IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 95/DEL/2024
[Assessment Year: 2020-21

Interglobe Technology Quotient Private Limited, 3rd Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, New Delhi-110001. **PAN- AABCI 3241 H**	Vs	ACIT, Circle-10(1), New Delhi.
APPELLANT		**RESPONDENT**
Assessee represented by	Shri Rohit Jain, Adv.; & Ms. Somya Jain, CA	
Department represented by	Shri Sandeep Kr. Mishra, Sr.DR	
Date of hearing	14.03.2024	
Date of pronouncement	28.05.2024	

O R D E R

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 30.11.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as "learned

First Appellate Authority" or in short "FAA"), in Appeal no. NFAC/2019-20/10192967, arising out of order dated 22.09.2022 u/s 143(3) read with section 144B of the Income-tax Act, 1961 (hereinafter referred as the "Act"), passed by the Assessing Officer, NFAC, Delhi (hereinafter referred as the "AO"), pertaining to the assessment year 2020-21.

2. The relevant facts are that the appellant is a private limited company inter-alia, engaged in the business of rendering data processing services and export thereof. The appellant filed return of income, for present AY, under section 139(1) of the Act on 12.02.2021 declaring income of Rs.24,43,74,310. Assessment was completed by the assessing officer vide order dated 22.09.2022 passed under section 143(3) r.w.s 144B, assessing income of the appellant at Rs.24,91,76,860, after making two disallowances.

2.1 The first disallowance was with regard denial of deduction claimed under section 80G of the Act

2.2 The second disallowance related to not allowing credit of TDS

3. The appeal filed by the appellant was partly allowed by the NFAC, aggrieved, the appellant is in appeal before this Tribunal raising following grounds of appeal:

> *"1. That on the facts and circumstances of the case and in law, the impugned order dated 30.11.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeals Centre ['CIT(A)'] is erroneous and bad-in-law.*
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> *1.1. That the CTT(A) erred in passing the impugned order without granting personal hearing (either physically or virtually) to the appellant which is not only violative of settled principles of natural justice but also express provisions of section 250 of the Income Tax Act, 1961 (the Act') and the faceless appeal scheme.*
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> *1.2. That the CIT(A) erred on facts and in law in making adverse observations (not forming part of assessment order) and changing the complexion of the case without any prior notice/ opportunity, in gross violation of provisions of section 251(2) of the Act.*
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> *1.3. That the CIT(A) erred in not quashing the assessment order dated 22.09.2022 passed without providing opportunity of personal hearing, in violation of mandatory scheme of section 144B of the Act and in gross violation of principles of natural justice.*
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> ***Re: Disallowance of deduction claimed under section 80G of the Act***
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> *2 That on the facts and circumstances of the case and in law. the CIT(A) erred in confirming the disallowance of deduction of Rs. 1,37,94,870 claimed under section 80G of the Act, being 50% of the eligible amount of donations made during the relevant previous year.*
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> *2.1. That the CIT(A) erred in denying deduction to the extent of Rs.59,93,920 (claimed qua donations aggregating to Rs. 1,19,87,840) merely because the donations were paid after 31 March, 2020, without appreciating that the time limit for making donations in assessment year 2020-21 stood extended*

to 30th July, 2020 vide The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

2.2. That the CIT(A) further erred in confirming the disallowance to the extent of Rs.78,00,950 (claimed qua donations aggregating to Rs.1,56,01,900) on the ground that the underlying expenditure was not in the nature of donation, rather the same represented mandatory contribution towards Corporate Social Responsibility (^ prime CS R^ prime prime) as specified under the Companies Act, 2013.
2.3. That the CIT(A) erred in confirming disallowance of deduction for donation of Rs.23,100 without appreciating that the same was not claimed by the appellant in the return of income.

Re: Not allowing credit of TDS

3. That on the facts and circumstances of the case and in law, the CIT(A) assessing officer erred in granting credit of taxes deducted at source to the extent of Rs.23.01,710 as against credit of Rs.4,10,51,738 claimed by the appellant thereby granting short credit to the extent of Rs.3,87,50,028.

3.1. That the CIT(A) erred in not appreciating that the income corresponding to the aforesaid TDS credit of Rs.3,87,50,028 was offered to tax in the year under consideration and hence the credit was allowable in terms of section 199 of the Act read with Rule 37BA of the Income Tax Rules, 1962 dehors the fact that the same was reflected in the Form 26AS for subsequent year.

Re: Interest under section 234A/B/C

4. That the CIT(A) erred on facts and in law in not deleting interest under sections 234A, 234B and 234C of the Act levied/ computed by the assessing officer."

4. Heard and perused the material before us. During the course of hearing nothing was submitted with regard to ground no. 1. As with regard to ground No. 2 to 2.3, the relevant facts are that during the year under consideration, the appellant

claimed deduction under section 80G of the Act in respect of the following donations made by it till 30th July, 2020:

S. No.	Date of Donation	Party	Amount donated	Deduction allowable u/s 80G (50%)	Whether part of CSR expense
1.	15.04.2019	Interglobe Foundation PAN-ACCI2495N	55,00,000	27,50,000	Yes
2.	27.08.2019		55,00,000	27,50,000	Yes
3.	18.03.2020		20,00,000	1,00,000	Yes
4.	17.06.2020		1,10,00,000	55,00,000	No
5.	20.12.2019	Uththaan PAN-AAJU0183G	13,12,500	6,65,250	Yes
6.	14.05.2020		12,89,400	6,44,700	Yes
7.	07.05.2020	End Poverty PAN-AATE3346B	9,87,840	4,93,290	No
TOTAL			2,75,89,740	1,37,94,870	

4.1 Admittedly the donations made as part of CSR expenditure were suo-motu disallowed by the appellant under section 37(1) of the Act. However, the assessing officer disallowed the entire deduction claimed by the appellant on the ground that donations forming part of CSR expenditure is not allowable as deduction under section 80G of the Act. The CIT(A) though rightly observed that donations to the extent of Rs.1,19,87,840, being total of S.No. 4 & 7, in above column, were not paid as part of CSR expense, however, the CIT(A) confirmed the disallowance on the ground that the same were made beyond 31.03.2020. Similarly, donation of Rs.12,89,400 made to Uththaan, referred above at S.No.6, after 31.3.2020 was

disallowed by the CIT(A) on the ground that payment was made beyond the end of financial year (without prejudice to eligibility of CSR expenditure.

4.2 Here itself we will like to observe that CIT(A) seems to have lost sight of the fact that provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ("TOLA'), were applicable in regard to the donations made beyond 31.03.2020. This aspect could not be disputed by Ld. DR. As per the provisions of TOLA, inter-alia, the due date for making donations, deduction for which could be claimed under section 80G of the Act, in the income tax return for assessment year 2020-21 was extended till 30th July, 2020.

5. The remaining amount of the disallowance was confirmed by NFAC on the ground that donations forming part of CSR expenditure is not allowable as deduction under section 80G of the Act. Same forms the basic controversy now. The assessing officer and CTT(A) disallowed the deduction claimed by the appellant 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 of the Act.

6. Ld. Counsel has submitted that the appellant suo-motu disallowed the expenditure incurred as part of CSR Activities in accordance with provisions of section 37(1) of the Act. However, for the purpose of claiming deduction under section 80G of the Act, the donations made as part of CSR expenditure were

considered. It was submitted that law in this regard is now quite settled. Ld. Counsel submitted that disallowance of deduction claimed under section 80G of the Act will result in double disallowance, which is not provided for by the Legislature. He has placed reliance on Bangalore Bench of the Tribunal judgment in the case of **Allegis services (India) Pvt Ltd vs ACIT Bangalore: ITA No.1693/Bang/2019.** Relevant extracts of the decision, as relied by him, are reproduced hereunder:

> *"14. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head 'Income from Business or Profession", whereas monies spend under section 80G are claimed while computing "Total Taxable Income" in the hands of appellant. The point of claim under these provisions are different*
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> *15. 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 or Profession".*
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> *16. For claiming benefit under section 80G, deductions are considered at the stage of computing "Total Taxable Income". Even if any payment under section 80G forms part of CSR payment (Keeping in mind ineligible deduction expressly provided u/s 80G), the same would already stand excluded while computing, Income under the head "Income from Business or Profession", The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to appellant under Chapter VIA for computing "Total Taxable Income" cannot be denied to appellant, subject to fulfilment of necessary conditions therein.*
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> *17. We therefore do not agree with the arguments advanced by Ld Sr DR.*

18. In our view, appellant cannot be denied the benefit of claim under chapter VIA, which is considered for computing "Total Taxable Income". If appellant is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of legislature. Accordingly, ground raised by appellant stands allowed. "(emphasis supplied)

6.1 Ld. Counsel has relied judgment in **Goldman Sachs Services Pvt Ltd vs JCIT: ITA No.2355/Bang/2019,** of the Bangalore Bench of the Tribunal to submit that that deduction under section 80G cannot be denied in respect of CSR expenditure incurred under section 135(5) of the Companies Act, 2013. He submitted that the Tribunal while allowing the deduction under section 80G, has also considered clauses (iiihk) & (iiihl) of section 80G(2) to hold that contribution made under section 135(5) of the Companies Act, 2013 other than to "Swachh Bharat Kosh" and "Clean Ganga Fund" shall be eligible for deduction under section 80G of the Act. The relevant extracts of the decision, as relied by him, are as under:

"16..... We find that the CSR expenses are required to be incurred by companies as per Section 135 of the Companies Act and the deduction u/s. 37(1) of the Act, is not available from Assessment Year 2015-16 as per the Explanation 2 to Section 37(1) of the Act inserted by the Finance Act No.2. 2014. Whereas, the appellant company has made a claim for deduction of CSR expenses w/s. 80G of the Income Tax Act, 1961. But the assessing officer has rejected the assesses claim without verifying the nature of contributions and observed that it is not a donation, and was not spent voluntarily for the eligibility of claim u/s.80G of the Act but due to legal obligation prescribed w/s. 135 r.w. Schedule VII of Companies Act, 2013. We find that the A.O has allowed eduction n/s.80G of the Act in respect of

contribution made to PM Relief Fund which is not disputed. We are of the opinion that the A.O. has not made his observations clear that no CSR expenses are eligible for deduction m/s. 80G of the Act. We consider it appropriate to refer to the Clauses (link) & (d) of sub section 2 of Section 80G of the Act which are read as under:

> *"(link) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the appellant in pursuance of Corporate Social Responsibility under sub-section (3) of Section 135 of the Companies Act, 2013 (18 of 2013): or*
>
> *(iihl) the Clean Ganga Fund, set up by the Central Government, where such appellant is a resident and such sum is other than the sum spent by the appellant in pursuance of Corporate Social Responsibility under sub- section (5) of Section 135 of the Companies Act, 2013) (18 of 2013)"*

Where these two exceptions are provided in Section 80G of the Act, it can be inferred that the other contributions made us. 135(5) of the Companies Act are also eligible for deduction u/s 80G of Income Tax Act subject to appellant satisfying the requisite conditions prescribed for deduction u/s 80G of the Act. In the present case the A.O. has not dealt on these aspects, prima facie, considered the contributions as not voluntary but a legal obligation and has accepted the genuineness of the contributions. We are of the opinion that the matter has to be considered for examination and verification of facts subject to the appellant satisfying the requirements of claim u/s 80G of the Act. Accordingly, we restore the entire disputed issues to the file of A.O. for fresh examination and verification as discussed above and the appellant should be provided adequate opportunity of hearing and shall co-operate in submitting the information and we allow the ground of appeal of the appellant for statistical purposes." (emphasis supplied)

6.2 Ld. Counsel has then relied a co-ordinate Delhi bench of Tribunal decision in the case of **Honda Motorcycle and Scooter India Pvt Ltd vs ACIT: ITA No.1523/Del/2022** vide order dated 22.08.2023, where relying on the decision of Bangalore bench of the Tribunal in the case **Goldman Sachs (supra),** the Co-

ordinate bench has held that there is no restriction in the Act that expenditure when disallowed for CSR cannot be considered under section 80G of the Act. The said donation also formed part of CSR expenditure of the assessee, though the assessee disallowed the said expenditure under section 37(1) of the Act. The Tribunal, however, remitted the issue to the file of the assessing officer with the directions to allow deduction under section 80G of the Act subject to verification that the payments qualified as donation under that section. The relevant extracts of the decision, as relied by him, are as under;

> *"18. We have heard both the parties and perused the records. We find that ITAT, Bangalore Bench in the case of Goldman Sachs Services (P.) Lad. (supra) has held that the other contributions made under section 135 (5) of the Companies Act are also eligible for deduction's 80G of the Act ITA No. 1523/Del./2022 subject to satisfying the requisite conditions prescribed for deduction w/s 80G of the Act. For this purpose, the issue is remanded to the file of AO to examine the same whether the payments satisfy the claim of donation's 80G of the Act. We find that the case law is fully applicable to the facts of the case. There is no restriction in the Act that expenditure when disallowed for CSR cannot be considered w/s 80G of the Act, Hence, we remit the issue to the file of AO to verify whether these payments were qualified as donations u/s 80G of the Act or not, if they qualify as donation u/s 80G of the Act then the requisite amount deserves to be allowed."* (emphasis supplied)

6.3 Ld. Counsel also relied judgment in case of **Teradata India Pvt Ltd vs. DCIT: ITA 1248/Del/2022,** the co-ordinate Delhi Bench of the Tribunal, where in the bench allowed the deduction claimed under section 80G of the Act in respect of

donations made to eligible institutions as part of CSR Expenditure, holding as under;

> *"16. It is not in dispute that contributions made by the assessee are made to eligible institutions which are enjoying exemption u/s 80G of the Act. The fact that those contributions were made only to eligible institutions are not in dispute before us. We find that all the institutions listed in the tabulation are enjoying exemption u/s 80G of the Act and accordingly, assessee would be entitled for deduction u/s 80G of the Act thereon, irrespective of the fact that it is made as part of CSR obligations. The assessee in the instant case had duly complied the provisions of Companies Act, 2013 read with CSR rules thereon and as per the provisions of the Income Tax Act had also voluntarily disallowed the CSR expenditure while computing the taxable income. Since, the donee institutions are eligible institutions enjoying exemption u/s 80G of the Act, the assessee has claimed deduction u/s 80G of the Act which is also provided in the statute itself to the assessee. Hence, denial of deduction u/s 80G of the Act to the assessee would result in gross injustice. We direct the ld AO to grant deduction u/s 80G of the Act to the assessee. Accordingly, the ground No. 6 to 6.6 raised by the assessee are allowed."* (emphasis supplied)

6.4 He has also made reference to Hyderabad Bench of the Tribunal decision in the case of **Optum Global Solutions (India) (P) Ltd vs DCIT: [2023] 203 ITD 14 (Hyd Trib.)** that where assessee satisfied conditions of section 80G, the assessee shall be eligible to claim deduction under the said section in respect of such donations, even if the same formed part of spends towards CSR. The relevant extracts of the decision, as relied by him, are as under:

> *"13. After computing the business income, while computing the total income of the assessee, the assessee is invoking the benefit under chapter-VIA by claiming deduction of the sums under section 80G of the Act. According to*

the Revenue, when once such sum went to satisfy the requirement of section 135 of the Companies Act, the benefit gets exhausted and such an amount is no more available for the purpose of claiming deduction under section 80G of the Act.

14. Coming to the Income-tax Act, 1961, there is no express provision to support the contention of Revenue. On the other hand, section 80G(2)(iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as apart of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G(2)(iiihk) and (iiihl) of the Act.

15. This aspect has been dealt with by successive Co-ordinate Benches in the cases relied upon by the assessee. While elaborately discussing this issue in the case of JMS Mining (P.) Ltd....

16. We are in agreement with such observations and findings of the Co-ordinate Bench of the Tribunal and while respectfully following the same, we hold that inasmuch as the assessee satisfied the conditions of section 80G of the Act, the assessee is entitled to claim deduction under section 80G of the Act in respect of such donations which formed part of the spend towards CSR. Accordingly, we hold Ground No. 2 in favour of the assessee." (emphasis supplied)

6.5 Reliance was also placed on the decision of Mumbai Bench of the Tribunal in the case of **Synergia Lifesciences Pvt Ltd vs DCIT: ITA No. 938/Mum/2023**

(Mum Trib), which has relied on the decision of Bangalore bench of the Tribunal in the case of **Allegis (supra)** and held that "the claim for deduction under section 80G of the Act in respect of CSR expenses cannot be denied". The Tribunal, however, remitted the issue to the file of the assessing officer with the directions to allow deduction under section 80G of the Act is the conditions specified therein are satisfied. He also cited the following decisions for the same proposition of law.

- FNF India Private Limited vs ACIT: 133 taxmann.com 251 (Bang Trib.)
- Infinera India (P.) Ltd vs. JCIT: 194 ITD 463 (Bang Trib.)
- First American (India) Private Limited: ITA No. 1762/Bang/2019 (Bang. Trib)
- Sling Media (P) Ltd vs. DCIT: 194 ITD 1 (Bang Trib.)
- JMS Mining (P.) Ltd vs PCIT: 130 taxmann.com 118 (Kol Trib.)
- DCIT vs. Peerless General Finance & Investment Co Ltd: 112 taxmann.com 410 (Kol Trib.)
- Diamond Beverages Private Limited vs PCIT: ITA No.208/Kol/2022 (Kol Trib.)
- Power Mech Projects Ltd vs DCIT: ITA No.155/Hyd/2023 (Hyd Trib.)
- Supreme Buildestates Pvt Ltd vs DCIT: ITA No.495/Jpr/2023 (Jpr Trib.)
- Naik Seafoods Pvt Ltd vs. PCIT: ITA 490/Mum/2021 (Mum Trib.)
- Societe Generale Securities India Pvt Ltd vs. PCIT: ITA 1921/Mum/2023 (Mum Trib.)

7. Learned DR has failed to bring forth any decision to the contrary. Thus, we accept the plea of learned counsel on the basis of case law cited, denial of CSR expenditure u/s 37(1) of the Act is not embargo to claim deduction u/s 80G of the Act.

7.1 Further, we like to observe that as a matter of fact as per Section 135 of the Companies Act, 2013 ('CA 2013), the qualifying Companies as mentioned therein

are required to spend certain percentage of profits of last three years on activities pertaining to Corporate Social Responsibility (CSR). The expenditure on CSR, could be by way of expenditure on projects directly undertaken by said companies, such as setting up and running schools, social business projects, etc. Such expenditure would include expenditure otherwise falling for consideration under section 37(1) of the Act. On the other hand, companies, instead of undertaking or participating directly in a project, may choose to give donations to institutions that are engaged in undertaking such projects, which is also a recognized way of compliance of CSR obligation.

7.2 The assessing officer and CIT(A) have relied upon General Circular 14/2021 dated 25.08.2021 issued by MCA and "Explanatory Notes to the provisions of the Finance (No.2) Act, 2014" to hold that donations made as part of CSR expenditure are not allowable as deduction. The foundation of their reasoning being that the donation is voluntary in nature, while CSR expenditures are under statutory obligations.

7.3 As we take notice of the fact that Parliament legislated that CSR expenses would not be eligible for deduction as business expenditure under section 37 of the Act by inserting Explanation 2 to section 37(1) vide the Finance (No.2) Act, 2014 (applicable from the assessment year 2015-16), which provided that any

expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the CA 2013, shall not be deemed to be an expenditure incurred by an assessee for the purpose of business or profession and shall not be allowed as deduction under section 37(1) of the IT Act. The intent of Parliament in bringing the aforesaid provision is given in the Explanatory Memorandum to the Finance (No.2) Bill, 2014 and is reproduced as under ;

> *"**CSR expenditure, being an application of income**, is not incurred wholly and exclusively for the purposes of carrying on business, As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for .computing the taxable income of the company, Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure." (emphasis supplied)*

7.4 The aforesaid explanatory memorandum categorically 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. We are of considered view that this in itself justifies the grant of deduction u/s 80G. As CSR expenditure is application of income of the assessee under the Income Tax Act, that means it continues to form part of the Total income of the assessee. Section 80G(1) of the Act provides that in computing the total income of an assessee, there shall be

deducted, 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) lists down the sums on which deduction shall be allowed to the assessee. Section 80G falls in Chapter VIA, which comes into play only after the gross total income has been computed by applying the computation provisions under various heads of income, including the Explanation 2 to section 37(1) of the Act. Thus, there is no correlation between suo-moto disallowance in section 37(1) and claim of deduction under section 80G of the Act.

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.

8. **Ground of Appeal No. 3 to 3.1:-** Ld. Counsel has submitted that the appellant, as a consistent practice, follows an "accrual system of accounting" wherein the revenue is recognized once the service has been rendered and the bill is raised upon the service recipient. The service recipient is obligated to deduct applicable tax (TDS) under the relevant provisions of the Act while making the payment. However, in appellant's case, there is a gap in the recognition of revenue by the appellant and deduction of taxes by the receipt inasmuch as, for services provided by the appellant around year end, the revenue is recognized by the appellant in March, however, the TDS is deducted by the recipient in the next financial year when the payment is made. As a consequence, though the revenue is offered to tax in the preceding financial year, the credit of tax deducted thereon gets reflected in the next financial year. In such a situation, in terms of section 199 of the Act read with Rule 37BA(3)(ii) of the Income Tax Rules, 1962 ('the Rules'), the applicant claims credit of the taxes in the year in which the income is offered to tax. In this background, it is submitted that during the year under consideration, the appellant rendered certain data processing and IT enabled services to M/s. Travelport International Operations Limited ('TravelPort'). Revenue from the services rendered to the said party to the extent of Rs.38,75,00,274 was offered to tax in the year under consideration (refer pages 44, 132 and 163 of PB). However, the tax on the said amount was deducted and deposited by TravelPort in the next

financial year i.e., 2020-21, relevant to assessment year 2021-22 (refer page 154 of PB). Accordingly, TDS credit of Rs.3,87,50,028 was reflecting in the Form 26AS of the applicant for assessment year 2021-22. As per the accrual method of accounting followed by the appellant read with provisions of section 199 of the Act and Rule 37BA of the Rules, since the income from TravelPort to the extent of Rs.38.75 crores was offered to tax in the year under consideration, the credit of the taxes deducted thereon, reflecting in the Form 26AS for the next year, were claimed in the year under consideration (refer pages 3 and 165 of PB). Further pertinently, since the credit of taxes to the extent of Rs.3,87,50,028 was claimed during the year under consideration, the applicant did not claim the said credit in the return of income for assessment year 2021-22 (refer pages 167 and 175 of PB). Attention in this regard was invited to the following documents for establishing that income from TravelPort was offered to tax during the year:

(a) Copy of invoice dated 30.04.2020 raised on TravelPort for services rendered in the month of February 2020-refer page 127 of PB:

(b) Copy of the ledger of 'TravelPort' and 'Data Processing Services' duly evidencing that the income of Rs.38.75 crore was offered to tax in the year under consideration and not in subsequent year-refer pages 128-136 of PB:

(c) Copy of financial statements for the year ended 31 March 2020-refer pages 4- 61 @ 44 of PB;

(d) Copy of Form 26AS for AY 2020-21 and 2021-22-refer pages 137-148 and 149- 162 @ 154 of PB:

(e) Copy of relevant extract of ITR for AY 2020-21 and 2021-22 duly evidencing that credit of TDS of Rs.3,87,50,028 was claimed in the year under consideration and not the subsequent year refer pages 2-3, 166-167 of PB.

9. On a perusal of the aforesaid trail of documents, it can be concluded that there remains no doubt that both the income and TDS deducted thereon has duly been offered tax during the year under consideration and no credit for such TDS has been claimed in the subsequent assessment year.

9.1 Even otherwise, in the computation of income annexed to the assessment order, the assessing officer however did not allow the credit of Rs.3,87,50,028 claimed by the applicant without granting any opportunity and without assigning any reason for the same. Similarly the CIT(A) dismissed the claim of the applicant for alleged want of reconciliation of TDS and the corresponding income shown, without providing the applicant with an opportunity to furnish the details. In the light of provisions of section 199 of the Act read with Rule 37BA of the rules, We are of considered view that since the income corresponding to the credit was

offered to tax in the year under consideration i.e., assessment year 2020-21, the credit of taxes deducted thereon was also to be granted in the same year.

9.2 Further more Ld. DR could not dispute the fact that the aforesaid issue now stands covered in favour of the applicant vide order dated 07.06.2022 passed by Tribunal in the case of applicant's group company, viz **InterGlobe Enterprises Ltd vs. ACIT: ITA 6580/Del/2019 for assessment year 2016-17** wherein the Co-ordinate bench has categorically held that the credit of TDS should be allowed in the same year in which the income has been claimed to have accrued / arisen and included for determination of taxable income. Relevant extract of the order of the Tribunal is reproduced as under:

> *"5. We have carefully considered the rival submissions. It is the case of the assessee that when the issue of availability of TDS credit in the appropriate assessment year is examined in the light of Section 199(3) r.w. Rule 37BA(3) of the Income Tax Rules, it would be clear that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. The assessee contends that the TDS credit is available in the financial year where the corresponding income has been referred by the assessee. A reference was made to the decision of the Co-ordinate Bench in the case of Greatship India Ltd. vs. DCIT in ITA No.5562/Mum/2018 order dated 8th June, 2020 to contend that the TDS credit cannot be postponed to a different assessment year on the basis of deduction carried out by the deductor when the accrued income from such transaction has been reported in the earlier assessment year.*
>
> *6. A combined reading of Section 199(3) r.w. Rule 37BA(3) makes the position of law clear that credit for TDS is available in the year in which the income is reported and as a corollary, should not be deferred to some other assessment year. In the instant case, the Revenue has allowed the credit in*

the subsequent assessment year when the TDS is shown to have been credited in the form 26AS. However, as stated on behalf of the assessee, the corresponding income will not be found to be recorded and therefore such direction would belie the letter and spirit of Section 199(3) and Rule 37BA(3) thereto. Thus, on first principles, we are inclined to agree with the stand taken on behalf of the assessee for eligibility TDS credit in the Assessment Year 2016-17 itself when income has been claimed to have accrued/arisen and included for determination to chargeable income." (emphasis supplied)

9.3 Thus the income was offered to tax in the year under consideration i.e., assessment year 2020-21, so the appellant had rightly claimed credit of TDS of Rs.3,87,50,028 in the year under consideration and the action of the assessing officer/ CIT(A) in not allowing the credit deserves to be reversed. The ground is sustained.

10. Consequently the appeal of assessee is allowed.

Order pronounced in open court on 28.05.2024.

Sd/-	**Sd/-**
(M. BALAGANESH)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 28.05.2024.
MP
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI