

# SCV ALERT


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Hon'ble Delhi Tribunal holds that donations made as a part of CSR expenditure are eligible for deduction under Section 80G of the Income tax Act, 1961 (the Act)





One of the most litigated issues faced by corporates has been the treatment of donations made towards Corporate Social Responsibility (CSR) expenditure and its eligibility for deduction under Section 80G of the Act.

Under the provisions of section 37(1) of the Act, deduction for expenditure is allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession and which earlier included CSR expenditure also, as there was no specific exclusion for the same. On the other hand, 'donations' made by taxpayers are disallowed while computing the gross total income and is then claimed under section 80G of the Act as a deduction (as per the prescribed limits). However, vide Finance (No 2) Act, 2014, Explanation 2 was inserted in Section 37(1) of the Act (w.e.f. Assessment Year 2015-16) which provided that any expenditure incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act 2013, will not be allowable as business expenditure. Hence, to this extent, the law was made clear. However, despite the said amendment to disallow CSR expenditure while computing business income, the said amount was and is being claimed by taxpayers under section 80G of the Act, to the extent so eligible and subject to the limits prescribed therein.

The tax authorities are of the view that deduction against the CSR spending under section 80G of the Act is not allowed. The tax authorities contend that the intention of the legislature was never to allow deduction for CSR expenditure, else it would result in subsidizing the CSR expenditure. Further, as per the tax authorities, CSR expenditure cannot be considered as a donation because it is not 'voluntary', but 'mandatory' in nature, hence, no deduction is permissible.

Till now, there have been decisions from various benches of the Tribunal<sup>1</sup> which have held that the taxpayers cannot be denied the benefit of claim under Chapter VI-A, which is considered for computing 'Total Taxable Income' and if the benefit is so denied merely because the payment forms part of CSR expenditure, this would lead to double disallowance, which is not the intention of Legislature. Moreover, the Tribunals were of the view that section 80G of the Act already has 2 specific exceptions to disallow the sum spent by a taxpayer in pursuance of CSR. If the intent of the legislature was to not allow other donations, the same would have been categorically spelt out in the section itself.

Now, on 28<sup>th</sup> May 2024, the **Hon'ble Delhi Bench of Tribunal in the case of Interglobe Technology Quotient Private Limited<sup>2</sup>**, taking note of the earlier decisions & reasoning given by the various other benches, has upheld and reiterated this

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<sup>1</sup> **Hon'ble Mumbai Tribunal** in the case of Societe Generale Securities India (P.) Ltd. v PCIT [2023] 157 taxmann.com 533, J K Investo Trade (India) Limited v DCIT (ITA No. 1836/Mum/2023) and Synergia Lifesciences Pvt Ltd v. DCIT [ITA No. 938/Mum/2023]; **Hon'ble Bangalore Tribunal** in the case of Goldman Sachs Services Pvt Ltd v. JCIT [IT(TP)A No. 2355/Bang/2019], Allegis services (India) Pvt. Ltd., v. ACIT [ITA No.1693/Bang/2019], First American (India) Pvt. Ltd., v. ACIT [ITA No.1762/Bang/2019] and Sling Media (P.) Ltd. v DCIT [2022] 135 taxmann.com 164; **Hon'ble Delhi Tribunal** in the case of Honda Motorcycle and Scooter India Pvt Ltd v. ACIT [ITA No.1523/Del/2022] and Teradata India Pvt Ltd v. DCIT [ITA 1248/Del/2022]; **Hon'ble Hyderabad Tribunal** in the case of Optum Global Solutions (India) (P) Ltd v. DCIT [2023] 203 ITD 14

<sup>2</sup> Interglobe Technology Quotient Private Limited v. ACIT (ITA no. 95/Del/2024, Dated 28th May 2024)

position regarding the eligibility of donations made as part of CSR expenditure for deduction under Section 80G of the Act. The Tribunal held as under:

- ✚ The explanatory memorandum to the Finance (No.2) Bill 2014 expresses the legislative intent and the rationale of disallowance of CSR expenditure referred to in section 135 of the Companies Act, that such expenditure is application of income and not incurred for the purposes of business. Since CSR expenditure is application of income under the Income Tax Act, it continues to form part of the Gross total income of the assessee.

The Tribunal, taking note of the above, held that this in itself justifies the grant of deduction under section 80G of the Act because section 80G is part of Chapter VI-A which comes into play only after Gross total income has been computed as per the provisions of law (which includes disallowance of CSR expenditure by applying Explanation 2 to section 37(1) of the Act.

Thus, the Hon'ble Tribunal held that there is **no correlation between suo-moto disallowance in section 37(1) of the Act and claim of deduction** under section 80G of the Act.

- ✚ With regard to the reasoning of the authorities that CSR expenditure is not voluntary but mandatory in nature due to penal consequences, the Hon'ble ITAT held that **voluntary nature of donation is by reason 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.
- ✚ The Tribunal accordingly held that **denial of CSR expenditure under section 37(1) of the Act is not an embargo to claim deduction under section 80G of the Act.**

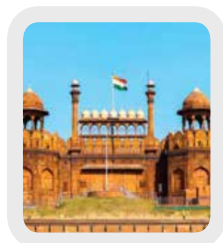


## SCV's Take Away

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*This decision of Hon'ble Delhi Bench of Tribunal adds another feather in the kitty of decisions in favour of the taxpayers in the matter of deduction under section 80G of the Act by highlighting that donations made as part of CSR expenditure are duly eligible for such deduction, despite the Revenue's argument that CSR spending is mandatory and hence does not qualify as donation. By emphasizing the voluntary nature of CSR expenses and donations, devoid of any reciprocal promises, the Tribunal underscores the philanthropic essence of such contributions. This decision upholds that the absence of reciprocal benefits for the taxpayer does not preclude deductions under Section 80G of the Act. Additionally, the Tribunal asserts that disallowance under Section 37(1) of the Act and deduction under section 80G of the Act have no correlation whatsoever. Overall, this ruling also lays down the principles for recognizing CSR expenditures as voluntary acts of corporate philanthropy deserving tax benefits. The need of the hour is for a higher forum to set this litigation to rest or a consequent change in law in the upcoming budget.*

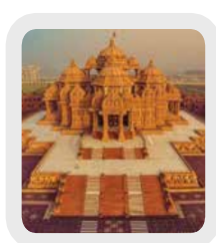
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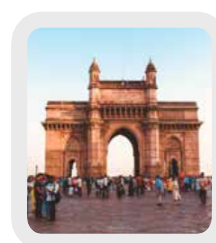
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