IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.3186/Mum/2025
(**Assessment Year :2020-21**)

Prudent Insurance Brokers Private Limited 101, Tower B Peninsula Business Park G.M. Marg, Lower Parel Maharashtra- 400 055	Vs.	PCIT-8, Mumbai
PAN/GIR No.AABCA1345C		
(Appellant)	..	**(Respondent)**

Assessee by	None
Revenue by	Shri Virabhadra S Mahajan
Date of Hearing	**31/07/2025**
Date of Pronouncement	**04/09/2025**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The present appeal has been preferred by the assessee challenging the order dated 03/03/2025 passed by the learned Principal Commissioner of Income Tax, Mumbai, in exercise of his revisionary jurisdiction under section 263 of the Income-tax Act, 1961 ("the Act") for the assessment year 2020–21.

2. The grievance of the assessee is directed against the action of the learned PCIT in holding that deduction claimed under

section 80G of the Act was erroneously allowed by the Assessing Officer, on the ground that such donations were made out of the Corporate Social Responsibility (CSR) funds of the assessee, and therefore not eligible for deduction. The learned PCIT, accordingly, set aside the assessment order allowing deduction under section 80G to the extent of ₹10,50,000/–.

3. The brief facts relevant to the controversy are that the assessee filed its return of income for the year under consideration on 24/12/2021 declaring a total income of ₹25,68,44,440/–. In the said return, the assessee claimed deduction under section 80G of ₹10,50,000/– in respect of donations aggregating to ₹10,00,000/– to KK Birla Memorial, ₹6,00,000/– to St. Krishna Public Charitable Trust, and ₹5,00,000/– to Udbhav School. During the scrutiny assessment proceedings under section 143(3), the Assessing Officer, upon examination of the documents placed on record, accepted and allowed the claim of deduction under section 80G.

4. The learned PCIT, however, in exercise of his revisionary powers, observed that the expenditure for which deduction was claimed was nothing but CSR expenditure, and in terms of the statutory mandate of the Companies Act, 2013, such CSR expenses were not allowable as deduction under section 80G. He was of the view that allowing deduction under section 80G would amount to subsidising statutory CSR obligations of corporates, which was never the intention of the Legislature. He therefore issued a show cause notice to the

assessee. In response, the assessee filed detailed submissions along with proof of donations made to the eligible organisations and contended that the Assessing Officer had duly verified all these details during the scrutiny assessment. It was further explained that while the CSR expenditure was suomoto disallowed in the computation of income, the donations, being voluntary contributions to institutions registered under section 80G, were independently claimed as deduction. In support, the assessee relied upon a number of judicial precedents wherein similar issues had been decided in favour of the assessee. The learned PCIT, however, was not impressed by such submissions and held that the Assessing Officer had failed to properly verify this issue in light of the fact that the case was selected for complete scrutiny. Invoking Explanation 2 to section 263(1), he concluded that the deduction claimed was purely CSR expenditure on which section 80G deduction could not be allowed, and accordingly, he set aside the assessment order.

5. After giving thoughtful consideration to the material placed on record and the submissions of the learned Departmental Representative, it is evident that the sole controversy centres upon the allowability of deduction under section 80G in respect of donations made out of CSR funds, which the assessee had already disallowed while computing income under section 37. This precise issue has travelled before the Tribunal on several occasions, and the law is now fairly well settled. In particular, the decision in Blue Dart Express Limited has examined the question threadbare and has laid

down the legal position in no uncertain terms. The relevant observations read as under:

"9. We have heard both the parties and also perused the relevant material referred to before us. First of all from the perusal of the re-assessment order which is the subject matter of revision u/s.263 by the ld. PCIT, we find that this was one of the ground for reopening and ld. AO has raised specific query as noted above on exactly same issue. The assessee has given its detailed reply and after examining those replies, the ld. AO has allowed the deduction u/s.80G holding that assessee has already disallowed CSR expenses u/s.37(1), and there is no bar for claiming deduction u/s.80G unless the same is not in accordance with the provision of the Section 80G and there is no issue of mutual exclusiveness of the claim found in this regard. Ld. PCIT has not brought on record any law or judicial precedence that such an observation and finding of the ld. AO is incorrect in law. Once the ld. AO has taken a possible view and there is no contrary law, then to take a different view in a revisionary jurisdiction u/s.263, cannot be held that the order of the ld. AO is erroneous and prejudicial to the interest of the Revenue. There is no case of invoking Explanation 2 to Section 263 which ld. PCIT has done, because ld. AO has made his enquiry and verification on the same issue. Ld. PCIT cannot cancel the assessment order to re-examine the same issue without finding any defect in such order that how the claim made u/s.80G is unsustainable in law.

10. On merits also, we find that view of ld. AO is correct in law. Claiming a deduction from computation of business income as provided from sections 28 to 44DB is different from claiming a deduction under chapter VIA of the Act which is allowed from Total Income. As per Explanation 2 to Section 37, CSR expenditure is not allowable as deduction while computing the business income under the provision of Section 28-44DB, whereas deduction u/s.80G is allowed while computing the total income under Chapter VIA. There is no pre-condition that claim for deduction u/s.80G on a donation should be voluntary. It is independent of computation of business income as it is allowed from Gross Total Income. The assessee had disallowed the CSR expenses while computing business income. Further, there is no dispute that the assessee has filed complete details

of donation and also filed the certificate u/s.80G which was enclosed before the AO. ***Section 80G (1) of the Act provides that in computing total income of the assessee, they shall be deducted in accordance with the provision of Section, such sum paid by the assessee in the previous year as a donation****. Deduction under Chapter VIA provides deduction from the gross total income which is computed after making necessary allowances / disallowances in accordance with Section 28-44BB of the Act including Explanation to Section 37(1). Thus, Section 37(1) and Section 80G of the Act are independent and the principles governing what is not allowable u/s. 37(1) have been provided in the section itself. Even in section 80G also, what is not allowable has also been provided under the Act. For instance, Section 80G specifically mentions two clauses, viz., section 800(2)(a)(iihk) and (iiihl), i.e., contributions towards 'Swacha Bharat Kosh' and 'Clean Ganga Fund', where donation in the nature of CSR Expenditure is not allowable as deduction under section 80G of the Act. Therefore, the disallowances for deduction under section 80G vis-à-vis CSR can be restricted to contributions made to these Funds mentioned in Section 800(2)(a)(iiihk) and (iiihl) only. It is an undisputed fact that the assessee has not claimed any deduction against the aforesaid clauses of 80G (2)(a) of the Act and as such entire donation claimed by the assessee is allowable u/s 80G. The Ministry of Corporate Affairs ("MCA") has issued "FAQs" through General circular no. 01/2016 dated January 12, 2016 (FAQ No. 6) and has clarified on 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."

11. This clarification being issued by the Ministry of Corporate Affairs, Government of India clarifies that donation covered under CSR Expenses which not are eligible for the deduction under section 80G of the Income-tax Act, 1961, but are allowed under different sections. Ergo, there is nothing that if any expenditure is disallowable u/s 37 the same cannot be allowed under other provisions of Act, if the conditions of allowability are satisfied. Thus, allowing the claim of deduction u/s.80G by the ld. AO cannot be held to be unsustainable in law or amounts to erroneous and prejudicial to the interest of the Revenue. Thus order of the Ld. PCIT is reversed on this point.

12. Thus, we hold that ld. PCIT is not correct in law in cancelling the assessment order by the ld. AO on this issue. Accordingly, the order of the ld. PCIT is quashed. Consequently, the appeal of the assessee is allowed.

6. The principles flowing from the aforesaid decision apply on all fours to the present case. The assessee has duly placed on record donation certificates, established that the donees were notified institutions under section 80G, and significantly, it is not even the case of the Revenue that the claim falls within the statutory exclusions carved out in clauses (iihk) and (iiihl) of section 80G(2)(a).

7. The matter has also been examined by a coordinate bench in ACIT v. Sikka Ports and Terminals Ltd. [(2025) 173 taxmann.com 366], where the Tribunal, after an exhaustive survey of arguments regarding voluntariness, statutory compulsion, and legislative intent, concluded that CSR contributions to approved institutions under section 80G continue to enjoy deductibility, subject of course to satisfaction of the statutory conditions. The Tribunal eloquently explained:

- *The assessee during the year disallowed a sum of Rs.33.85 crores under section 37 towards the CSR Spend in compliance with section 135 of the Companies Act. Since the institutions to which the said amounts are given are registered under section BOG, the assessee claimed 50 per cent ie. Rs.16.93 crores 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.*
- *The word "donation" has not been defined under the Act. However the Supreme Court in the context of Expenditure Tax Act in the case of Commissioner of Expenditure Tax v. PVG. Raju(1975) 101 ITR 465 (SC) has described the meaning of the word "donation"*
- *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 Rellance Foundation and 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 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, the payment made whether voluntarily or as part of a mandate does not negate the intention of the contribution made.*

- *Now coming to the intention of legislature while amending the provisions of section 37 whereby the CSR spend are not allowed to be claimed as a deduction under the said section. Finance (No.2) Act, 2014 brought in the amendment to section 37 by inserting Explanation 2 to the said section with effect from 1-4-2015.*
- *The "Explanatory Notes to the provisions of Finance (No.2) Act, 2014" issued by the Central Board of Direct Taxes vide its Circular No.01/2015 dated 21-1-2015 explaining the aforesaid amendment, clarifies that 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 and that 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. However, it is pertinent to note that though, the expenditure Incurred towards CSRs is not an expenditure incurred for the purpose of business, if the spend is of the nature described in sections 30 college or other institution to be used for scientific research etc., which are approved under section 35 n For example if the contribution is made to a scientific research association, or to a university or to s part of CSR spending then deduction can be allowed subject to the fulfilment of conditions prescribed under section 35. This explanatory note though self-contradictory Le, denying deduction under section 31 but allowing the assessee to claim deduction under sections 30 to 36, also makes it clear that there is no bar regarding the admissibility of CSR expenditure under any other provision of the Act, except under section 37(1). In other words, the intention of the legislature is not to restrict the right of the assessee to claim deduction towards the CSR spend if the payment is otherwise allowable under a specific provision of the Act. Further wherever the intention is to restrict the claim of deduction under any other provisions of the Act the same is explicitly provided for to that effect by the legislature. This view is supported by the Explanatory Memorandum to Finance Bill 2015 which brought in the specific restriction for claiming deduction under section 80G towards the CSR spend towards donation to Swachh Bharat Kosh and Clean BOG is against the intention of the legislature*

which restricts the same to be claimed as a deduction under Ganga Fund. Therefore, the contention that the CSR spend being claimed as a deduction under section section 37 cannot be appreciated.

- *The next issue is whether the impugned payments are otherwise eligible for deduction under section 80G It has already been established that the payments made by the assessee are donations and therefore if the other conditions for the deduction under section 80G are fulfilled then there should not be any restriction for the assessee to claim the deduction. Before holding so the contention of the revenue that the payments made towards CSR spend are monitored and controlled by the assessee and are not voluntary is addressed section 135 of Companies Act 2013, there are many prescribed modes and activities under Schedule VII In this regard it is relevant to note that though there is a statutory obligation of CSR expenditure under CSR expenditure, (the list is not exhaustive but ofither section 135 of the Companies Act nor Schedule VII to the Companies Act nor the CSR Rules, mandates donations to the institutes/funds prescribed under section 80G. Therefore, there is merit in the submission of the assessee that though the quantum of CSR spend is mandatory there is no mandate on how amount is to be spent or to whom the contribution is to be made. Accordingly the act of the assessee to choose to Reliance Foundation and Shyam Kothari Foundation which are eligible to accept donations under section 80G is voluntary and is not mandated by section 135 of the Companies Act 2013. Further from the perusal of CSR Rules as applicable in assessee's case, it is noticed that the monitoring of the CSR spend is to ensure that the same is as per the CSR policy of the company and it does not provide for monitoring the utilization of the funds by the third party donees. In any case the donations made for a specific cause does not result in denial of deduction which is otherwise allowable as per the provisions of section 80G.*
- *One more point that needs to be considered while deciding the deduction under section 80G for CSR spend is that the restriction on the allowability of the said spend as provided in Explanation 2 to section 37 is for computing the business income under the provision of*

section 28-44DB whereas the deduction fer section 80G is claimed under Chapter VIA ie. after computing the Gross Total Income. The provisions of section 80G does not impose any condition that the contribution should be voluntary and provefore when the CSR spend is evaluated independently under the provisions of the Act, it is viewed that there is no restriction for the assessee to claim deduction under section 80G provided the CSR spend meets the conditions specified therein. In other words, the provisions of section 37 is computation provision whereas section 80G is a beneficial provision which allows deduction towards payments made by the assessee for charitable purposes and therefore these two sections are independent of each other. For example, when a company which is not required to comply with the provisions of section 135 of the Companies Act 2013 makes a donation or a company makes donations in excess of 2 per cent even then the payment may get disallowed under section 37 but in that case the revenue would not impose any restriction to evaluate the payment for claiming deduction under section 80G. If the same analogy is applied to the CSR spend it is viewed that the assessee should be able to claim deduction under section 80G if the other conditions are fulfilled. Denying the claim for the reason that there is a specific mention under section 37 for disallowance and that the payments are made in compliance with section 135 of the Companies Act is not legally tenable unless there is an explicit provision for e.g. contributions towards "Swacha Bharat Kosh" and "Clean Ganga Fund.

- *In view these discussions and considering the judicial precedence in this regard, it is viewed that there is no infirmity in the order of the Commissioner (Appeals) in allowing the deduction under section 80G to the assessee towards donations made to Reliance Foundation and Shyam Kothari Foundation. Accordingly the grounds raised by the revenue are dismissed.*

8. From the above authoritative pronouncements, the position of law emerges with clarity. Once the assessee has disallowed CSR expenditure under section 37(1), any

donation to an institution registered under section 80G stands on an independent footing. The deduction flows not from the head of business income, but from the gross total income under Chapter VIA, which operates in a distinct statutory compartment. The Assessing Officer, having examined the claim and allowed it on this basis, adopted a view that is not only plausible but squarely supported by judicial precedent.

9. Therefore, the order passed by the Assessing Officer cannot be said to be erroneous or prejudicial to the interests of the Revenue. The learned PCIT has merely substituted his own opinion in place of that taken by the Assessing Officer, which is not permissible under section 263.

10. In view of the above discussion and following the coordinate bench decisions, we quash the impugned order passed under section 263 and restore the assessment order.

11. In the result, the appeal of the assessee stands allowed

Order pronounced on 4th September, 2025.

Sd/-	**Sd/-**
(GIRISH AGRAWAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 04/09/2025
KARUNA, *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