurred under CSR. He submitted that, under 80G the claim of deduction is assuming the character of donation and the thus any payment made voluntarily can only be considered for deduction u/s.80G subject to the necessary conditions being satisfy therein. He emphasis that, the payment made under CSR lacks the character of it be a donation and therefore cannot be considered for deduction u/s.80G of the Act.

5.11. In the counter to the above agreement of the Ld.DR, the Ld.AR placed reliance on a recent decision of coordinate bench of this *Tribunal* in case of *ACIT vs. Sikka Port and Terminal Ltd. reported in (2025) 173 taxmann.com 366*. He submitted that, the decision relied by the Ld.DR has been distinguished by observing as under :

"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 v. 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"

We have perused the submissions the advance by both sides in the light of record placed before us.

6. The limited issue for consideration is, whether the assessment order passed by the Ld.AO without verifying the claim of deduction u/s.80G leads the assessment order to be erroneous in so far as prejudicial to the interest of the revenue.

6.1. Admittedly notice u/s.143(2) was issued to the assessee to verify large squared up loans during the year, the notice though considers only one issue was issued for complete scrutiny scanned copy of the notice issued u/s.143(2) is as under :

Notice under section 143(2) of the Income-tax Act, 1961

PAN: AAACB2156M JA777740872IN

Name: B ARUNKUMAR CAPITAL & CREDIT SERVICES PVT LTD

Address: 154/C MITTAL COURT , VIDHAN BHAVAN MARG NARIMAN POINT MUMBAI 400021 , Maharashtra

DIN: ITBA/AST/S/143(2)/2021-22/1033795303(1)
Date: 29/06/2021
Assessment Year: 2020-21
Financial Year: 2019-20

आपको यह संचार क्यों मिल रहा है?
Why are you getting this communication?

प्रिय करदाता,
Dear Taxpayer,
प्रारम्भ में

आयकर विभाग आपके द्वारा निर्धारण वर्ष 2020-21 के लिए दिनांक 01/02/2021 को पावती संख्या 236086711010221 के तहत आयकर विवरणी दाखिल करने पर, देश के विकास में आपके योगदान की सराहना करता है।

The Income Tax Department appreciates your contribution towards development of the Nation by filing of your return of income for the Assessment Year 2020-21 vide Ack. no. 236086711010221 on 01/02/2021.

विवरणिका को तैयार करने में आपकी सावधानी को स्वीकार करते हुए, कुछ मुद्दों पर और स्पष्टीकरण की आवश्यकता है, जिनके कारण आपकी आय विवरणिका को सम्पूर्ण संवीक्षा (जाँच) के लिए चुना गया है।

While acknowledging the care you may have taken in preparing the return of income, there are certain issues, on which further clarification is required, therefore, return of income has been selected for **complete scrutiny**.

किन मुद्दों पर प्रारम्भ में और स्पष्टीकरण की आवश्यकता है?
What is/are the Issue(s) on which further clarification is required initially ?

S No	Issue
i.	Unsecured Loans

चूंकि यह सम्पूर्ण संवीक्षा है, निर्धारण प्रक्रिया के दौरान और प्रश्न किए जा सकते हैं।
Since it is a complete scrutiny, further queries may arise during the course of assessment proceedings.

आपको क्या करने की आवश्यकता है?
What you need to do?

आप ई-फाइलिंग वेबसाइट (www.incometax.gov.in) में इलेक्ट्रॉनिक रूप से अपने खाते के माध्यम से 'ई–प्रोसीडिंग्स' की सुविधा का उपयोग करके, नोटिस प्राप्त होने की तारीख से 15(पन्द्रह) दिनों के भीतर अपनी सुविधानुसार –
(i) कोई भी साक्ष्य जिस पर आप अपनी आयकर विवरणी के समर्थन में निर्भर करते हैं।
(ii) उपरोक्त मुद्दे/मुद्दों पर आपका उत्तर।
प्रस्तुत कर सकते हैं या करवा सकते हैं।

You may submit or cause to submit:
(i) Any evidence on which you may rely in support of your return of income;
(ii) Reply to the above-mentioned issue(s);
electronically in 'e-Proceedings' facility through your account in e-Filing website (www.incometax.gov.in) at your convenience **within 15 (fifteen) days from the date of receipt of the notice**.

चूंकि यह एक सम्पूर्ण संवीक्षा कार्यवाही है, आपको उपरोक्त संदर्भित मुद्दों एवं विचाराधीन निर्धारण वर्ष के दौरान आपके द्वारा किए गये विभिन्न वित्तीय लेन-देन से संबन्धित सारी जानकारियाँ, दस्तावेज, साक्ष्य इत्यादि एकत्र करने की सलाह दी जाती है। विस्तृत प्रश्नावली या संचार, निर्धारण प्रक्रिया के दौरान जारी किया जा सकता है। जब भी आपको प्रश्नावली या संचार जारी किया जाता है, आपको निर्दिष्ट समयावधि में बिन्दुवार प्रतिक्रिया देने की आवश्यकता है।

Since it is a complete scrutiny proceeding, it is advised that you should gather all the information, documents, evidences, etc. related to the above referred issues and in respect of various financial transactions you have entered during the Assessment Year under consideration, which may be relevant for the scrutiny proceedings. Detailed questionnaire(s) or communication may be issued during the course of assessment proceedings. As and when questionnaire(s) or communication is issued, you are required to provide specific point wise response within the time specified.

कार्यवाही का तरीका क्या होगा?
What will be the mode of proceedings?

कार्यवाही आपके ई-फाइलिंग वेबसाइट (www.incometax.gov.in) में खाते के माध्यम से 'ई-प्रोसीडिंग्स' सुविधा के द्वारा इलेक्ट्रॉनिक रूप से की जाएगी। 'ई-प्रोसीडिंग्स' एवं 'पहचान विहीन निर्धारण' पर एक संक्षिप्त टिप्पणी आपके सन्दर्भ के लिए संलगित है।
The proceedings will be conducted electronically in 'e-Proceedings' facility through your account in e-Filing website (www.incometax.gov.in). A brief note on 'e-Proceedings' and a brief note on 'Faceless Assessment' are enclosed for kind reference.

Enclosure: As Above

With Regards.

Yours faithfully,

Asstt.Commissioner of Income Tax, NaFAC-1(1)(2), Delhi

आयकर अधिनियम 1961 की धारा 143(2) केअधीन विहित आयकर प्राधिकारी

Prescribed Income-tax Authority u/s 143(2) of the Income Tax Act, 1961

"

6.2. Undoubtedly the assessing officer has broad powers u/s.143(2) when it is a complete scrutiny. The notice issued under 143(2) was for complete scrutiny and further clarification was called for in respect of unsecured loans only. However, during the assessment proceedings the assessing officer limited the scrutiny to issue relating to unsecured loans. There is nothing on record to suggest that, details relating to other issues were even called for and verified by the Ld.AO. It is noted that, the questioner issued by the assessing officer though called for all the information pertaining to computation of income, has only verified unsecured loans during the financial year relevant to assessment year under consideration.

263. Revision of orders prejudicial to revenue.

(1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including,—
(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment;
or
(ii) an order modifying the order under section 92CA; or

(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section.
*****
Explanation 2.— For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—
(a) the order is passed without making inquiries or verification which should have been made;

(b)the order is passed allowing any relief without inquiring into the claim;
(c)the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
(d)the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

(Emphasis added)

6.3. Therefore, while deciding the question as to whether or not the jurisdiction was rightly exercised by the Ld.PCIT under Section 263 of the Act, we would have to take into consideration the provisions of Section 263 of the Act, sans Explanation 2 (inserted by Finance Act 2015 w.e.f. 1/04/2015) that elucidated the circumstances when an assessment order can be held to be erroneous and prejudicial to the interests of the Revenue.

6.4. We also note that even before the said amendment, it stipulated the mandatory requirement of the order being "erroneous" as well as "prejudicial to the interests of the Revenue". Therefore, what manifests from the above is the fact that, the twin conditions have to be met before assuming jurisdiction under Section 263 of the Act, and the PCIT has to form an opinion that the order passed by the assessing officer is "erroneous" and "prejudicial to the interests of the Revenue".

6.5. We also note that prior to the amendment, the scope of these words were explained by the *Hon'ble Supreme Court.* We refer to the decision of *Malabar Industrial Co. Ltd. Vs. CIT* reported in *(2000) 243 ITR 83 Hon'ble Supreme Court inter alia* laid down that, the prerequisite for exercise of jurisdiction by the Ld.PCIT under section 263 is that, the order of the assessing officer must

be erroneous in so far as it is prejudicial to the interests of Revenue. The PCIT thus has to satisfy twin conditions, namely :

(a) The order of the assessing officer sought to be revised is erroneous, and

(b) It is prejudicial to the interests of the Revenue.

6.6. *Hon'ble Supreme Court* held that, if one of them is absent i.e; if the order of the assessing officer is erroneous, but is not prejudicial to the revenue, or, if it is not erroneous, but is prejudicial to the interest of the revenue, recourse cannot be had to section 263(1) of the Act. *Hon'ble Supreme Court* further held that:

> *9. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC).*

6.7. Thus the Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in respect of a return which is picked up for complete scrutiny. The assessing officer must ascertain the truth of the facts stated in the return. It is in this context that *Hon'ble Supreme Court* assigns such meaning to the word "erroneous" for the purposes of section 263.

In present facts of the case, the return was picked up for complete scrutiny, as per the notice issued under section 143(2). It is thus incumbent on the assessing Officer to investigate the facts stated in the return, and circumstances would make prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because no inquiry was made, and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.

6.8. Now the question arises is whether the assessing officer still applied his mind on the issue of deduction claimed by the assessee under section 80G of the Act. Admittedly, the Ld.AO did not issue any specific query regarding the deduction claimed by the assessee. The details filed by the assessee was not verified by the Ld.AO. Further, it cannot be lost out of mind that, the notice issued under section 143(2) of the act was for a complete scrutiny. The Ld.AO was under the mandate to verify every claim made in the return of income. Thus the test under *Explanation 2(a)* to section 263 of the Act needs to be invoked.

6.9. The Ld.AR vehemently relied on the decision of coordinate bench of this *Tribunal* in case of *Sir Dorabji Tata Trust Vs. DCIT (supra).* We refer to specific observation in para 20 &22. At the cost of repetition, the same is reproduced herein below:

> 20.....*What essentially follows is that unless the Assessing Officer does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be, Commissioner cannot legitimately form the view that "the order is*

passed without making inquiries or verification which should have been made". The true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing Officer is expected to be.

…….

22. Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under section 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications.. …….

(Emphasis supplied)

Coordinate bench of this *Tribunal* in the above case also held similarly as observed by various decisions of *Hon'ble Supreme Court*, including *Malabar Industrial Co. Ltd. Vs. CIT (supra)*.

6.10. Considering the totality of the facts and the decisions relied by both sides as discussed herein above, we concur with the invoking provisions of section 263by the Ld.PCIT as the assessing officer failed to carry out any inquiry, failed to apply his mind while passing the assessment order in respect of the deduction claimed under section 80 G of the Act.

Accordingly the ground 1 raised by the assessee stands partly dismissed.

7. On the issue of the allowability of deduction under section 80G of the Act out of the CSR spending, the Ld.PCIT during the revisionary proceeding had sufficient documents to conclude that the proceedings should be dropped. Section 263 is not enacted to facilitate a mere escape of revenue, which is addressed in other

provisions of the Act. The prejudice contemplated under section 263 is the prejudice to the income-tax administration as a whole. Section 263 should be proceeded not as a jurisdictional corrective or as a review of a subordinate's order in exercising supervisory power, but for correcting distortions and prejudices to the revenue. This is a unique concept that must be understood in the context of and in the interests of the revenue administration.

7.1. The Ld.DR relied on the decision of *Hon'ble Delhi Tribunal* in case of *Agilent Technology (international) Pvt. Ltd. vs. ACIT(supra)* and submitted that no deduction is allowable under section 80G on the amount incurred for the purposes of CSR. He submitted that the assessment order was prejudicial, and the order passed under section 263 corrected such prejudice caused to the Revenue administration.

7.2. We note that the decision of *Hon'ble Bangalore Tribunal* relied by the Ld.AR in case of *First American (India) Pvt. Ltd. v. ACIT* in *ITA No. 1762 of 2019, vide order dated 29.04.2020* dealt with the applicability of section 80G by observing as under:

> *11. 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 sub- section (1) of section 37, so as to clarify that for purposes of sub- section (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.*
> *12. This amendment will take effect from 1/04/2015 and will, accordingly, apply to assessment year 2015-16 and subsequent years.*
> *13. 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."
14. 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.
15. 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.
16. 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".
17. 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.
18. We therefore do not agree with arguments advanced by Ld.Sr.DR.
19. 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.

7.3. The above decision analyses the ambit of exemption available under section 80G of the Income Tax Act and the

specific exceptions in respect of payments forming part of CSR (Corporate Social Responsibility) expenditure, on which deduction is **not** available under the said section. Accordingly, in respect of all other payments, deduction under section 80G **cannot be denied merely on the ground that such payments form part of CSR spending**.

7.4. It is important to note that payments forming part of CSR do not form part of the profit and loss account for the purpose of computing income under the head *"Profits and Gains of Business or Profession."* However, if certain payments that form part of CSR expenditure are otherwise eligible under section 80G, the deduction under section 80G cannot be denied, since the benefit under Chapter VI-A is available for the purpose of computing *"Total Taxable Income."*

7.5. Similar is the view taken by coordinate bench of this *Tribunal* in case of *ACIT vs. Sikka Ports and Terminals Ltd(supra)*and all subsequent decisions referred to therein. In the said decision, this *Tribunal* dealt with the term "donation" that is not defined under the Act, by observing as under:

> *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 ld DR on the decision of Agilent Technologies (International) (P.) 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 Dy. CIT v. Hindustan Dorr Oliver Ltd [1994] 48 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.

Applying the above observations and discussions to the present facts, there is nothing on record to conclude the intention behind the donation was material return or that the donation was a *quid pro qo.* Thus, in our view, the order passed under section 263 cannot be sustained as the provisions of the Act allow the assessee to claim deduction under section 80G.

Accordingly the ground 2 raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 25/07/2025

Sd/-	**Sd/-**
(OMKARESHWAR CHIDARA)	**(BEENA PILLAI)**
Accountant Member	**Judicial Member**

Mumbai:
Dated: 25/07/2025
Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy

By order

(Asstt.Registrar)
ITAT, Mumbai