IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "C", MUMBAI

BEFORE SHRIOM PRAKASH KANT, ACCOUNTANT MEMBER

&

SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 2985/MUM/2025(A.Y: 2020-21)

M/s. Pashupati Capital Services Pvt. Ltd. 806, DLH Park NR. MTNL Tele, SV Road, Goregaon West, Maharashtra-400 104 **PAN: AACCP0795J**	*Vs.*	**PCIT, Mumbai-4,** R. No. 629, 6th floor,Aayakar Bhavan, M. K. Road, Mumbai-400 020
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Ms. Vinita Shah, Ld. AR**
Department Represented by	**:**	**Shri R. A. Dhyani, Ld. DR**
Date of conclusion of Hearing	**:**	**24.06.2025**
Date of Pronouncement	**:**	**31.07.2025**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 21.03.2025of Learned Principal Commissioner of Income Tax, Mumbai[hereinafter referred to as the "*PCIT*"],passed under section 263 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] for the A.Y.

2020-21 wherein Ld. PCIT set aside the order dated 19.09.2022 of AO and directed to enquire the claim of section 80G deduction out of CSR expenses and modify the assessment order as per findings given by the Ld. PCIT.

2. The brief facts of the case are that, the assesseeis a share broking company and engaged in the business of sale purchase of securities and future and option transactions in shares in both the exchanges viz BSE and NSE. Theassessee filed the return of income for the assessment year 2020-21 on 22.01.2021 showing a total income at Rs. 52,95,84,170/-. The case was selected for Scrutiny through CASS. The assessee has claimed large refund out of self assessment tax which was found unusual because self assessment tax should be paid after final assessment of income. It was further noticed that there is difference between the total expenditure of personal nature as per ITR (Schedule OI) and total expenditure of personal nature as per Form 3CD. Correctness of income and the source of income therein was required to be verified and assessee has claimed large refund claimed out of overall TDS which was also required to be verified whether the taxable income has been disclosed correctly.

3. Statutory notice u/s 143(2) was issued on 29.06.2021 andassessee submitted his reply alongwithComputation of Income, Balance Sheet and P & L Account, Tax Audit Report and Statutory Audit Report. Subsequently, a notice u/s 142(1) along with questionnaire was issued on 06.09.2022. The assessee replied to the said notice on 13.09.2022. The AO was satisfied with the reply of assessee and accordingly completed the assessment u/s 143(3) and 144B of the Act and accepted the return income at Rs. 52,95,84,170/-.

4. Ld. PCIT has proceeded to examine the matter u/s 263 of the Act and observed that assessee has debited an amount of Rs. 71 lakhs towards CSR expenses which was added back in the computation of total income as disallowable. On perusal of the ITR, it is seen that CSR payments have been claimed as deduction u/s.80G of the I.T. Act to the tune of Rs.36,23,500/-. Ld. PCIT was of the view that the amounts spent on CSR activities even though is contributed to the areas where 80G deduction is available but the same lacks voluntarily character and partakes the nature of an obligation to be fulfilled as a necessary requirement in accordance with Section 135 of the Companies Act 2013. Ld. PCIT was therefore of the view that the Assessment Order passed by the AO to that extent suffers from infirmity and is erroneous in so far as is also prejudicial to the interests of the

revenue. Accordingly, notice u/s. 263 of the Act dated 14/02/2025 was issued.

5. In response to the said notice, assesseeclaimed that the deduction u/s 80G for making donations to charitable organizations is contained in Chapter VI-A of the Act whereas the income under the head 'income from business' is computed u/s. 28 to 44 of the Act which falls under Chapter IV and the only Explanation 2 to section 37 prohibits the allowance of CSR expenditure as business expenditure. This scope of the restriction imposed in section 37 does not extend to Chapter VI-A of the Act which is independent of section 37 of the Act. It is further claimed by the assessee that CSR expenditure is eligible for deduction under section 80G of the Act even if the expenditure was disallowed under section 37(1) by virtue of Explanation 2 of Section 37 of the Act as the deduction u/s 80G is available from the gross total income of the assessee which is the aggregate of all heads of income in contrast to section 37 which is applicable for computing the income under the head 'business income' only. In support of his contentions, the assessee has relied various cases before the Ld. PCIT as mentioned in the impugned order.

6. However, the Ld. PCIT was of the view that section 263 of the Act can be resorted to in the case of incorrect assumption of facts as well as incorrect interpretation of law. Ld. PCIT further observed that in this case, there is no query put with regards to CSR expenses eligible for deduction under section 80G of the Act and hence, there is incorrect assumption of facts as regards CSR expenses eligible for section 80G deductions. Therefore, these incorrect assumptions of fact has led to incorrect application of law. Hence, the revisionary power u/s. 263 of the Act lies with the PCIT in these facts of the case, therefore restored the case to the file of AO to pass a modified order because the expenses under CSR head is part of mandatory compliance under the provisions of Companies Act and apparently the AO had no occasion to examine the issue of CSR expenses vis-a-vis section 80G donations. Ld. PCIT observed that the assessment order suffers from infirmity being erroneous and also prejudicial to the interest of revenue for allowing ineligible claim of deduction of Rs.36,23,500/- u/s. 80G of the Act.

7. Aggrieved with the order of Ld. PCIT,assessee preferred the present appeal before us raising the following grounds:

1. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) has erred in initiating proceedings U/s 263 of the Income Tax Act, 1961 (the Act) vide show-cause notice dated 14.02.2025 and passing an order U/s 263 of the Act, without considering the facts & Circumstances of the case.

2. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in passing Revision Order u/s.263 of the Income Tax Act, 1961 for the assessment order u/s.143(3) of the Act, 1961, passed by the Learned Assessing Officer after making adequate enquiries and application of mind, without considering the facts and circumstances of the case.

3.On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in considering the order passed u/s.143(3) of the Income Tax Act, 1961 by the Learned Assessing officer as erroneous and prejudicial to the interest of the revenue, without appreciating the facts and circumstances of the case.

4.On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in partly setting aside Assessment order passed by the Learned Assessing Officer and directing him to modify the assessment order, without considering the facts and circumstances of the case.

5.On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in directing the Learned Assessing Officer to make enquiries about the claim of section 80G deduction out of CSR expenses without considering the facts and circumstances of the case.

6. The appellant craves leave to add, amend, alter or delete the said ground of appeal.

8. To summarize the grounds, the following points for determination arise asunder:-

i) Whether the assessee is legally entitled to allow a sum of Rs. 36,23,500/- as deduction u/s 80G of the Act out of the amount of Rs. 71,00,000/- spend towards CSR?

ii) Whether the order of the Ld. AO is erroneous or prejudicial to the interest of revenue, if so it affects?

9. We have heard Ld. AR who has submitted that the reasons given by Ld. PCIT for setting aside the order of AO were incorrect and contrary to the facts and settled legal principle laid down by various ITAT Tribunal including Jurisdictional Tribunal. Ld. AR has filed written submissions and on perusal of the same, it is noticed that Ld. AR has relied on various cases of Mumbai Tribunal in support of his arguments that the expenditure towards CSR are allowable deduction u/s 80G of the Act. In that regard, Ld. AR referred the decision of Mumbai Tribunal in the case of AluboundDacs (India) Pvt. Ltd. vs. DCIT,(2024) 163 taxmann.com 536 (Mum Trib.) and FDC Ltd. Vs. PCIT, 157 taxmann.com 387 (Mum. Trib.). In addition to that, Ld. AR also referred the following case laws:-

i) ITA No. 1906/Mum/2019 order dated 30.07.2019 (Mumbai Tribunal)

ii) ITA No. 3035/Mum/2025 order dated 27.06.2025 (Mumbai Tribunal)

10. Ld. AR further raised another argument as per his written submission that the AO has carried out limited scrutiny under CASS and there are various circulars of CBDT which provide that when there is limited scrutiny on specified issues, it is not open to the AO to travel beyond the reason for selection of the matter for limited scrutiny. It was further argued by Ld. AR that it is clear from the scrutiny assessment in this case that it was a limited scrutiny assessment on specified points, hence the CBDT Instruction No. 7/2014, 20/2015, 5/2016 and CBDT letter dated 30.11.2017 apply which mandates that the AO should not travel beyond the issues for which limited scrutiny assessment has been carried out. Ld. AR further argued that since the issue of allowance of CSR expenditure u/s 80G of the Act has already been settled by various Tribunals and it being a limited scrutiny assessment under CASS, therefore the AO has chosen not to conduct any enquiry on this issue and has rightly accepted the claim of the assessee in this regard and the assessment order was neither erroneous nor prejudicial to the

interest of revenue. Hence, setting aside the order of AO u/s 263 of the Act is beyond the jurisdiction of Ld. PCIT which is illegal as it has directed the AO to consider the CSR expenditure not allowable deduction u/s 80G of the Act. It is therefore argued that the impugned order is illegal and liable to be set aside.

11. Ld. DR on the other hand while supporting the order of Ld. PCIT has taken us to the notice u/s 142(1), 143(2) and other documents and submitted that as per income and loss determination proposal (ILDP) dated 13.12.2021, the case was selected for **complete scrutiny assessment** under CASS on the 4 grounds mentioned therein. Ld. DR referred to the statutory notice u/s 142(1) and also the assessment order where it is clearly stated that the case was selected for complete scrutiny, assessment under CASS on the following 4 issues mentioned in para 1 of the assessment order. It is therefore argued that it was not a limited scrutiny assessment but complete scrutiny assessment u/s 143(3) of the Act and notice u/s 142(1) and 142(2) shows that no question has been put by the AO with respect to CSR expenditure as allowable deduction u/s 80G of the Act. Hence the assessment order suffers from lack of enquiry and Explanation 2 of section 263 of the Act is attracted in the case of the

assessee and the jurisdiction of section 263 of the Act has been rightly exercised by the Ld. PCIT.

12. In order to appreciate the arguments advanced by the parties, we deem it expedient to extract the relevant provision of section 263(1) alongwith explanation 2 as under:-

> ***Section 263.****"(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."

13. We have considered the rival submissions and examined the material placed on record as well as judgments relied upon by the parties. The Hon'ble High Court of Bombay in *Commissioner of Income Tax Vs. Gabriel India Ltd. [1993] 71 Taxman 585 (Bombay) dated 15.04.1993*had the occasion to interpret Section 263(1) and elaborated the meaning of word erroneous and prejudicial to the interest of revenue. Para 13 of the said case is relevant and reproduced as under:-

13. We, therefore, hold that in order to exercise power under sub-section (1) of section 263 there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as it is prejudicial to the interests of the revenue. We have already held what is

erroneous. ***It must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the revenue. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision.*** *Exercise of power of suomotu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. Our aforesaid conclusion gets full support from a decision of Sabyasachi Mukharji, J. (as his Lordship then was) in Russell Properties (P.) Ltd. v. A. Chowdhury, Addl. CIT [1977] 109 ITR 229 (Cal.). In our opinion, any other view in the matter will amount to giving unbridled and arbitrary power to the revising authority to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. As already stated, it is a quasi-judicial power hedged in with limitation and has to be exercised subject to the same and within its scope and*

ambit. So far as calling for the records and examining the same is concerned, undoubtedly, it is an administrative act, but on examination 'to consider' or in other words, to form an opinion that the particular order is erroneous insofar as it is prejudicial to the interests of the revenue, is a quasi-judicial act because on this consideration or opinion the whole machinery of re-examination and reconsideration of an order of assessment, which has already been concluded and controversy which has been set at rest, is set again in motion. It is an important decision and the same cannot be based on the whims or caprice of the revising authority. There must be materials available from the records called for by the Commissioner."

14. Thus, to attract the explanation 2 of section 263 alongwith provision of section 263(1) of the Act, the twin conditions required to be fulfilled are (i) the assessment order is not in accordance with law or (ii) the same suffers from lack of enquiry. Ld. PCIT has concluded in para no. 4.7 and 4.8 of its order as to how the AO's order is erroneous and prejudicial to the interest of revenue and the said para is extracted below:-

"4.7 In the current case, it is important to note from the assessment order that the A.O has, nowhere in the assessment order, mentioned or discussed anything about the claim of expenses under CSR head vis-à-vis donations u/s. 80G. The appellant has referred to various court decisions to support its contention that there cannot be revision u/s 263 of the Act once the A.O has taken conscious decision after proper enquiry and no error in the assessment order can be pointed out. On this contention, I must reiterate that S. 263 can be

resorted to in the case of incorrect assumption of facts as well as incorrect interpretation of law. In the current case, there is no query regards CSR expenses eligible for s.80G of the Act and hence, there is incorrect assumption of facts as regards CSR expenses eligible for S.80G deductions. Further, incorrect assumption of facts led to incorrect application of law. Therefore, revisionary power u/s 263 lies with the PCIT in the current facts of the case.

4.8 In common parlance, donations are made without any expectation of reciprocal return or benefits in lieu of the same whereas the expenses made under CSR head are for the benefits in the form of mandatory compliance as per section 135 of the Companies Act. Thus, voluntariness is lacking in the expenses made under CSR head. In the decision by Supreme Court in the case of Commissioner of Expenditure Tax vs. PVG Raju Raja of Vizianagaram (supra), the Hon'ble Apex Court held that for any payment to constitute as donation, it must satisfy the test of voluntariness. The assessee, in the current case incurred expenses under CSR head as part of mandatory compliance of the provisions of Companies Act and this certainly lacked voluntariness character. Thus, it is apparent that the A.O had no occasion to examine the issue of CSR expenses vis-a-vis section 80G donations and to this extent, it can be held that the assessment order suffers from infirmity being erroneous and also prejudicial to the interest of revenue for allowing ineligible claim of deduction of Rs.36,23,500/- u/s. 80G of the Act. Hence, the assessment order dated 19/09/2022 is hereby partly set aside to the file of the AO to enquire the claim of Section 80G deduction out of CSR expenses and modify the assessment order as per findings in this order."

15. It is evident from the above extracts that Ld. PCIT has not considered any of the judgments referred and relied by the assessee despite the fact that the same constitute the part of reply of the assessee which has been

reproduced in the impugned order. It is noticed that Ld PCIT has justified the exercises of jurisdiction u/s 263 of the Act on the ground that the AO has done incorrect assumption of facts and also indulged in incorrect interpretation of law with respect to allowability of CSR expenditure as eligible deduction u/s 80G of the Act. Ld. PCIT has further observed that the CSR expenditure incurred by the assessee are part of mandatory compliance of the provisions of Companies Act and this certainly lacked voluntariness character. Ld. PCIT was of the opinion that since the CSR expenditure is not voluntarily paid and therefore cannot constitute as donation and consequently is not eligible u/s 80G of the Act. In view of these observations, Ld. PCIT partly set aside the assessement order and directed the AO to enquire the claim of Section 80G deductions out of CSR expenses and modify the assessment order as per findings of Ld. PCIT.

16. Now the question before this Tribunal is whether the AO is required to conduct an enquiry during the complete scrutiny assessment with regard to issue which is no more res integra and has been settled by various ITAT Tribunals including Jurisdictional Tribunal. The issue of allowability of CSR expenditure as eligible deduction u/s 80G of the Act is continuously settled by various Tribunal and the various judgment in this regard are

relied by the assessee in his reply to the notice u/s 263 of the Act and Ld. PCIT has simply stated nothing about those settled legal principles on the issue while setting aside the assessment order. When the issue of CSR expenditure as eligible deduction u/s 80G of the Act has already been settled by various Tribunal including Jurisdictional Tribunal in various case laws referred and relied by the assessee, we are of the considered opinion that there was no necessity for the AO to even consider it in the scrutiny assessment under CASS and for that reason, the AO has not enquired during the complete scrutiny assessment with respect to the CSR expenditure as eligible deduction because only the following four issues were raised in the complete scrutiny assessment as mentioned in para 1 of the assessment order:-

> *1. The assessee has claimed large refund out of self-assessment tax paid which is unusual as self-assessment tax is paid after final computation of income. It is required to be verified whether the taxable income has been disclosed correctly.*
>
> *ii. There is difference between the total expenditure of personal nature as per ITR (Sch. OI) and total expenditure of personal nature as per Form 3CD. The reason for the difference in the values of personal nature expenditure may be verified.*

iii. The assessee has done substantial transactions settled otherwise than by actual delivery or transfer. The correctness of income and source of investment therein may be verified

iv. The assessee has claimed large refund claimed out of overall TDS. It is required to be verified whether the taxable income has been disclosed correctly"

17. It is a settled law that any issue decided by ITAT or the Hon'ble High Court, is binding upon the assessing authorities and in that regard, we are supported bythe decision of the Hon'ble Allahabad High Court in***K. N. Agarwal Vs. Commissioner of Income Tax, order dated 11.01.1991, [1991] 189 ITR 769B (ALL)***which says, "*Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing Officer and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore it merely on the ground that the Tribunal's order is the subject-matter of revision in the High Court or that the High Court's decision is under appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases."*

18. In view of above findings of Hon'ble Allahabad High Court, we notice that once the issue of CSR expenditure as eligible deduction u/s 80G of the Act has already been settled by various Tribunal including Jurisdictional

Tribunal, the AO was bound by the said settled legal proposition and for that reason the Ld. AO has not put any query in the complete scrutiny assessment under CASS with regard to CSR expenditure claimed as deduction u/s 80G of the Act by the assessee.

19. Further, where the AO is satisfied that the assessee will not be aggrieved, he was not required to put questions in the statutory notice in that regard and to discuss the same in the assessment order. In this regard, the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Nirma Chemicals Works (P) Ltd (2009) 182 taxman 183 (Gujarat) can be relied with profit where it is held as under:-

> *"The contention on behalf of the revenue that the assessment order does not reflect any application of mind as to eligibility or otherwise under Section 80-I of the Act requires to be noted to be rejected. An assessment order cannot incorporate reasons for making/granting a claim of deduction. If it does so, an assessment order would cease to be an order and become an epic tome. The reasons are not far to seek. Firstly, it would cast an almost impossible burden on the Assessing Officer, considering the workload that he carries and the period of limitation within which an order is required to be made; and, Secondly, the order is an appealable order. An appeal lies, would be filed, only against disallowances which an assessee feels aggrieved with."*

20. Now we proceed to discuss some of the order of Jurisdictional Tribunal wherein the issue on CSR expenditure as eligible deduction u/s 80G of the Act has been decided in favour of the assessee as under:-

i) ITA No. 3663/Mum/2023, order dated 27.05.2024

"11. We have heard the rival submissions and perused the materials available on record. The only moot question to be decided here is whether the expenditure towards CSR activities are an allowable deduction u/s. 80G of the Act. The CSR expenses are governed by section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies (CSR) Policy Rules, 2014 where companies having net worth of Rs.500 crores or more or turnover of Rs.1000 crores or more or net profit of Rs.5 crores or more have to mandatorily comply with the CSR provisions specified u/s. 135(1) of the Companies Act, 2013. The above mentioned companies are liable to spend atleast 2% of its average net profit for the immediately preceding three financial years on CSR activities. In the present case, the assessee has contributed Rs.30 lacs to various educational and charitable trust for which the assessee has claimed 50% of the total donation paid as deduction u/s. 80G of the Act. Prior to the Finance (No.2) Act, 2014, the said expenditure was claimed as 'business expenditure' u/s. 37(1) of the Act where after the insertion of Explanation 2 to section 37(1) of the Act, the CSR expenses referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession. It is observed that the said expenses pertaining to CSR has been claimed as deduction u/s. 80G of the Act which claim was perennially rejected by the Revenue for the reason that only donations which are voluntary in nature will come under the purview of section 80G of the Act and donation towards CSR was merely a statutory obligation on companies

as per section 135 of the Companies Act, 2013. It is pertinent to point out that the intention of the legislature was clear when the same was clarified by the Finance (No.2) Act, 2014 that CSR expenses will not fall under the business expenditure and also there has been an express bar specified in sub clause (iiihk) and (iiihl) of section 80G(2)(a) of the Act that any sum paid by the assessee as donation to Swatch Bharat Kosh and Clean Ganga Fund will not come under the purview of deduction u/s. 80G of the Act subject to certain conditions. This justifies the fact that the other donations specified u/s. 80G of the Act would be entitled to deduction provided the conditions stipulated u/s. 80G of the Act are satisfied. In the present case in hand, the contributions made by the assessee would not fall under the two exceptions specified above which clearly mandates that the assessee is entitled to claim deduction for the donations contributed during the year under consideration u/s.80G of the Act. The decision relied upon by the ld. A.O. in the case of PVG Raju (supra) is distinguishable on the facts of the present case where there is no requirement of proving the voluntariness of the donation contributed by the assessee for claiming deduction u/s. 80G of the Act. The amendment brought about by Finance Act, 2015 to section 80G of the Act which had inserted the sub clauses (iiihk) and (iiihl) to be the exception for qualifying a donation for claiming u/s. 80G of the Act could also be an evidencing factor to substantiate that CSR expenditures which falls under the nature specified in section 30 to 36 of the Act are an allowable deduction u/s. 80G of the Act."

ii) ITA No. 3035/Mum/2025, order dated 27.06.2025

"6. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by both the parties. We find that assessment in the present case was completed on 19.02.2022. The assessing

officer while passing the assessment order made various disallowanc. However, there is no discussion about the issue identified by ld. Pr. CIT while exercising his jurisdiction under section 263. However, on perusal of notices under section 142(1) dated 8.06.2022, we find that assessing officer sought explanation on various issues including on the deduction under section 80G along with supporting documents. The assesseevide its reply dated 09.08.2022 furnished various details including the detail of examination claimed under section 80G. The assessee also furnished receipt of donations and per Annexure-XII of the reply. The assessee explained that they have claimed deduction of 50% of total donation. As noted above, the assessing officer has not made such references in the assessment order. Thus, assessing officer impliedly accepted the explanation offered by assessee. We find that co-ordinate bench of Mumbai Tribunal in DCIT Vs Gabriel India Ltd. (supra), Vistex Asia Pacific Private Limited (supra) and Axis Securities Limited (supra) consistently allowed deduction under section 80G @ 50% of CSR expenses. We, further, find that this combination in Dalal and Broacha Stock Broking Pvt. Ltd. in ITA No. No. 2718/Mum/2025 dated 19.06.2025 by considering other decision of Tribunal passed the following order:

> *"6. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. On careful perusal of assessment order, we find that case was selected for scrutiny on the issue of large amount of donation. No doubt that the assessing officer during the assessment examined the issue and disallowed donation under section 80G to Urvashi Foundations. Though, there is no discussion about the donation to other charitable trust or institution, however the assessing officer has sought detailsof donations to all about such charitable trust and institution. We find that the assessee also furnished all required details to the assessing*

officer. Thus, the assessing officer impliedly accepted the donation to such charitable trust or institution. We find that recently Co-ordinate Bench of Mumbai Tribunal in DCIT Vs Gabriel India (2025) 173 taxmann.com 219 (Mum) on similar issue where the assessee–company claimed deduction under section 80G at the rate of 50% of CSR expenses and furnished receipts of donees evidencing eligibility of deduction under section 80G allowed claim of such assessee. The tribunal while allowing relief to the assessee followed various other decisions of the different benches of the Tribunal. The relevant part of the decision if extracted below

"7.After giving a thoughtful consideration to the orders of the authorities below, we are of the considered view that the Coordinate ITA No. 3035/Mum/2025 The Ruby Mills Limited 9 Benches have been consistently taking the stand that 80G deduction cannot be denied. The relevant findings in the case of Ericsson India Global Services (P) Ltd. (supra), read as under:-

"7. We have considered rival submissions and perused the material on record. We have also applied our mind to case laws cited before us. Undisputedly, expenditure incurred towards CSR is specifically prohibited from being allowed as deduction towards business expenditure by insertion of Explanation - 2 to Section 37(1) of the Act by Finance Act, 2014 w.e.f01.04.2015. However, there is no such Ericsson India Global Services Pvt. Ltd. v. DCIT corresponding amendment to section 80G of the Act. Only condition for claiming deduction under section 80G of the Act as per the existing provision is the institute to which donation is made must have been registered under section 80G of the Act. Once the aforesaid condition is fulfilled, the donor is entitled to avail the deduction. This is also the view

expressed by the Coordinate Bench in case of Honda Motorcycle and Scooter India Pvt. Ltd. (supra). The relevant observation are as under:

"17. Apropos the issue of disallowance u/s 80G of the Income-tax Act, 1961 (for short 'the Act') : The assessee made certain donation to approved institutions or funds and claimed 50% of the total donation made as deduction u/s 80G. This amount also formed part of the CSR initiative of the assessee company which amounts to INR 22,81,29,964/-. It is observed that the assessee has duly disallowed CSR expenditure of INR 22,81,29,964/-debited to the statement of profit and loss under section 37 of the Act. DRP rejected the claim of the assessee by saying that the donation is pursuant to the CSR policy of the company and lacks the test of voluntariness as required under section 80G. The AO has disallowed the claim on the ground that anything donation over and above the CSR u/s 80G will be only allowed as the CSR expense is not an allowable expense u/s 37 of the Act. Ld. Counsel of the assessee placed reliance on the following decisions :-

JMS Mining (P.) Ltd. v. PCIT [2021] 130 taxmann.com 118/190 ITD 702/91 ITR(T) 80 (Kolkata - Trib.)

Goldman Sachs Services (P) Ltd. v. JCIT (2020) ([2020] 117 taxmann.com 535 (Bangalore - Trib.)) (ITAT Bangalore) (iii) First American (India) Pvt. Ltd. (ITA No. 1762/Bang/2019)

Allegis Services (India) Pvt. Ltd. (ITA No. 1693 /Bang/ 2019) Ld. Counsel further submitted that if the intention was to deny deduction of CSR expenses under section 80G, appropriate amendments on lines of section 37(1) should also have been made under section 80G of the Act. In the absence of any such amendment, CSR expenses should not be disallowed under section 80G of the Act.

18. We have heard both the parties and perused the records. We find that ITAT, Bangalore Bench in the case of Goldman Sachs Services (P.) Ltd. (supra) has held that the other contributions made under section 135 (5) of the Companies Act are also eligible for deduction/s 80G of Ericsson India Global Services Pvt. Ltd. v. DCIT the Act subject to satisfying the requisite conditions prescribed for deduction u/s 80G of the Act. For this purpose, the issue is remanded to the file of AO to examine the same whether the payments satisfy the claim of donation u/s 80G of the Act. We find that the case law is fully applicable to the facts of the case. There is no restriction in the Act that expenditure when disallowed for CSR cannot be considered u/s 80G of the Act. Hence, we remit the issue to the file of AO to verify whether these payments were qualified as donations u/s 80G of the Act or not, if they qualify as donation u/s 80G of the Act then the requisite amount deserves to be allowed."

8. Before us, it is the specific contention of learned Counsel of the assessee that the institutes to whom the assessee has donated the CRS fund are registered under section 80G of the Act. Keeping in view the submissions of the assessee as well as the ratio laid down in the judicial precedents cited before us, we direcl the Assessing Officer to allow assessee's claim of deduction under section 80G of the Act, subject to, factual verification of assessee's claim that the donee institutions are registered under section 80G of the Act and other conditions of section 80G of the Act are fulfilled. Ground is allowed for statistical purposes."

8. The facts of the case in hand show that the assessee has submitted the receipts of the donees evidencing the eligibility of deduction u/s 80G of the Act. Therefore, respectfully following the decision of the Coordinate Bench, we do not find any reason to interfere with the findings of the ld. CIT(A). The decision relied upon by the ld. D/R is on

different reasoning as the Co-ordinate Bench was of the opinion that CSR expenses cannot be allowed u/s 37(1) of the Act, therefore, no deduction is allowed u/s 80G, whereas in the case in hand, assessee has claimed deduction u/s 80G and not u/s 37(1) of the Act. Accordingly, ITA No. 1710/PUN/2023 is also dismissed.

9.In the result, appeals of the revenue are dismissed."

Considering the fact that view taken by assessing officer while allowing 50% of donation under section 80G out of CSR expenses are in accordance with the decisions of various benches of Tribunal. Thus, the view taken by assessing officer cannot be said to be erroneous. Thus, the pre-requisite twin conditions for exercising jurisdiction under section 263 has not meet out in the present case hence we quash / set aside the orderof Pr. CIT dated 17.03.2025. In the result, grounds of appeal raised by assessee are allowed.

7. Considering the consistent decision of Co-ordinate Bench of Tribunal, we find that in accepting the claim of donation under section 80G @ 50% of total donation in the assessment order is not erroneous as the action of assessing officer is legally sustainable view. Thus, in our considered view, the twin conditions prescribed under section 263 of the Income Tax Act is not fulfilled in the present case. As the pre-requisite conditions for exercising jurisdiction under section 263 has not meet out in the present, hence we quash/set aside the order of ld. Pr. CIT. In the result, grounds of appeal raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed."

21. In the case in hand, admittedly the AO has not questioned the claim of CSR expenditure of Rs. 71 lakhs and claim of deduction u/s 80G of the Act by the assesseei.e. 50% amount of CSR expenditure to the tune of Rs.

36,23,500/-. The CSR expenditure and the claim of deduction u/s 80G was not made the subject matter of the scrutiny assessment by the AO and the AO has simply accepted the claim of the assessee while keeping in mind the settled legal principle in that regard because the question of CSR expenditure as eligible deduction u/s 80G of the Act is no more res-integra as having been settled and allowed in favour of the assessee by the various judgments of the Tribunal including Jurisdictional Tribunal as referred in the preceding paras and the assessment order was passed in consonance with the settled legal principles on the issue. Therefore, the assessment order in this case cannot be said to be erroneous. Hence, the twin conditions as provided in explanation 2 of section 263 of the Act are not fulfilled.

22. Therefore, respectfully following the judgments of Jurisdictional Tribunal in ITA No. 3035/Mum/2025 (supra) and ITA No. 3663/Mum/2023 (supra), we are of the considered opinion that the Ld. PCIT has wrongly assumed the jurisdiction u/s 263 of the Act while setting aside the assessment order which was based on legal sound principle and settled legal precedents and the revenue authorities are bound to follow these legal principles unless the same has been set aside by the Hon'ble

High Courts which otherwise is not the case of the revenue before us. For these reasons, the impugned order passed by Ld. PCIT is set aside and the Point No. 1 enumerated by us is decided in affirmative and the Point no. 2 is decided negative.

23. In the result, appeal filed by the assessee is allowed in above terms.

Order pronounced in the open court on 31.07.2025

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 31.07.2025
Dhananjay, Sr. PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai