

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1389/Del/2025
(ASSESSMENT YEAR 2020-21)**

DCIT, Circle-7(1), Delhi.	Vs.	Ernst & Young Services Private Limited, 6 th Floor, Worldmark-1, Asset Area-11, Hospitality District, Indira Gandhi International Airport, New Delhi-110037. PAN-AA CCP8967E
(Appellant)		(Respondent)
Assessee by	Shri Kamal Sawhney for Sh. Puro Adv.	
Department by	Shri Dayainder Singh Sindhu, CIT-DR	
Date of Hearing	19/03/2026	
Date of Pronouncement	16/06/2026	

ORDER

PER MANISH AGARWAL, AM:

This present appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld. CIT(A)' in short] in Appeal No. NFAC/2019-20/10192313 arising out of assessment order passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') dated 17.09.2022 for Assessment Year: 2020-21.

2. Briefly stated the facts are that assessee company is engaged in providing Business Centre Services at various locations in India and also Business Support Services to its clients. The assessee filed its return of income on 14.02.2021 declaring total income at Rs.28,87,45,550/- which was processed u/s 143(1) of the Act wherein certain adjustments were made by the CPC to the total income declared. Against the said intimation order, an appeal was filed before the Ld. CIT(A) on 06.05.2021. Thereafter, the case of the assessee was selected for scrutiny by way of issue of notice u/s 143(2) of the Act and assessment order was passed u/s 143(3) dated 17.09.2022 wherein the total income of the assessee was computed at Rs.43,11,76,738/- by making following additions/disallowances:

- (i) Disallowance of Education Cess claimed as expenses of Rs.27,95,057/-;
- (ii) Disallowances of deduction claimed u/s 80G of Rs.18,00,500/- out of CSR expenses;
- (iii) Disallowance made by CPC vide order dated 24.09.2021 of Rs.13,73,24,225/- u/s 43B of the Act; and
- (iv) Disallowance of Employee's Contribution to PF of Rs.5,11,409/- deposited after due the date.

3. The assessee filed an appeal before the Ld. CIT(A) against the said order, who vide impugned order has partly allowed the appeal of the assessee wherein the Ld. CIT(A) has deleted the disallowance made u/s 43B of the Act on account of bonus payment of Rs.8,12,41,438/-; GST payable of Rs.4,75,62,851/- and employer contribution of Provident Fund (PF) of Rs.41,61,849/- and further allowed deduction u/s 80G where such donations were made out of CSR expenses. However, the Ld. CIT(A) has confirmed the disallowance on account delayed payment of employee's contribution towards PF.

4. Against the said order, the Revenue is in appeal before the Tribunal wherein the grounds of appeal No. 1 to 3 are with respect to the deletion of disallowance made u/s 43B on account of payment of bonus, GST payment and Employer's contribution to PF.

5. Heard both the parties at length and perused the materials available on record. It is observed that the AO has repeated the disallowance made by the CPC in the order passed u/s 143(1) of the Act where the CPC has incorrectly disallowed the payments reported by the Auditor in Item No.26(1)B(a) of Tax Audit Report under the titled "***Paid on or before due date for furnishing the return of income of previous year u/s 139(1)***", the tax auditor has identified the amount of GST payable, bonus payable and employer's contribution towards provident fund which were outstanding at the end of the previous year relevant to assessment year under appeal and paid on or before the due date for filing of return u/s.139(1) of the Act, thus it requires no disallowance for the same. It is further observed that assessee has filed rectification application u/s 154 of the Act, before the CPC against the order passed u/s 143(1) which was dismissed by CPC and an appeal was preferred by the assessee against the rectification order dated 24.09.2021. This appeal

was decided by Ld. CIT(A) vide order dated 07.01.2025 in Appeal No. NFAC/2019-20/10091206z, where ld. CIT(A) has deleted the disallowance so made by the CPC and no appeal was preferred by the Revenue against the said order. Once it is established that the payments were made before the due of filing of the return, no disallowance could be made u/s 43B of the Act and, accordingly, we find no error in the order the ld. CIT(A) who has rightly deleted the disallowance made by the AO/CPC more particularly when the ld. CIT(A) has deleted the disallowance against the order passed u/s 154 of the Act which reached finality. Thus, grounds of appeal Nos. 1 to 3 of the Revenue are dismissed.

6. Ground of appeal No. 4 of Revenue is with respect to the deletion of disallowance of deduction claimed u/s 80G of the Act where the AO alleged that the said amount was paid out of CSR expenses.

7. Heard both the parties and perused the materials available on record. The Ld. CIT(A) while dealing the disallowances has made following observations.

"5.5 The ground of appeal No. 4 is related to not allowing deduction u/s 80G in respect of donations of Rs. 36,01,000/- made by the assessee to the approved trusts registered under section 12A and after obtaining certificate u/s 80G. This issue is common for the appeal for AY 2018-19 also. In this context, The Assessing Officer has primarily disallowed the deduction on the ground.

(a) CSR expenditure by the assessee forms part of the mandatory requirement of the Companies Act 2013 and consequently not eligible for deduction u/s 80G of the IT Act.

(b) Allowing deduction under section 80G will result in subsidizing these expenses incurred by the corporate which is not the intent of the legislature.

The appellant has mainly contended that the contributions to CSR expenditure are disallowed u/s 37 of the I.T. Act. However, there is nothing in section 80G specifically disallowing the donations for CSR, if the institute to which donations are made is otherwise eligible. The appellant has further relied upon the Jurisdictional ITAT decisions of Delhi Tribunal. The appellant submitted the following case laws:

"Reliance in this regard is placed on the following judicial precedents pronounced by jurisdictional Delhi Tribunal which held that mandatory nature of CSR expenditure does not justify disallowance of the same u/s 80G, if other conditions of section 80G are fulfilled.

- *Interglobe Technology Quotient (P.) Ltd. vs AGIT [2024] 207 ITD 360 (Delhi -Trib.) - Copy enclosed as Annexure-2*
-

In this case, the assessee had claimed deduction u/s 80G in respect of the donations. It had suo-motu disallowed the expenditure incurred as part of Corporate Social Responsibility (CSR) activities in accordance with provisions of section 37(1). The Assessing Officer disallowed the deduction claimed by the assessee by holding that the donations have been made to meet the

statutory requirement of the provisions of Companies Act 2013 and were accordingly not 'voluntary donation to be allowable under section 80G. On such facts, the Tribunal held as under:

"7.5 As with regard to the reasoning that CSR expenditure are not voluntary but mandatory in nature due to penal consequences, we are of considered view that voluntary nature of donation is by nature of fact that it is not on the basis of any reciprocal promise of donee. The CSR expenditures are also without any reciprocal commitment from beneficiary being philanthropic in nature. The Act permits deduction of donations as per Section 80G of the Act, even though, assessee is not gaining any benefit out of any reciprocity from donee. Similar is the case of CSR expenditure. Thus the reasoning of learned Tax Authority, the CSR expenditure is mandatory, does not justify disallowance of these expenditures u/s 80G, if other conditions of section 80G are fulfilled. There is no allegation of Revenue that other conditions of Section 80G are not fulfilled. We, thus sustain the ground." [Emphasis Supplied)

Ericsson India Global Services (P.) Ltd. vs. DCIT [2024] 160 taxmann.com 599 (Delhi-Trib.) - Copy enclosed as Annexure 3

"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)*." (Emphasis Supplied)

American Express (India) P. Ltd. vs POT [2024] 166 taxmann.com 91 (Delhi -Trib.) -Copy enclosed as Annexure 4

In this case, the assessee had incurred expenditure to the tune of certain amount under Corporate Social Responsibility (CSR). The assessee in its book disallowed the said expenditure. The aforesaid expenditure included some donations which were eligible for deduction under section 80G. The assessee claimed benefit of said deduction on the donations made under CSR. The Assessing Officer in assessment proceedings examined assessee's claim of deduction under section 80G and accepted the same. Subsequently, the Principal Commissioner invoked revision jurisdiction u/s 263 on ground that claim of deduction u/s 80G was not allowable to the assessee as the said claim had been made on expenditure incurred towards CSR. On such facts, Delhi Tribunal held as under:

"6. We find that the Tribunal in past has considered this issue in various cases and has been consistently holding that CSR expenses which are mandatory u/s. 135 of the Companies Act are not allowable as deduction u/s. 37(1) of the Act. But if any part of CSR contribution that is otherwise eligible for deduction under Chapter VI-A there is no bar on the companies to claim the same as deduction u/s. 80G of the Act."

In view of the above case laws, the appellant is eligible for deduction u/s 80G for donation claimed for CSR expenses. The ground of appeal No. 4 is allowed."

8. Before us, the Revenue has failed to controvert the findings of the Ld. CIT(A) given by the Ld. CIT(A) wherein it is held that the CSR expenditure are disallowable u/s 37(1) of the Act,

however, no restriction is imposed by the Act for claiming deduction u/s 80G on the donations made out of such expenses.

9. Section 80G(1) provides that in computing the total income of the assessee, there shall be deduction, in accordance with the provisions of this section, such sum paid by the assessee in the previous year as a donation. Further, section 80G(2) provide a list where deduction is allowed to the assessee for making donations. Section 80G falls in Chapter VIA of the Act, which comes after the computation of gross total income under various heads of income which *interalia* includes the disallowance of CSR expenses as per Explanation 2 of section 37(1). Thus, both section 37(1) and section 80G has different field to play. Further according to section 80G(2)(a)(iihk) and section 80G(2)(a)(iihl), any contributions made towards Swacha Bharat Kosh and Clean Ganga Fund, is not allowable as deduction under section 80G if the same is claimed as CSR expenses. However, section 80G(2)(a) provides deduction for 'any sums paid by the assessee in the previous year as donations', thus except the donations paid to the Swachh Bharat Kosh and Clean Ganga Fund, all other donation made to the eligible institutions / funds as per section 80G(2) are eligible for deduction u/s 80G of the Act. The coordinate bench of ITAT Bangalore in case of First American (India) Pvt. Ltd v. ACIT in ITA No.1762/Bang/2019 vide its order dt. 29.04.2020 has allowed the deduction under Section 80G by making following observations:

15. *In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, 'Income form Business and Profession', whereas 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.*
16. *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".*
17. *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.

18. *We therefore do not agree with arguments advanced by Ld. Sr. DR.*
19. *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.*
20. *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.*

The coordinate bench of Delhi Tribunal, in following case has also expressed the same view:

- Honda Motorcycle and Scooter India Pvt Ltd vs ACIT in ITA No.1523/Del/2022 (ITAT, Delhi)
- Teradata India Pvt Ltd vs. DCIT in ITA 1248/Del/2022 (ITAT, Delhi)

10. As per the above discussion and also by respectfully following the aforesaid judgements of various benches of Tribunal, we are of the considered view that Explanation 2 inserted in Section 37 to deny the deduction for CSR expenses incurred by companies as normal business expenditure and the same applies only to the extent of computing business income under Chapter IV-D. The said Explanation cannot be extended or imported to CSR contributions which are otherwise eligible for deduction under any other provision or Chapter, to say donations made by a charitable trust registered under Section 80G and if the same denied merely because such payment forms part of CSR, it would lead to double disallowance, which is not the intention of Legislature. Therefore, we find no error in the order of the Ld. CIT(A) in allowing the deduction us 80G on the donations made out of CSR expenses, thus Ground of appeal No.4 of the revenue is dismissed.

11. Ground of Appeal No.5 of the Revenue is with respect to the deletion of penalty levied of Rs.892/- and disallowed u/s 37 of the Act.

12. Heard both the parties and perused the materials available on record. It is observed that such ground is not borne out from the order of the Ld. CIT(A) challenged before us, however, the said disallowance was made by the CPC and deleted by Ld. CIT(A) in the order passed against the rectification order passed by the CPC as stated (supra), therefore, this ground of appeal of Revenue is dismissed.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 16. 06.2026.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 16.06.2026

PK, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI