

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.123/Coch/2017 : Asst.Year 2012-2013

M/s.HLL Lifecare Limited C/o.K.Venkatachalam Aiyer & Co.Chartered Accountants P.B.No.12, Trivandrum Pin 695 001. PAN : AAACH5598E.	Vs.	The Asst.Commissioner of Income-tax, Circle 1(1) Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri. Govind Sastry
Respondent by : Sri.A.Dhanaraj, Sr.DR

Date of Hearing : 31.05.2018	Date of Pronouncement : 11.06.2018
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ORDER

Per George George K., JM

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax's order passed u/s 263 of the I.T.Act (order dated 09.02.2017). The relevant assessment year is 2012-2013.

2. The grounds raised read as follows:-

"1. The learned Commissioner of Income tax erred in concluding that the assessment order dated 19/03/2015 passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue since the Assessing Officer had allowed deduction for CSR expenditure of Rs.44.69 lakhs without due verification in the manner it ought to be.

2. The learned Commissioner of Income tax failed to note that the "explanation (2) to section 37(1) of the

Income tax Act”, where by any expenditure incurred by an assessee on the activities relating to “CSR” 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 is applicable only from the asst. year 2015-16.

3. The learned Commissioner of Income tax also failed to note that the CSR expenditure has been incurred by the assessee, which is a Government of India Undertaking, following the guidelines dated 09.10.2010 issued by Government of India to all Central Public Sector Enterprises on CSR. Since this expense has been incurred by the assessee based on the specific directions of Government of India, it has been rightly allowed as deduction by the Assessing Officer.

4. For the above and other additional grounds that may be advanced at the time of hearing, the appellant prays that the appeal be allowed.”

3. The brief facts of the case are as follows:

The assessee is a company. For the assessment year 2012-2013, return was filed declaring an income of Rs.29,26,21,280, which was subsequently revised to Rs.22,88,55,880. The assessment u/s 143(3) of the I.T.Act was completed on 19.03.2015 determining a total income of Rs.23,88,46,210. In the assessment completed u/s 143(3) of the I.T.Act, the Assessing Officer had allowed deduction of Corporate Social Responsibility (CSR) expenses to the tune of Rs.44.69 lakh.

4. The Principal Commissioner of Income-tax issued notice u/s 263 of the I.T.Act, since according to him, the A.O. allowed deduction of CSR expenses without properly verifying the same. According to the Commissioner, as per *Explanation 2* to section 37(1) of the I.T.Act, any expenditure incurred by an assessee on activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be allowed as an expenditure incurred by the assessee for the purpose of business or profession.

5. To the notice issued u/s 263 of the I.T.Act, the assessee filed its objections. It was submitted by the assessee that the CSR expenses had to be necessarily incurred on account of Government Guidelines dated 09.04.2010 and the same is to be treated as an expenditure wholly and exclusively for the purpose of business u/s 37 of the I.T.Act. The assessee had also relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Travancore Titanium Products Ltd. (187 Taxman 81)* for the proposition that when Government issues orders, the assessee being a Government company, was duty bound to comply with such orders. It was further explained that *Explanation 2* to section 37(1) of the I.T.Act was applicable only for and from assessment year 2015-2016 and for the relevant assessment year, the said *Explanation* does not have any application. The assessee also relied on the order of the Raipur Bench of the Tribunal in the case of *ACIT v. Jindal Power Limited [ITA No.99/BLPR/2012 – order dated 23rd June, 2016]*.

6. The CIT, however, rejected the contentions / objections of the assessee and passed order u/s 263 of the I.T.Act on 09.02.2017. The CIT set aside the assessment order u/s 143(3) for fresh examination on the limited issue of deduction of Rs.44.69 lakh claimed as CSR expenses.

7. Aggrieved by the order of the CIT passed u/s 263 of the I.T.Act, the assessee has filed the present appeal before the Tribunal. The learned AR has filed paper book comprising of 55 pages including the ledger account Copy of the CSR expenditure, copy of the Guidelines issued by the Central Government and judicial pronouncements relied on by the assessee before the lower authorities.

8. The learned Departmental Representative, on the other hand, supported the order of the CIT passed u/s 263 of the I.T.Act.

9. We have heard the rival submissions and perused the material on record. The assessee is a Government of India Undertaking, working under the Ministry of Health and Family Welfare. The Government of India had issued certain Guidelines dated 09.04.2010 to all Central Public Sector Enterprises on CSR. The Guidelines issued by the Central Government dated 09.04.2010, is placed at pages 9 to 27 of the paper book filed by the assessee. As per the Guidelines as indicated under "5. Funding", all PSUs should mandatorily spend a percentage of net profit for CSR activities. The CSR

expenses that has been incurred by the assessee is based on the specific directions of the Government of India and the A.O. in the assessment order passed u/s 143(3) dated 19.03.2015 had allowed the CSR expenditure.

9.1 The following explanation was introduced in the I.T.Act by Finance Act, 2014:

“Explanation 2. – For the removal of doubts, it is hereby declared that for the purposes of sub-section (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 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession”

9.2 The “Notes on Clauses” of Finance Bill, 2014 states as under:

“Clause 13 of the Bill seeks to amend section 37 of the Income tax Act relating to general expenditure.

The existing provisions contained in sub-section (1) of the aforesaid section provide that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession”.

It is proposed to insert a new Explanation in sub-section (1) of section 37 so as to clarify that for the purpose of sub-section (1) of the said section, 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."

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

(emphasis supplied)

9.3 The ITAT, Raipur Bench in the case of Jindal Power Ltd (supra) had held that *Explanation 2* to section 37(1) of the I.T.Act is prospective. The relevant findings of the Tribunal reads as follows:-

"This disabling provision, as set out in Explanation 2 to Section 37(1), refers only to such corporate social responsibility expenses as under Section 135 of the Companies Act, 2013, and, as such, it cannot have any application for the period not covered by this statutory provision which itself came into existence in 2013. Explanation 2 to Section 37(1) is, therefore, inherently incapable of retrospective application any further."

9.4 It was specifically mentioned in the notes on clauses explaining the Finance Bill 2014, that the "*Explanation 2*" is applicable only from the assessment year 2015-2016. This also implies that CSR expenditure incurred by the assessee upto the assessment year 2014-2015 is an allowable business expenditure u/s 37 of the I.T.Act.

9.5 The CSR expenses has been incurred as per the directions of Government of India. The Hon'ble Kerala High Court in the case of *Travancore Titanium Products Ltd. (supra)* had held that a Government Undertaking is duty bound to comply with Governmental orders. The relevant findings of the Hon'ble jurisdictional High Court reads as follows :-

"Being a company under the control of the Government, it is bound to comply with all the Government orders and the Board of Directors itself is constituted with the Government secretaries and other nominees as members.

Therefore, the claim of deduction has to be considered with reference to the peculiar circumstances of the company which has no discretion in regard to the payment of the service charges to the government as it is bound to comply with the government orders. So much so, we are of the view that the parameters applicable in the case of a private company that too with respect to the claim for business expenditure, are exactly not applicable in the case of Public Sector Company whether it is under the control of the State Government or Central Government.

In fact, many public sector companies are not formed just to make profit alone but are supposed to achieve larger objectives for the society and the State.

By making payment of service charge, the respondent company has discharged only the obligation under Government orders. It cannot carryon business by violating Government orders and remain as a defaulter to the Government.

9.6 The ITAT Mumbai bench in the case of Hindustan Petroleum Corporation Ltd. (96 ITD 186) had held CSR

expenditure incurred by Government Undertaking is an allowable deduction. The relevant finding of the ITAT Mumbai Benches reads as follows:-

“Expenditure incurred by assessee, a company owned by the Government of India and working under its control and directions, towards implementation of 20 point programme as per specific directions of the Government though voluntary in nature and not forced by any statutory obligation, is allowable as business expenditure.

Merely because an expenditure is in the nature of donation, it does not cease to be an expenditure deductible under s. 37(1).”

9.7 The Commissioner of Income tax had mentioned in his order that *“the Apex Court (313 ITR 334 SC) CIT Vs Madras Refineries Ltd., while hearing the allowability of CSR expenses observed that neither the High Court nor the Tribunal concerned had given specific finding to the effect that the said CSR expenditure is allowable as business expenditure ”*. In the above mentioned case, the Apex court has not given any decision on merits of the case. It had only given an observation and remitted the issue back to the Tribunal to give specific finding to the effect that the said CSR expenditure is allowable as business expenditure.

9.8 Since, the assessee had incurred CSR expenses to comply with the directions of Govt. of India, following the above observations made by High Court of Kerala and ITAT, Mumbai Bench, the expenditure incurred is incidental to the

assessee's business and ought to be allowed as deduction u/s 37 of the I.T.Act.

9.9 Therefore, the A.O. had taken a possible view and the assessment order cannot be stated to be erroneous or prejudicial to the interest of the Revenue, warranting interference u/s 263 of the I.T.Act. Therefore, we set aside the impugned order of the CIT passed u/s 263 of the I.T.Act. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 11th day of June, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 11th June, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT Thiruvananthapuram.
4. The Pr.CIT.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin