

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C' KOLKATA**

**[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER &  
MS. MADHUMITA ROY, HON'BLE JUDICIAL MEMBER]**

**[THROUGH VIRTUAL COURT]**

**I.T.A. Nos. 1099 & 1100/Kol/2018**  
Assessment Year: 2013-14 & 2014-15

***M/s. Garden Reach Ship Builders & Engineers Ltd.....Appellant***  
***43/46, Garden Reach Road,***  
***Kolkata - 700 024.***  
***[PAN: AACG 9371 K]***

**VS.**

***Pr. Commissioner of Incomes Tax, Kolkata - 1, Kolkata .....Respondent***  
***P-7, Chowringhee Square,***  
***Kolkata - 700 069.***

**Appearances by:**

*Shri Sanjoy Bhattacharya, Advocate appearing on behalf of the Assessee.*

*Shri Vijay Shankar, CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : November 17, 2020

Date of pronouncing the order : November 20, 2020

**ORDER**

**Per J. Sudhakar Reddy: AM**

Both these appeals are filed by the assessee and are directed against separate orders of Ld. Principal Commissioner of Income Tax, Kolkata - 1, Kolkata passed u/s 263 of the Act 1961 ('The Act') dated 21.03.2018. As the issues arising in both the appeals are common, for the sake of convenience, they are heard together and disposed off by way of this common order.

2. The assessee is a public limited company, in the public sector, under the Ministry of Defence, Government of India. It filed its return

of income for the Assessment Year 2013-14 on 02.09.2013 and for the Assessment Year 2014-15 on 28.11.2014.

3. The assessment was completed u/s 143(3) of the Act for A.Y. 2013-14 on 30<sup>th</sup> January, 2016 and A.Y. 2014-15 on 28<sup>th</sup> November, 2016. Thereafter, the Ld. Pr. CIT issued separate show cause notice for each of these assessment years proposing to revise the assessment orders u/s 263 of the Income Tax Act.

4. In the show cause notice alleging that the assessment orders passed by the A.O. for both of these assessment years 2013-14 & 2014-15, are erroneous, in so far as it is prejudicial to the interest of Revenue, the following reasons are given by the Ld. Pr. CIT:

*"i. From the details of 'Other Expenses' (Note -2.26) in the Profit & Loss Accounts it is observed that your company had claimed 'Corporate Social Responsibility Expenses' of Rs. 300.54 Lakh and the same was allowed in the assessment. However, as the expenditure was not incurred wholly and exclusively for the purposes of the business of the assessee as per provisions u/s 37 of the IT Act, 1961, the same was not allowable as business expenditure resulted in under assessment of income of Rs. 300.54 Lakh involving undercharge of tax of Rs. 1,30,66,366/-.*

*ii. The AO has passed the impugned assessment order without making enquiries or verification which should have been made in this case."*

5. In reply, the assessee stated as follows:

*"During the assessment proceedings u/s 143(2)/(3) on being requisitioned by the Assessing Officer, GRSE vide its letter dated 21/01/2016, had furnished details of CSR Expenses aggregating to Rs.3,00,54,276. A copy of the above-mentioned letter dated 21/01/2016 is enclosed for ready reference. After considering the details so submitted and due explanations offered by GRSE during the assessment proceedings, the Assessing Officer accepted GRSE's claim for deduction of CSR Expenses aggregating to Rs.3,00,54,276. So, it may kindly be appreciated that during the assessment proceeding itself the Assessing Officer had enquired*

*into the allowability of CSR Expenses and then decided upon allowing the same while making the assessment.*

*As stated hereinabove, it may kindly be appreciated that it would be wrong to consider that the Assessing Officer had passed the Assessment Order without making enquiries or verification in regard to the allowability of CSR Expenses for the Assessment Year 2013-14.*

*2. As earlier explained by GRSE during the assessment proceedings before the Assessing Officer, the reason for incurring the CRSE Expenses, is being repeated hereunder:*

*GRSE has been carrying on its business, i.e., Construction and Repairs of Ships mainly for the Indian Navy, in Reach and Kidderpore areas. For facilitating the business of GRSE in Garden Reach and Kidderpore areas, it had been necessary for GRSE to take up certain activities for the benefit of the people residing in the said locality. Accordingly, GRSE had to arrange for Vocational Training for local unemployed youths through Bengal National Engineering College, Shibpur. GRSE had been carrying on health welfare programmes for the benefit of the local people. In regard to Cerebral Palsy, GRSE did certain works for the benefit of the local people. In the nearby areas there had not been sufficient arrangement for Water Purifiers and Toilet facilities for the local schools specially in the Girls Schools and those facilities were not up to the standards. Therefore, GRSE took up the programmes for betterment as regards the availability of Drinking water and also for toilets. The local schools did not have proper Power back-up system which was affecting the running of the schools in the locality and therefore GRSE assisted in installing proper Power back-up system in the local schools. The local schools were also provided with computers for assisting the students in their education. Blood Donation Camps were also being arranged by GRSE for Thallaesemia and RTA patients. GRSE entered into a Memorandum of Understanding with Tata Institute of Social Sciences in order to arrange for the upliftment of the locality wherein GRSE's business was being carried on. As there had been a number of Scheduled Caste people in the locality, for the benefit of them GRSE supplied blankets. All these activities were undertaken by GRSE for facilitating its business in the areas wherein its business was being carried on. Hence it must be appreciated that all these expenses aggregating to Rs.3,00,54,276 had been incurred towards the benefit of GRSE in carrying on its business in a peaceful manner and without any obstruction of any nature.*

*It is submitted that only after appreciating as to how the above-mentioned activities of GRSE had been facilitating the business carried on by GRSE, the Assessing Officer had decided that the CSR expenses aggregating to Rs.3,00,54,276 should be held as allowable u/s 37(1) of the Income-tax Act, 1961.*

*3. It appears that the present move of treating the Assessment Order dated 30/01/2016 as an allegedly erroneous in so far as it is allegedly prejudicial to the interests of the revenue, has been taken up in view of the amendment made in section 37(1) by way of an insertion of a new Explanation 2 with effect from the Assessment Year 2015-16.*

*It may kindly be noted that in the above-mentioned Explanation 2, reference has been made to section 135 of the Companies Act, 2013 and that particular Act became effective only from 1<sup>st</sup> April, 2014. Hence, the present Assessment Year being 2013-14 during which the above-mentioned Act of 2013 had not been applicable, there cannot be any application of this newly inserted Explanation 2 to section 37(1) in the case of GRSE.*

*It is further submitted that since the Government brought the amendment by way of an insertion of new Explanation 2 to section 37(1) in relation to CRS Expenses that would be incurred on or after 01/04/2014, there cannot be any assumption as regards any alleged retrospective applicability of the said new Explanation 2. It is clear that the Government's desire had been to prohibit allowing of CSR Expenses only in respect of such expenses incurred on or after 01/04/2014 and therefore, any CSR Expense that had been incurred prior to 01/04/2014, should be considered as having been allowable u/s 37(1). It is needless to mention here that whenever any restriction is brought to any Statute, it is always understood that prior to making effective of that restriction from a particular date, the acts carried out before that date, have to be considered as not having any restriction of any nature. In this case also, on following the general convention, in view of the fact that the restriction was in relation to expenses incurred on or after 01/04/2014, any CSR Expense incurred upto 31/01/2014 cannot be considered as not allowable u/s 37(1). So, in the case of GRSE the entire CSR Expenses aggregating to Rs.3,00,54,276 cannot be considered as allegedly disallowable in the Assessment Year 2013-14.*

*On the basis of the above facts and the submissions made hereinabove of GRSE, it is further submitted that the Assessment Order dated*

*30/01/2016 passed u/s 143(3) for the Assessment Year 2013-14, cannot be considered as any alleged erroneous Order which is allegedly prejudicial to the interests of the revenue. Hence, on behalf of GRSE it is submitted that the proposal made by you for revision of the said Order u/s 263, may kindly be dropped.*

6. The Ld. Pr. CIT rejected the contention of the assessee at para 5 and 11 as follows:

*"5. I have considered the facts and circumstances of the case and the submission of the assessee. The issue at hand pertains to claim of "Corporate Social Responsibility expenses" to the tune of Rs. 300.54 lakhs. The assessee explained that the issue stood discussed during the impugned assessment proceedings that such expenses were necessary for facilitating its business of ship building for the India Navy for mainly in Reach and Khidderpore areas. The expenditure were stated to have been incurred for Vocational Training for local unemployed Youth, health welfare programme, arrangements for water and toilet facilities, power back up system & computers for schools etc.*

*No doubt CSR expenses were have been specially curbed w.e.f. 01.04.2015 i.e. A.Y. 2015-16 onwards, but previous year debits of such kind will necessarily have to pass the test of wholly and exclusively for the purpose of business as laid down in section 37 of the Act. The assessee had debited the sum of Rs. 300.54 lakhs of CSR under 'other expenses'. It is the responsibility of any taxing authority to ensure correct disallowances are made so that only the proper total income is taxed. The AO is therefore, directed to go through the nature and reason in each of the debits instead of merely accepting the assertions of the assessee.*

*11. Having heard to the facts and circumstances of the case and in the light of the aforesaid decisions of Hon'ble Supreme Court and Hon'ble High Court and in accordance with the amendment made in section 263 of the Act with effect from 01.06.2015, I hold that the impugned assessment order dated 30.01.2016 passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. I further hold, after giving the assessee an opportunity of being heard, that the impugned assessment order dated 30.01.2016 is liable to set aside. Therefore, I set aside the said assessment order directing the present A.O. to frame the assessment afresh after considering the aforesaid observations. Hon'ble Supreme Court and Hon'ble High Court decisions and as per law."*

Aggrieved the assessee is in appeal before us.

7. After hearing rival contention we hold that the issue in question is covered by the order of the Kolkata 'A' Bench of the Tribunal in the case of Hindustan Copper Ltd. vs CIT, LTU-1, ITA No. 900/Kol/2018 order dated 29.01.2020 held as follows:

*"4. Coming to merits, we notice that the PCIT's revision directions under challenge have placed reliance on the statutory amendment in sec. 37 by way of Explanation-2 inserted by the Finance (No.2) Act,2014 w.e.f. 01.04.2015 that such a claim shall not be deemed to be an expenditure incurred for the purpose of the business or profession. We reiterate that we are in assessment year 2013-14 with the relevant financial year 2012-13 only. This tribunal's coordinate bench's decision in ITA No.99/BLPR/2012 in Assistant Commissioner of Income Tax Circle-1(1), Bilaspur vs. Jindal Power Limited decided on 23.06.2016 holds that the above stated explanation to sec. 37 of the Act carries prospective operation only. Coupled with this, this tribunal's yet another decision in M/s HLL Lifecare Limited vs. The Asstt. Commissioner of Income Tax, Cricle-1(1),Trivandrum in ITA No. 123/Coch/2017 decided on 11.06.2018 takes into consideration an identical claim of corporate social responsibility expenses incurred by a public sector enterprise as per Government of India's direction not disallowed in case of regular assessment to be not resulting error causing prejudice to interest of the Revenue as under:-*

*"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 subsection (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 carry on 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."*

*5. Learned CIT-DR at this stage sought to emphasize on the PCIT's findings that neither there was an enquiry nor any discussion in the assessment records on the issue of "CSR" claim of ₹513,36,000/- in issue and therefore, this regular assessment has been rightly revised u/s. 263 of the Act. We find no substance in Revenue's instant last argument as well. The fact remains that this assessee has admittedly incurred its corporate*

*social responsibility expenditure as per the Government of India's guidelines only. It has been further subjected to statutory audits as well qua all the expenses incurred from time to time. The question as to whether the relevant assessment order must expressly discuss the issues in question or not so as to attract sec, 263 revision proceedings stands settled long back in Commissioner of Income Tax vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom) that mere non-discussion on an issue in the assessment order does not render it an erroneous causing prejudice to the interest of the Revenue. Hon'ble apex court's landmark decisions in Malabar Industrial Co. Ltd. v. Commissioner of Income Tax (2000) 243 ITR 83 (SC) and Commissioner of Income Tax vs. Max India (2007) 295 ITR 282 (SC) also hold that before an assessment is sought to be revised as erroneous causing prejudicial to the interest of the revenue, these twin conditions must exist simultaneously. We conclude in view of above stated factual and legal backdrop that even if it is held that the Assessing Officer had erred in not carrying out the necessary enquiry / factual verification on the assessee's claim of its "CSR", the same could not have caused any prejudice interest of the revenue in case of a public sector undertaking bound by the Government of India's directions issued on the subject. More particularly before the insertion of Explanation-2 in sec. 37 of the Act in assessment year 2013-14 since the amended legal position carries prospective effect only. We thus conclude that the CIT's assumption of revision jurisdiction in these facts and circumstances is not sustainable. The same stands reversed. We order accordingly. The Assessing Officer's regular assessment dated 29.01.2016 is restored as a necessary corollary.*

*6. This assessee's appeal is allowed."*

8. In the case on hand it is clear that the Assessing Officer had called for and obtained explanation for CSR expenses incurred by the assessee. The explanation given by the assessee before the AO is extracted by it, in its reply to the Principal Commissioner of Income Tax u/s 263 of the Act. This is not a case where there was no enquiry on this issue by the A.O. It is also not a case of non-application of mind nor in the case where the Assessing Officer had not examined these particular expenses claimed by the assessee, as alleged in point No. (ii) of the show cause notice by the Pr. CIT. Though the Pr. CIT had

made this allegation in his Show Cause Notice, no such finding has been given by the Pr. CIT in his order u/s 263 of the Act. Admittedly, the expenditure in question is audited and is allowable as deduction. The amendment brought about by way of Explanation 2 to section 37 by Finance Act, 2014, was only with effect from 01.04.2015. In the case of Misrilall Mines Pvt. Ltd. ITA No. 738/Kol/2017 and in the case of ACIT vs Jindal Power Ltd., Raipur Bench, ITA No. 99/BLPR/2012 order dated June 23<sup>rd</sup>, 2016, the ITAT held that the amendment in question is not retrospective. Expenditure incurred in CSR in accordance with guidelines issued by the Govt. of India is allowable as a deduction for both A.Y. 2013-14 and A.Y. 2014-15.

9. In view of the above discussion, we are of the considered view that there is no error in the order of the Assessing Officer passed u/s 143(3) of the Act in both the assessment year, much less an error, in so far as it is prejudicial to the interest of Revenue. Thus we cancel the orders passed by the Pr. CIT u/s 263 of the Act and allow both the appeals of the assessee for both A.Y. 2013-14 and A.Y. 2014-15.

10. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on November 20, 2020.

Sd/-

(Madhumita Roy)  
JUDICIAL MEMBER

Sd/-

(J. Sudhakar Reddy)  
ACCOUNTANT MEMBER

**Dated: 20/11/2020**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Garden Reach Ship Builders & Engineers Ltd., 43/46,  
Garden Reach Road, Kolkata – 700 024.
2. Pr. CIT, Kolkata – 1, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar  
ITAT, Kolkata