



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.

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.

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.

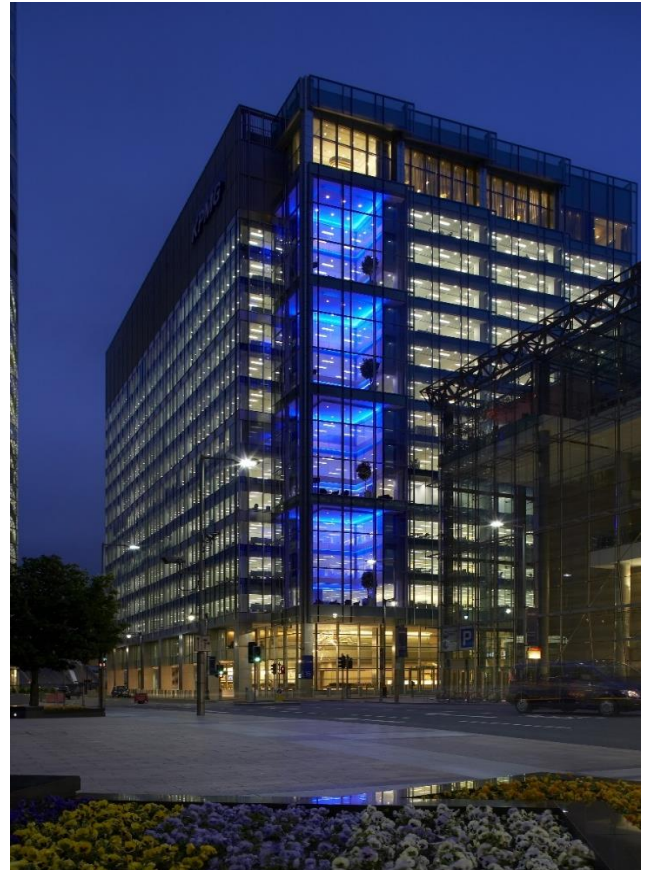
³ Section 80G(2)(iihk) and (iihl)

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 cases⁵, 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)

home.kpmg/in/socialmedia

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2020 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only