

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.1565/Bang/2019
Assessment year: 2016-17

M/s. FNF India Private Ltd., 6 th , 7 th & 8 th Floor, Umiya, Business Bay, Tower 2, Cessna Business Park, Kadubeesanahalli, Bengaluru – 560 103. PAN: AAECF 1100B	Vs.	The Assistant Commissioner of Income Tax, Circle 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri K R Vasudevan, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	05.01.2021
Date of Pronouncement	:	05.01.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals)-3, Bengaluru dated 21.05.2019 passed u/s. 143(3) of the Income-tax Act, 1961 [the Act].

2. The first ground of appeal is with regard to the rejection of claim of deduction of Rs.11,87,500 made to charitable institutions u/s. 80G of the Act holding that deduction u/s. 80G is not available to the assessee since donations are made as part of the Corporate Social Responsibility (CSR).

3. The brief facts with regard to the issue of deduction u/s. 80G of the Act are that during the course of assessment proceedings the AO observed that the assessee had incurred certain expenses on account of CSR as per provisions of Companies Act, 2013. On this payment deduction u/s. 80G to the extent of Rs. 11,87,500 was claimed. The AO referred to explanatory circular to Finance (No.2) Act, 2014 dt 21.01.2015 and Section 198 of the Companies Act, 2013 and held that deduction under Section 80G of the Act was not available if the donation was part of the CSR expenditure.

4. Before the CIT(Appeals) in the appellate proceedings, the assessee made detailed submissions and argued that there is no restriction in the Act regarding claiming deduction u/s. 80G of the Act, if the expenses have been incurred for the purposes of the CSR activity, provided the payment is made to eligible entities as listed in Section 80G of the Act. Therefore, the assessee submitted that it is eligible to claim deduction and the AO has wrongly disallowed the same.

5. The CIT(Appeals) observed that the provisions of Section 80G of the Act provides that the sums specified in sub-section (1) & (2) are eligible for deduction at the rate of 100% or 50% depending upon the entity to which the sum is paid. Section 80G (2) further reveals that any sum paid by the assessee in the previous year has to be in nature of 'donations' to various entities. He noted that the 'sums paid' need to be 'donation' for the purpose of being eligible for deduction under Section 80G of the Act. The meaning of word 'donation' has not been given in the Act. The dictionary meaning of the word 'donation' is that it is a gift for charity, humanitarian aid, or to benefit a cause. A donation may take various forms, including money, alms, services, or goods such as clothing, toys, food, or vehicles. A donation may satisfy medical needs such as blood or organs for

transplant. However for the purpose of Section 80G of the Act, it is the donations which are in nature of 'sum paid' or money which are relevant. Further the dictionary meaning of the word donation refers to an amount paid voluntarily by a person and that too without any consideration as the donation is 'gift'. The voluntary act on the part of donor is thus an essential element to treat the amount paid as a donation. In the case under consideration the amount has not been paid by the assessee to the eligible entity specified in Section 80G of the Act on a voluntary basis. But the same has been paid by it as the assessee was mandatorily required to spend such an amount for specified activities as per the provisions of Section 135 of the Companies Act, 2013. The expression "shall ensure" used in Section 135(5) of the Companies Act, 2013 clearly implies that there is a mandate to spend 2% of average net profits of the preceding three years on CSR activity. Thus the required-to-spend amount is perceived by the legislature to be mandatory in nature. So when the assessee had paid the amount to an eligible entity under Section 80G of the Act, such a payment was not made on a voluntary basis, but it was a mandatory requirement of law to spend such an amount for activities benefitting the society. The assessee could also have made payment to an entity not covered by Section 80G or it could have directly incurred the expenditure for the specified purpose, however in any of these scenarios too, the expenditure would not have been voluntary but mandatory to comply with the provisions of Law. Further paying such a sum, the assessee was complying the obligation cast on it by the Companies Act, 2013.

6. As far as the assessee's reliance upon the decision in the case of *Malayala Manorama Co. Ltd. v CIT [2006] 284 ITR 69* in support of its claim is concerned, the CIT(Appeals) was of the view that the said decision was on entirely different issue as the expenditure was incurred voluntarily

and as such the same was a donation. The issue of CSR expenditure was not there. The reliance of the assessee on Circular No 01/2016 dt 1.2.01.2016 issued by the Ministry of Corporate Affairs (MCA) was held to be misplaced as not relevant to income-tax matters.

7. Therefore, the CIT(Appeals) held that the sum paid by the assessee cannot be considered as a 'donation' for the purpose of Section 80G of the Act and upheld the actin of the AO.

8. The Id. AR reiterated the submissions made before the CIT(Appeals). On the other hand, the Id. DR supported the order of the CITA.

9. After hearing both the parties, we find that similar issue came up for consideration before this Tribunal in ITA No.1693/Bang/2019 in the case of *Allegis Services (India) Pvt. Ltd. v. ACIT*. The Tribunal by its order dated 29.4.2020 held as under:-

“10. 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.

11. This amendment will take effect from 1/04/2015 and will, accordingly, apply to assessment year 2015-16 and subsequent years.

12. 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."

13. 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) (iihk) and (iihl) there are specific exclusion of certain payments, that are part of CSR responsibility, not eligible for deduction u/s80G.

14. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, 'Income from 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.

15. 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".

16. 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.

17. We therefore do not agree with arguments advanced by Ld.Sr.DR.

18. 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.

19. On the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G(1) of the Act.

20. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its claim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility.

Accordingly grounds raised by assessee stands allowed for statistical purposes.”

10. Since the facts and circumstances in the present case is similar to that of the Coordinate Bench in the case of *Allegis Services (India) Ltd. (supra)*, taking a consistent view, we remit the issue back to the file of the Assessing Officer with similar directions as contained in the aforesaid order of the Tribunal and for decision afresh in accordance with law.

11. The next ground is with regard to non-grant of deduction for gratuity amounting to Rs.17,87,315. The brief facts are that the AO denied deduction of gratuity paid. The assessee submitted before the CIT(Appeals) that it had created a provision for gratuity amounting to Rs.1,47,69,903 and that Rs.44,22,139 was actually paid to the employees. In its return of income, the assessee had erroneously claimed deduction to the extent of Rs.26,34,825 only and the net provision of Rs.1,21,35,078 was disallowed in the computation. During the pendency of the assessment proceedings, the same was brought to the notice of the AO, however, the AO has not granted deduction towards the balance amount of gratuity paid of Rs.17,87,315 and prayed that the same may be allowed.

12. The CIT(Appeals) observed that undisputedly the above claim was not made by the assessee in its return of income or by way of a revised return of income. In *Goetze (India) Ltd. v. CIT, 284 ITR 323 (SC)* the Court held that AO has no such power to entertain any claim of fresh deduction, if the same is not by way of revised return. The CIT(Appeals) was of the view

that in view of the restriction of the powers of the AO, the powers of first appellate authority also get restricted accordingly in the absence of any revised return. Therefore, the CIT(Appeals) rejected the claim of the assessee.

13. We have heard both the parties and considered the rival submissions. The contention of the Id. AR is that the judgment in the case of *Goetze (India) Ltd. (supra)* is not applicable to the powers of the first appellate authority and is only applicable to the powers of the AO. The first appellate authority could consider a new claim of the assessee without any revised return. For this purpose, he relied on the decision of the Hon'ble Bombay High Court in the case of *CIT v. Pruthvi Brokers & Shareholders [2012] 23 taxmann.com 23 (Bom)*.

14. As rightly pointed out by the Id. AR, the first appellate authority has powers to entertain additional claims, even if the same was not made in the return of income. This was fortified by the judgment of the Hon'ble Bombay High Court in of *Pruthvi Brokers & Shareholders (supra)* and also by the judgment of Hon'ble Delhi High Court in the case of *PCIT v. Western India Shipyard Ltd. [2017] 88 taxmann.com 448 (Delhi)* and *ACIT v. Eastern Silk Industries Ltd. [2019] 109 taxmann.com 204 (Kolkata Trib.)* as well as *Hirsh Bracelet India (P) Ltd. 178 ITD 601 (Bang. Trib.)*. Being so, in our opinion, the assessee in principle is entitled to claim deduction of gratuity paid before the appellate authorities. Accordingly, we remit this issue to the file of AO to quantify the amount of deduction towards gratuity and decide accordingly.

15. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 5th day of January, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 05th January, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.