CSR donations are eligible for deduction under Section 80G of the Income-tax Act subject to specified exceptions

Recently, the Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Goldman Sachs Services Pvt. Ltd.¹ (the taxpayer) dealt with the issue of allowability of Corporate Social Responsibility (CSR) expenditure under Section 80G of the Income-tax Act, 1961. The Tribunal observed that there are two specific exceptions provided in Section 80G to disallow sum spent by the taxpayer in pursuance of CSR under Section 135(5) of the Companies Act, 2013 (the Companies Act). Thus, the other contributions made under Section 135(5) of the Companies Act are eligible for deduction under Section 80G subject to taxpayer satisfying the requisite conditions prescribed for the deduction.

However, the AO did not deal with these aspects and merely considered the contributions as not voluntary but a legal obligation. Accordingly, the Tribunal remanded the matter back for fresh examination and verification of facts.

Facts of the case
The taxpayer is a subsidiary company of a foreign company. During the Assessment Year (AY) 2015-16, the taxpayer incurred expenditure to meet the Corporate Social Responsibility (CSR) as per the formulated policy². Out of the said amount, certain sum qualified for deduction under Section 80G @ 50 per cent. The Assessing Officer (AO) disallowed the substantial portion of donation under Section 80G on the ground that donations were not in the nature of voluntary contribution. However, the AO allowed the contribution to PM National Relief Fund under Section 80G as it was a direct contribution to the government.

Tribunal’s decision
The Tribunal observed that the CSR expenditure were required to be incurred by companies as per Section 135 of the Companies Act and the deduction under Section 37(1) was not available from AY 2015-16 as per the Explanation 2 to Section 37(1) inserted by the Finance Act (No.2) 2014. However, in the present case the taxpayer claimed deduction of CSR expenditure under Section 80G.

The AO had allowed deduction in respect of contribution made to PM Relief Fund. However, the AO had not made his observations clear that no CSR expenditure were eligible for deduction under Section 80G.

The Tribunal observed that there are two specific exceptions³ provided in Section 80G to disallow sum spent by the taxpayer in pursuance of CSR under Section 135(5) of the Companies Act. Thus, the other contributions made under Section 135(5) of the Companies Act would be eligible for deduction under Section 80G subject to taxpayer satisfying the requisite conditions prescribed for the deduction.

However, the AO did not deal with these aspects and merely considered the contributions as not voluntary but a legal obligation. Accordingly, the Tribunal remanded the matter back for fresh examination and verification of facts.

Our comments
The issue with respect to allowability of expenditure incurred on CSR activities under the Income-tax Act has been a subject matter of debate before the Courts.

¹ Goldman Sachs Services Pvt. Ltd v. JCIT [IT(TP)A No. 2355/Bang/2019] – Taxsutra.com
Note – In this case, the Tribunal has dealt with various issues. However, this flash news deals with the issue of eligibility of CSR expenditure under Section 80G.
² Under Section 135 of the Companies Act, 2013.
³ Section 80G(2)(iihk) and (iihl)
Taxpayers were claiming CSR expenditure as business expenditure. However, the Finance (No 2) Act, 2014 introduced Explanation 2 to Section 37(1)\(^4\) to disallow any expenditure incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act.

After the amendment, some tax authorities not only disallowed the expenditure under Section 37(1) but have also disputed the claim of deduction under Section 80G for eligible donations, qualifying for CSR. The tax authorities contended that the intention of the legislature was never to allow deduction for CSR expenditure, else it would result in subsidising the CSR expenditure by one-third amount. Furthermore, CSR expenditure is not ‘voluntary’, but ‘mandatory’ in nature.

The Bangalore Tribunal, in some of the cases\(^5\), allowed the deduction under Section 80G and held that taxpayer cannot be denied the benefit of claim under Chapter VI-A, which is considered for computing total taxable income. If taxpayer is denied this benefit, merely because such payment forms part of CSR, it would lead to double disallowance, which is not the intention of Legislature.

In the instant case also, the AO disallowed the donations under Section 80G on the ground that donations were not in the nature of voluntary contribution. However, the Tribunal held that there are two specific exceptions provided under Section 80G to disallow sum spent by the taxpayer in pursuance of CSR under Section 135(5) of the Companies Act. Thus, the other contributions made under Section 135(5) of the Companies Act would be eligible for deduction under Section 80G subject to taxpayer satisfying the requisite conditions prescribed for the deduction.

\(^4\) Applicable from the AY 2015-16
\(^5\) First American (India) Pvt. Ltd v. ACIT (ITA No.1762/Bang/2019) and Allegis services (India) Pvt. Ltd v. ACIT (ITA No.1693/Bang/2019)