(2024) 03 ITAT CK 0014

Income Tax Appellate Tribunal (Delhi D Bench)

Case No: Income Tax Appeal No. 1150/DEL/2022

Ericsson India Global Services Private Ltd.	APPELLANT
Vs	
DCIT	RESPONDENT

Date of Decision: March 5, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 37, 37(1), 40(a)(ii), 80G, 115O, 234A, 234B, 234C
- Companies Act, 1956 - Section 135(5)

Hon'ble Judges: Saktijit Dey, (VP); Pradip Kumar Kedia, (AM)

Bench: Division Bench

Advocate: Vishal Kalra, Ankit Sahni, Yishu Goel, Vizay B. Vasanta

Final Decision: Partly Allowed

Judgement

1. The captioned appeal has been filed by the assessee against the order of Learned Commissioner of Income-tax (Appeals)-44, Delhi, pertaining to Assessment Year 2015-16.

2. At the outset, learned Counsel appearing for the assessee submitted that Ground No.1, being a general ground, does not require adjudication. He further submitted that Ground No.6 has become redundant as the Assessing Officer, in the meanwhile, has granted the desired relief. In view of the aforesaid submissions, ground nos.1 and 6 are dismissed as not pressed.

3. In Ground No.2, the assessee has challenged disallowance of deduction claimed under section 80G of the Act, 1961 in respect of Corporate Social Responsibility (CSR) donations.

4. Briefly the facts relating to the issue in dispute are, the assessee is a residential corporate entity stated to be engaged in the business of providing services in terms of operating and supporting the network, development and delivery of software based solutions for telecommunication industry. For the assessment year under dispute, the assessee filed its return of income on 30.11.2015 declaring total income of Rs.690,78,94,230/-. In course of assessment proceedings, assessee made a fresh claim of deduction under section 80G of the Act. It was the case of the assessee that it has incurred expenditure of Rs.3.4 crores towards CSR activities. The assessee claimed that though the expenditure was disallowed in the computation of income following section 37(1) of the Act, however, since the institutions to whom the assessee had donated the funds are eligible under section 80G of the Act, the assessee is entitled for deduction of 50% of the amount expended in terms of section 80G of the Act. While completing the assessment, the Assessing Officer did not allow assessee's claim. Contesting the disallowance, the assessee preferred appeal before learned First Appellate Authority. While deciding the issue, learned First Appellate Authority held that intention of Government is very clear that expenditure on CSR does not form part of business expenditure and no specific tax exemption including deduction under section 80G of the Act has been extended to CSR expenditure. He further held that deduction under section 80G of the Act is applicable only to 'donation' which is a 'voluntary act' on the part of the donor. He observed that since CSR expenditure has been incurred mandatorily in compliance of provisions of the Companies Act, it cannot be said to be voluntary and would not qualify for tax deduction under section 80G of the Act.

5. Before us, learned Counsel appearing for the assessee submitted that the institutions to whom the assessee has donated the CSR funds are registered under section 80G of the Act. Hence, assessee is eligible for deduction under section 80G of the Act. He submitted, since there is no prohibition under section 80G of the Act, the assessee cannot be denied deduction under the said provision. In support of such contentions, he relied upon the following decisions:

i. Honda Motorcycle and Scooter India Pvt. Ltd. vs. ACIT (ITA No.1523/Del/2022 order dated 22.08.2023)

ii. Escorts Skill Development vs. CIT (Exemptions) [2019] 108 taxmann.com 53 (Delhi-Trib.)

6. Learned Departmental Representative relied upon the observation of learned First Appellate Authority.

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.f 01.04.2015. However, there is no such 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 Co-ordinate 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 :-

(i) JMS Mining (P.) Ltd. vs. PCIT [2021] 130 taxmann.com 118 (Kolkata - Trib.)

(ii) Goldman Sachs Services (P) Ltd. vs. JCIT (2020) (117 taxmann.com 535) {ITAT Bangalore} (iii) First American (India) Pvt. Ltd. (ITA No. 1762/Bang/2019)

(iv) 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 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 direct 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.

9. In Ground No.3 assessee has raised the issue of lower rate of Dividend Distribution Tax (DDT) as per the provisions of Double Taxation Avoidance Agreement (DTAA) as against applicability of rate of tax under section115-O of the Act. Though, the Assessing Officer has not specifically dealt with the issue, however, while dealing with the issue, learned First Appellate Authority rejected assessee's claim following the decision of ITAT Special Bench in the case of DCIT vs. Total Oil India (P.) Ltd. [2021] 127 taxmann.com 774 (Mumbai-Trib.).

10. Before us, though, learned Counsel reiterated the stand taken before the Departmental Authorities however he fairly submitted that issue has been decided against the assessee by the ITAT Special Bench in the case of Total Oil India (P.) Ltd (supra). The learned Departmental Representative submitted that the special Bench decision covers the issue against the assessee.

11. Having considered rival submissions, we find, issue in dispute is squarely covered by the decision of the Special Bench of ITAT in the case of Total Oil India (P.) Ltd. 104 ITR(T) 1. Hence, respectfully following the ratio laid down therein, we reject assessee's claim.

12. Ground No.5 being consequential to ground no.3 is also dismissed.

13. In Ground No.4, the assessee has claimed deduction of Education Cess ('EC') and Secondary Higher Education Cess ('SHEC') levied on income tax payable on the total income. Having considered rival submissions, we are of the view that in view of amendment u/s 40(a)(ii) of the Act by Finance Act, 2022 with retrospective effect from 1.04.2005, the claim of the assessee is not allowable. This is so because as per the amended provision, Education Cess and Secondary Higher Education Cess partake the character of income tax. In this context, we refer to decision of the Hon'ble Supreme Court in the case of JCIT vs. M/s. Chambal Fertilisers and Chemicals Ltd. SLP(C) No.7379

of 2019 order dated 14.12.2022. Accordingly, ground raised is dismissed.

14. Ground No.7 on the issue of levy of interest under section 234A, 234B and 234C of the Act being consequential in nature, does not require any adjudication.

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