

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.938/Mum./2023
(Assessment Year : 2020-21)

Synergia Lifesciences Pvt. Ltd.
1503, Universal Majestic P. Ltd.
Lokhande Marg, Ghatkopar Mankhurd Appellant
Link Road, Govandi, Mumbai 400 043
PAN – AAICS0736Q

v/s

Dy. Commissioner of Income Tax
Assessment Unit Respondent

Assessee by : Shri Rashmikant C. Modi a/w
Ms. Ketaki Rajeshrike
Revenue by : Shri Anil Kumar Das

Date of Hearing – 12/06/2023

Date of Order – 20/06/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 21/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2020-21.

2. In this appeal, the assessee has raised the following grounds:-

"(A) Denial of Deduction u/s. 80G

- 1) *The learned Commissioner of Income Tax (Appeals) [CIT(A)] erred on facts and in law in confirming the order passed by the DCIT Assessment Unit (AO) rejecting the appellant's claim of deduction u/s. 80G.*
- 2) *The learned CIT(A) erred in fact & law by not appreciating that the deduction of the items covered under Part No. A & B under of Chapter VIA was allowed in AY 2020-21, under the then existing provision of Section 115BAA.*
- 3) *The learned CIT(A) erred on facts and in law in not appreciating the fact that the amendment in the provisions of Section 115BAA disallowing deduction under Part A & B of Chapter VIA, was made applicable from next AY 2021-22 whereby even deduction under Part A & B of Chapter VIA, were not allowed along with those Chapter C.*
- 4) *The learned CIT(A) erred on fact & in law and ought to have held that if the words are unambiguous or plain, they will indicate the intention with which the statute was passed.*
- 5) *The learned CIT(A) erred in holding that the intention of legislature was to disallow the deduction without appreciating fact that the amendment was specifically made effective from 01.04.2021.*

B) General

- 1) *Para (d) & (e) of the CIT Appeals Order, seems to have been erroneously included in the body of the Order not pertaining to our case & hence not contended.*
- 2) *The above Grounds of Appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above Grounds of Appeal."*

3. The brief facts of the case as emanating from the record are: The assessee is a private limited company and is engaged in the business of manufacturing, selling, and in any way dealing and conducting research and development activities in fermentation and life science products using biotechnology. The assessee manufactures Vitamin K2-7 at its plant in Wada. For the year under consideration, the assessee filed its return of income on 30/12/2020 declaring a total income of Rs.90,80,08,580, which was later revised under section 139(5) of the Act on 22/03/2021 declaring a total income of Rs.90,25,23,300. The return of income filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as

section 142(1) along with questionnaires were issued and served on the assessee.

4. From the perusal of the return, computation of income, other financial statements, and submissions made by the assessee, it was observed that the assessee has incurred expenditure amounting to Rs.10,98,80,555, on account of donation in line with the guidelines issued under the Companies Act, 2013. Out of this payment, the assessee has claimed an amount of Rs.54,85,278, as a donation under section 80G of the Act, claiming a deduction to the extent of 50% of the donation. As per the assessee, there is no restriction imposed on claiming deduction under section 80G of the Act, even if the expenses have been incurred for the purpose of the Corporate Social Responsibility ("CSR") activity, provided the payment is made to eligible entities as listed in section 80G of the Act. The assessee suo moto disallowed CSR expenses under section 37(1) of the Act, however, claimed deduction under section 80G of the Act.

5. The Assessing Officer ("AO") vide order dated 08/09/2022 passed under section 143(3) read with section 144B of the Act did not agree with the submissions of the assessee and held that under section 80G the '*sums paid*' need to be '*donation*' for the purpose of being eligible for deduction under the said section. It was further held that the amount paid by the assessee should be voluntary to become eligible for deduction under section 80G of the Act. However, in the present case, the same was paid by the assessee as a mandatory requirement as per section 135 of the Companies Act, 2013. The AO further held that there should be an element of charity and voluntary for being considered as a donation for the purpose of claiming deduction under

section 80G of the Act, which is missing in the present case. Accordingly, the AO disallowed the deduction claimed by the assessee under section 80G of the Act.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the denial of deduction claimed under section 80G of the Act. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") by placing reliance upon various decisions of the coordinate bench of the Tribunal submitted that CSR expenditure has been held to be allowable under section 80G of the Act. The learned AR submitted that the CSR expenditure in the present case is for the purpose of education, medical, etc. The learned AR also referred to the details of donation and payment receipts, forming part of the paper book, to support the submission that the CSR expenditure incurred is covered under the ambit of section 80G of the Act.

8. On the contrary, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. The only grievance of the assessee is against the denial of deduction under section 80G of the Act in respect of CSR expenditure. In the present case, it is undisputed that the assessee has not claimed the CSR expenditure under section 37(1) of the Act, and its claim is only restricted to section 80G of the Act. We find that a similar issue has come up for consideration before various coordinate benches of the Tribunal. We find

that in Allegis Services (India) Private Ltd. V/s ACIT, in ITA No. 1693/Bang./2019, the deduction in respect of CSR expenditure under section 80G of the Act was denied by the Revenue on a similar basis as in the present case. While deciding the issue in favour of the taxpayer, the coordinate bench of the Tribunal, vide order dated 29/04/2020, observed as under:-

"We have perused submissions advanced by both sides in light of records placed before us.

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 from 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 clare 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 calim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility."

10. Thus, in view of the above, the claim for deduction under section 80G of the Act in respect of CSR expenses cannot be denied. In the present case, the lower authorities denied the deduction claimed by the assessee under section 80G of the Act without verifying the conditions as laid down in the said section. Therefore, respectfully following the aforesaid decision rendered by the

coordinate bench of the Tribunal, we remit this issue to the file of the AO to verify the conditions necessary for claiming deduction under the said section. The assessee is also directed to file all the details for the purpose of claiming deduction under section 80G of the Act. We further direct that if the conditions as laid down in section 80G are found to be satisfied then deduction be granted to the assessee to that extent. With the above directions, the impugned order is set aside. Accordingly, ground no.A(1) raised in assessee's appeal is allowed for statistical purposes.

11. In view of our aforesaid findings, the issues arising in grounds no.A(2)-A(5), raised in assessee's appeal, are rendered academic and therefore are left open.

12. Ground no.B raised in the present appeal is general in nature and needs no separate adjudication.

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

Order pronounced in the open Court on 20/06/2023

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/06/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai