

+IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.3663/Mum/2023
(Assessment Year: 2020-21)

M/s. Alubound Dacs India Private Limited 301, T V Industrial Estate, Behind Glaxo, Ahire Road, Worli, Mumbai-400 030	Vs.	Dy. CIT, Circle-6(1)(1) Mumbai
PAN/GIR No. AAICA 1569 P		
(Assessee)	:	(Respondent)
Assessee by	:	Ms. Simoni Chouhan
Respondent by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	28.02.2024
Date of Pronouncement	:	27.05.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in treating the first ground of appeal as general in nature, this ground was against the action of the Assessing Officer making addition to the income assessed u/s. 143(1) against additions to the returned income proposed in the Final Show cause notice dated 19.02.2022.*
2. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in upholding the action of the Assessing Officer, in denying the deduction of Rs.15,00,000/- claimed by the appellant company u/s. 80G of the Income Tax Act.*

3. The brief facts of the case are that the assessee company is engaged in the manufacturing, processing, trading and supply of aluminum composite panel sheets for interior and exterior applications and had filed its return of income dated 15.02.2021, declaring total income at Rs.25,63,96,298/- and the same was processed u/s. 143(1)(a) of the Act where the total income was computed at Rs.26,29,86,460/- after making the following addition/disallowance :

- (i) Rs.60,08,528/- on account ICDS adjustment.
- (ii) Rs.5,81,630/- on account of disallowance u/s. 36(1)(va).

4. The assessee then filed rectification application dated 12.04.2022 which the assessee claims was not disposed of till date. The assessee's case was selected for scrutiny and notice u/s. 143(2) of the Act and 142(1) were duly issued and served upon the assessee.

5. The learned Assessing Officer (ld. A.O. for short) passed the assessment order dated 17.09.2002 u/s. 143(3) r.w.s. 144B of the Act where the ld. A.O. made an addition/disallowance as per the variation computed u/s. 143(1) of the Act which included disallowance of Rs.15 lacs u/s. 80G of the Act which is 50% of the total donation paid by the assessee towards corporate social responsibility (CSR) during the year under consideration which are tabulated herein under:

<i>Name of the party</i>	<i>Amount</i>	<i>80G claim (Rs. In Lakhs)</i>	<i>PAN</i>
<i>M/s. Shri Jagatbharti Education & Charitable Trust, Surendranagar, Gujarat</i>	<i>Rs.10,00,000/-</i>	<i>15,00,000</i>	<i>AAICA1569P</i>
<i>M/s. Bharat Education Society's Neral School Building</i>	<i>Rs.10,00,000/-</i>		<i>AAATB0196Q</i>
<i>All India Social Education Trust</i>	<i>Rs.10,00,000/-</i>		<i>AACTA 1516D</i>

6. In an appeal before the first appellate authority, the impugned addition was upheld by the Id. CIT(A). The assessee has challenged the Id. CIT(A)'s order on the ground that the Id. CIT(A) has not adjudicated the addition to the income assessed u/s. 143(1) of the Act inspite of a specific ground raised by the assessee and has also challenged the disallowance made u/s. 80G of the Act before us.

7. Ground no. 1 pertains to the disallowance u/s. 143(1) of the Act where the assessee has raised the contention that the Id. CIT(A) has not adjudicated the said ground. It is observed that against section 143(1) intimation the assessee has filed the rectification application u/s.154 of the Act before the Id. A.O. which is pending for disposal. It is evident from the record that the assessee has only challenged the assessment order passed u/s. 143(3) of the Act and not the intimation u/s. 143(1) of the Act before the first appellate authority. We are conscious of the fact that section 246A of the Act has specifically provided for an appeal before the Id. CIT(A) against the intimation issued u/s. 143(1) of the Act where the cause of action had arouse and the assessee ought to have filed an appeal against the same. Even before us, the assessee has challenged only the assessment order passed u/s. 143(3) of the Act and not the 143(1) intimation. We, therefore, find no merit in the ground raised by the assessee. Hence, ground no. 1 raised by the assessee is hereby dismissed.

8. Ground no. 2 pertains to the disallowance of Rs.15 lacs u/s. 80G of the Act towards CSR expenses. The Id. A.O. has rejected the claim of the assessee for the reason that the CSR expenses is not a voluntary donation but is merely a statutory obligation u/s. 135 of the Companies Act, 2013 read with Schedule VII of the Companies Rules, 2014.

The Id. A.O. has also relied on the insertion of Explanation 2 to section 37(1) of the Act vide Finance (No.2) Act, 2014 where the CSR expenses incurred by the Companies Act shall not be allowed as 'business expenditure' as per the said provision. The Id. A.O. relied on the decision of the Hon'ble Apex Court in the case of *Commissioner of Expenditure – Tax vs. PVG Raju, Raja of Vizianaram* [1967] SCR (1)1017C which has held that donation has to be voluntary for it to satisfy the test of voluntariness. The Id. CIT(A) upheld the order of the Id. A.O. holding that the reasoning given by the Id. A.O. was justifiable.

9. The learned Authorised Representative (Id. AR for short) for the assessee contended that the issue of deduction of CSR expenses u/s. 80G of the Act is squarely covered by various decisions of the co-ordinate bench in favour of the assessee. The Id. AR further iterated that there has been express bar in claiming the said expenses u/s. 37(1) of the Act and also on sub clause (iiihk) and (iiihl) of section 80G(2)(a) of the Act pertaining to Swatch Bharat Kosh and Clean Ganga Fund where donation made pursuant to CSR is not an allowable deduction. The Id. AR further contended that the test of voluntariness is irrelevant in claiming deduction u/s. 80G of the Act where there is no criteria specified by the Act. The Id. AR relied on a catena of decisions where the donation towards CSR has been allowed u/s. 80G of the Act.

10. The learned Departmental Representative (Id. DR for short), on the other hand, controverted the said fact and stated that donation to CSR expenses are not voluntary in nature and is a compliance to be made by the assessee as per section 135 of the

Companies Act, 2013. The Id. DR reiterated that the Hon'ble Apex Court in the case of *PVR Raju* (supra) has categorically held that any payment has to be voluntary in order to be termed as a 'donation'. The Id. DR relied on the orders of the lower authorities.

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 Id. 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.

12. On the above observation, we deem it fit to hold that the assessee is entitled to deduction claimed u/s. 80G of the Act towards the CSR expenditure incurred by it. We, therefore, direct the Id. A.O. to allow the claim of the assessee subject to the condition that the assessee has satisfied the other requirements warranted u/s.80G of the Act. Hence, ground no. 2 raised by the assessee is allowed.

13. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27.05.2024

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 27.05.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai