# CORPORATE SOCIAL RESPONSIBILITY (CSR)

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**Corporate Social Responsibility (CSR) expenditure incurred, ITC shall be available in GST, Penalty for not fulfilling CSR obligations under Companies Act 2013 &Treatment of CSR expenditure in Income tax**

**What is Corporate Social Responsibility (CSR)?**

Corporate Social Responsibility (CSR) is the idea that a company should play a positive role in the community and consider the environmental and social impact of business decisions. It is closely linked to sustainability − creating economic, social, and environmental value – and ESG, which stands for Environmental, Social, and Governance. All three focus on non-financial factors that companies, large and small, should consider when making business decisions.

CSR is now compulsory for Every company having net worth of Rupees Five Hundred crore or more or turnover of Rupee One Thousand Crore or more or a Net Profit of Rupee Five crore or more in the immediately preceding financial year as per Section 135 of the Companies Act 2013. The Board of every such company shall ensure that the company spends in every financial year at least two percent of the average net profits of the company made during the three immediately preceding financial years.

Section 135 of companies Act, 2013 enshrines corporate social responsibility as follows:

**Sub-section (1)**Every company having net worth of rupees five hundred crore or more or turnover of rupee one thousand crore or more or a net profit of rupee five crore or more in the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

**Sub-section (5) The** Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial year, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibilities activities.

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause ( o ) of sub-section ( 3 ) of section 134 specify the reasons for not spending the amount and, and unless the unspent amount relates to any ongoing project referred to in sub-section ( 6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

**Sub-section (6)** Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its corporate social responsibility policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of third financial year.

**Sub-section (7)**If a company is in default in complying with the provisions of sub-section (5) or sub section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupee, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

## Goods & Service Tax (GST)

The question raised by the applicant before Telangana State Authority for Advance Ruling

**Whether ITC is available on CSR expenditure spent by the Company?**

Recently **Telangana State Authority for Advance Ruling** in the case of **M/S Bambino Pasta Food Industries Private Limited vide TSAAR Order No.52/2022 , A.R.Com/17/2022 dated 20-10-2022** rightly held that the expenditure made towards corporate social responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

## Facts of the Case

The applicant Bambino Pasta Food Industries is a manufacturer of Vermicelli and pasta products.

During the covid time, when oxygen was scarce in the country, Applicant has donated oxygen plant to AIIMS hospital Bibinagar, Yadari Bhongir District, for the benefit of patients who were suffering with low oxygen levels. For this purpose, the applicant has purchased PSA oxygen plant and spare parts for that oxygen plant for Rs 62,74,200 which includes IGST paid of RS 9,16,200.

## Contention by the Taxpayer.

The applicant is of the opinion that the expenditure made by them comes under the CSR provisions as per Section 135 of the Companies Act, 2013.

The applicant is of the view that it is eligible to claim ITC on CSR expenditure spent by it since it is spent in accordance with the provisions laid down by the Companies Act, 2013. CSR expenses incurred by the applicant have been mandated under the Companies Act, 2013. Therefore, CSR activity is to be considered as "used or intended to be used in the course or furtherance of business.

As per section 17(5)(h) of the CGST Act, 2017, input tax credit shall not be available in respect of "goods lost, stolen, destroyed, written off or disposed by way of gift or free samples." The term "Gift" has not been defined under the CGST Act, 2017, however in common parlance gift is provided to someone occasionally, without consideration and which is voluntary in nature.

Further, the applicant also relies upon the judgement of the Hon'ble Supreme Court of India, in the case of Ku. Sonia Bhatia V. State of UP (1981-VIL-06-SC), wherein Hon'ble Court has cited the definition of "Gift" from Corpus Juris Secundum, Volume 38 in the following words:A gift is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation there for.

Since CSR expenses are not incurred voluntarily, accordingly, applicant is of the opinion that it does not qualify as "Gift" and therefore its credit is not restricted under section 17(5) of the CGST Act, 2017.

**Discussion, findings and Ruling by the AAR**

As can be seen from the above statutory provisions of the Companies Act, 2013, the Companies with a specified networth or net profit are obliged to incur a minimum of 2% of their net profit towards their corporate social responsibility and failure to do so will attract penalty under sub section 7 of section 135 of the said Act which may go upto a maximum of RS 1 Crore. Thus, the running of the business of a company will be substantially impaired if they do not incur the said expenditure. Therefore, the expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

**The ruling is given as below:**

In view of the above discussion, the question raised by the applicant are clarified as below:

| Question | Ruling |
|---|---|
| Whether ITC is available on CSR expenditure spent by the company? | The expenditure made towards corporate social responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts. |

That **Hon'ble CESTAT Mumbai, in the case of M/S Essel Propack Ltd. Vs. Commissioner of CGST, Bhiwandi {2018 (362) E.L.T. 833 (Tri. – Mumbai) – 2018-VIL-621-CESTAT-MUM-ST},** has observed that : "Sustainability is dependent on CSR without which companies cannot operate smoothly for a long period as they are dependent on various stake holders to conduct business in an economically, social and environmentally sustainable manner i.e. transparent and ethical. Hence in my considered view, CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake." It is now to be looked into as to if CSR can be considered as input service and be included within the definition of "activities relating to

business" and if in so doing, a company's image before corporate world is enhanced so as to increase its credit rating as found from the handbook of CSR activities published by the Confederation of Indian Industry (CII). The answer is in the affirmative since to win the confidence of the stake holders and shareholders including the people affected by the supply of raw material from their locality say natural resources like mines and minerals etc. the hazardous emission that may result in production activities.

**Order**

The appeal is allowed and the order passed by the Commissioner (Appeals) demanding duty, interest and penalty against input service availed by the appellant company towards fulfilment of CSR activity is hereby set aside.

Also in the Advance Ruling in the case of **Dwarikesh Sugar Industries Limited, Uttar Pradesh AAR** gave a ruling that CSR is a mandatory obligation on a company under the companies Act 2013. So the expenses incurred by the company in this regard can be considered as incurred in the course of business. It is mandatory for company to fulfil this obligation to continue its business. AAR also stated that as it is a mandatory obligation and it cannot be considered as gift. So, ITC cannot be said to be blocked under section 17(5) of CGST Act, 2017.

**Conclusion – CSR expenditure – Input Tax Credit - GST:**

All above decisions are a welcome decision wherein expenditure made towards corporate social responsibility are required to be incurred as per section 135 of the companies act 2013 and therefore the said expenditure are considered as incurred in the course of furtherance of business. CSR is mandatory for company to fulfil this obligation to continue its business. Therefore, input tax credit is available on CSR expenditure spent by the company under CGST and SGST Acts.

**Companies Act 2013**

Order for Penalty for Violation of Section 135 of the Companies Act, 2013 In the matter of **Comviva Technologies Limited issued from Government of India, Ministry of Corporate Affairs, Office of Registrar of companies, NCT of Delhi & Haryana**vide No. ROC/D/Adj Order/Section 135/Comviva/5702-5710 Dated 27-09-2022.

**Appointment of Adjudicating Officer:**

Ministry of Corporate Affairs vide its Gazette Notification No.A-42011/112/2014-Ad.II, dated 24-03-2015 (See SO 831 ( E ) , dated 24-03-2015) appointed undersigned as Adjudicating Officer in exercise of the powers conferred by section 454 (1) of the Companies Act, 2013 (herein after known as Act) r/w Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

**Facts of the case:**

An application dated 26/07/2022 has been received from the company admitting non-compliance of section 135 (5) of the Companies Act, 2013 whereby it has been stated that the company was required to spent Rs 2,88,65,811 as part of its CSR obligation during the financial year 2020-2021. However, the company spent Rs. 2,83,15,689 towards its CSR obligation during the financial year 2020-2021.

During the end of the financial year the company had an unspent amount of Rs. 5,50,122 which was to be transferred within six months of the end of the financial year i.e. 31st March 2021 to the fund specified in Schedule VII of the Act in compliance of the Section 135 (5) r/w Rule 10 of the Companies (Corporate Social Responsibility Policy) Rule, 2014.

The subject company transferred such unspent amount of RS. 5,50,122 to the specified schedule VII fund (PM Relief Fund) on 22nd April 2021. However, due to inadvertence and technical error, the said amount bounced back into applicant Company's Bank account on the same day and it was remained unnoticed to the officers of the Applicant Company. However, the default was made good by the company and its officers by depositing unspent amount of Rs. 5,50,122/- to the Prime Minister's National Relief Fund on March 30,2022.

## Adjudication of penalty

The Applicant Company and its officers who have made the default in complying the provisions of section 135 (5) by not transferring unspent CSR amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year are now liable for penalties under section 135(7) of the Companies Act,2013.

| Violation Section | Penalty imposed on company/director (s) | Calculation of penalty amount | Maximum penalty can be imposed. |
|---|---|---|---|
| u/s 135 (5) of the Companies Act 2013 | Comviva Technologies Limited | 5,50,122 * 2 = 11,00,244 or Rs 1 crore whichever is lower | Rs 11,00,244 |
| u/s 135 (5) of the Companies Act 2013 | CEO, CFO, CS, 4 Directors and one another KMP | 5,50,122/10 = 55,012.2 or Rs 2 lakhs whichever is less | RS 55012.2 to everyone separately. |

## Order

a. The company and its directors are hereby directed to pay the penalty amount as per above table. In case of directors such amount is required to be paid out of their own funds.

b. The company and its directors are hereby directed to rectify the default immediately from the date of receipt of copy of this order.

## My Comments

The default was already rectified on March 30, 2022. Therefore, now no further action is required to be done by the company.

c. The notices shall pay the said amount of penalty through online within 90 days of receipt of this order.

## Conclusion – CSR – Companies Act:

If company has not complied CSR requirements due to lack of funds then also Directors, CEO, CFO and CS are held responsible along with company. The same is also in line with Section 135 (7) of the companies act 2013. It is also mentioned that penalty levied on Director is to be paid from their own funds; may also mean penalty levied on CEO, CFO & CS may be allowed to be paid from the funds of the company.

**CSR Expenses – Whether allowed in Income Tax Act or not**

**Explanation 2 to Section 37 (1) is added relating to CSR Expenditure which is as under:**

**37 (1)**

*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.

So as per Explanation 2 to Section 37 (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 shall not be allowed as business expenditure.

The intent of Parliament in bringing the said 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. 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."

It is proposed to clarify that for the purposes of section 37(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 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein for example CSR expenditure laid out or expended on Scientific Research related to the business if revenue in nature is allowable under section 35(1)(i) and if capital in nature then allowable under section 35(1)(iv) etc.

**Kolkata Tribunal in the case of JMS Mining Pvt Ltd v/s. PCIT-2, Kolkata ITA No.146/Kol/2021**

The assessee is a mining service provider engaged in the business of management and operation of mines.

The company has made donations of Rs 1,35,00,000/- to certain Trusts, which qualifies as CSR Expenditure as per Section 135 read with Schedule VII of the Companies Act 2013 and the same has been added back in computation of income in accordance with Explanation 2 to Section 37(1) which states that "For 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 shall not be deemed, to be an expenditure incurred by the assessee for the purposes of the business or profession."

The assesse has first suo moto added back the said amount and subsequently took further claim of benefit of deduction under Chapter VIA amounting to Rs. 67,50,000(50% of Rs 1,35,00,000/-) on account of CSR expenses/donation made to eligible/approved Charitable Trusts u/s 80 Gas the Trust were approved under section 80 G (5) (Vi) by the Commissioner of Income Tax, in this behalf. Neither there is any express provision nor any of the explanations present under section 80 G, prohibits the assessee to claim the

amount made towards donations as deduction under Chapter VIA, even if the same has been classified as CSR expenditure for the purpose of Companies Act 2013.

In view of the above, the amount of Rs 1,35,00,000 is allowable under Chapter VIA of the Income Tax Act 1961.

**Decision of the ITAT**

**ITAT noted/observed the following**

From a plain reading of Explanation 2 to section 37 (1) of the Income Tax Act shows that any expenditure incurred towards CSR activities as referred to in Section 135 of the Companies Act, 2013 shall not be allowed as 'business expenditure' and shall be deemed to have not been incurred for the purpose of business.

The embargo created by this Explanation 2 inserted in section 37 of the Act by the Finance (No.2) Act 2014 was to deny deduction of CSR expenses incurred by companies, as and by way of regular business expenditure while computing "Income under the head Business".

So, it can be clearly seen that this Explanation 2 to Section 37(1) of the Act which denies deduction of CSR expenses by way of business expenditure is applicable only to the extent of computing "Business Income" under chapter IV – D of the Act. The said Explanation according to us cannot be extended or imported to CSR contributions which is otherwise eligible for deduction under any other provision or Chapter, to say donations made to charitable trusts registered u/s 80G of the Act.

Relevant portions of 80G of the Act is reproduced below:

**Deduction in respect of donations to certain funds, charitable institutions, etc.**

**80G.** (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) or in sub-clause (iiia) or in sub-clause (iiiaa) or in sub-clause (iiiab) or in sub-clause (iiib) or in sub-clause (iiie) or in sub-clause (iiif) or in sub-clause (iiig) or in sub-clause (iiiga) or sub-clause (iiih) or sub-clause (iiiha) or sub-clause (iiihb) or sub-clause (iiihc) or sub-clause (iiihd) or sub-clause (iiihe) or sub-clause (iiihf) or sub-clause (iiihg) or sub-clause (iiihh) or sub-clause (iiihi) or sub-clause (iiihj) or sub-clause (iiihk) or sub-clause (iiihl) or sub-clause (iiihm) or in sub-clause (vii) of clause (a) or in clause (c) or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty per cent of the balance of such aggregate; and

(ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).]

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(*a*) any sums paid by the assessee in the previous year as donations to—

(iiihk) **The Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013** (18 of 2013); or

(iiihl) **the Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013** (18 of 2013);

(iv) any other fund or any institution to which this section applies; or

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely : —

(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the PCIT or Commissioner in accordance with the rules* made in this behalf;

From a bare reading of section 80G of the Act we note that deduction under this section has to be made in accordance with and subject to the provisions of this section i.e. section 80G of the Act. As per this section i.e. section 80G of the Act, an amount equal to 50% of the aggregate of the sums specified in sub-section 2 (refer sub-clause (iv) of Clause (a) of Sub section 2 of section 80 G of the Act read with section 80 G (1) (ii)) which allows the donation given to any other Fund or any institution to which this section applies and if it satisfies the requirement of sub-section (5) of Section 80G of the Act, then 50% of the donation is allowable expenditure (refer 80G (1) (ii)) even if the assessee has included the expenditure as CSR Expenditure because there is no prohibition or restriction placed by the Parliament on such a donation even if shown as CSR expenditure. The reason for saying so is that in section 80G of the Act certain restrictions in respect of deduction in respect pf two (2) donations are expressly seen in this section. So the Parliament has expressed its intention clearly by bringing in restriction in respect of expenditure classified by an assessee company while claiming deduction u/s 80G of the Act i.e. CSR expenditure related to Swachh Bharat Kosh and Clean Ganga Fund. So if an assessee makes some donation to these projects and include/classify it as CSR expenditure while claiming deduction u/s 80G of the Act then it will be allowed only the amount that is other than the sums spent by the assessee in pursuance of CSR u/s 135 of the Companies Act.

In other words, if a taxpayer company spends only the mandatory CSR expenditure, which includes the amount of donation to Swach Bharat Kosh and Clean Ganga Fund (referred to in section 80 G (2)(a) (iiihk) and (iiihl) of the Income Tax Act, then deduction under section 80G of the ITA was not allowable.

However, where the taxpayer expended the mandatory expenditure and gave donations to these two projects over and above the mandatory CSR expenditure, then the excess sum donated to Swach Bharat Kosh and Clean Ganga Fund would be eligible for deduction under section 80 G of the Income Tax Act.

**Example:** A company has reported eligible net profit u/s 135 of the Companies Act, 2013 at Rs. 100 crores. The minimum CSR contribution of 2% under section 135 (5) of the Act works out to Rs. 2 crores.

**Situation 1:** The company has been spent the required minimum CSR contribution of Rs. 2 crores towards construction of road & school in the vicinity of the backward area where the factory is located.

**Tax Treatment:** The entire CSR expenditure of Rs. 2 crores is to be disallowed and added back in terms of Explanation 2 to Section 37(1) of the Act. The said expenditure is not falling under 80 G Donation so the same will not be allowed under chapter VI A of the Act.

**Situation 2 :**The company has contributed Rs. 3 crores to Swach Bharat Kosh.

**Tax Treatment:** The entire CSR expenditure of RS. 3 crores is to be disallowed and added back in terms of Explanation 2 to section 37(1) of the Act.

In terms of Section 135(5) of the Companies Act 2013 read with Section 80 G (2)(a) (iiihk) read with Section 80G(1)(i) of the Act, only the excess sum paid amounting to RS. 1 crores (3 crores – 2% of Rs 100 crores) can be availed as deduction u/s 80G of the Act.

**Situation 3 :** The company has contributed Rs. 1 crore to Prime Minister's National Relief Fund and RS. 1 crore to any other charitable trust registered u/s 80 G (5) of the Act.

**Tax Treatment:** The entire CSR expenditure of RS. 2 crores is to be disallowed and added back in terms of Explanation 2 to Section 37(1) of the Act.

The company can claim deduction for 100% of the donation of Rs. 1 crores paid to Prime Minister's National Relief Fund u/s 80 G (2) (a) (iiia) read with Section 80 G (1) (i) of the Act.

The company can also claim deduction to the extent of 50% of the Donation of Rs. 1 crores paid to any other registered charitable trust u/s 80 G (2) (a) (iv) read with Section 80G(1)(ii) of the Act.

Applying the **legal maxim "expressiouniusestexclusioalterius"**, it can be safely inferred that when the Legislature in particular has provided for only the above referred two specific exceptions in section 80G, then it is the implied intent of the Legislature to permit deduction u/s 80G in respect of CSR contributions made to funds/organizations referred to in all other sub-clauses of Section 80G (other than (iiihk) and (iiihl) of the Act.

Since the assessee satisfies the condition u/s 80 G of the Act of the donees, the assessee's claim for deduction of CSR expenses/contribution u/s 80G of the Act was allowed after enquiry by the AO. Thus action of the AO allowing the claim u/s 80G of the Act is a plausible view.

**In the result, ITAT has allowed the appeal of the assessee.**

**The Bangalore Tribunal in the case of Allegis Services (India) vs. CIT in ITA No. 1693/Bang/2019 pronounced on 29-04-2020 has held as under**:

In present facts of case, Ld. AR submitted that all payments forming part of CSR does not form part of Profit and Loss account for computing Income under the head, "Income from Business and Profession'". It has been submitted that some payments forming part of CSR were claimed as deduction under section 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing "Total Taxable Income". **If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.**

**The Bangalore Tribunal in the case of FNF India Pvt Ltd vs. ACIT (ITA No. 1565/Bang/2019) reported in 2021-TIOL-319-ITAT-BANG pronounced on January,05,2021 held as under:**

"Similar issue came up for consideration before this Tribunal in the case of Allegis Services (India) Pvt Ltd wherein it was held that "For claiming benefit under section 80G, ITA No. 146/Kol/2021 M/S JMS Mining Pvt Ltd Ay 2016-2017 deductions are considered at the stage of computing "Total Taxable income". Even if any payments under section 80G forms part of CSR payments (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 and Profession". The effect of such disallowance would lead to increase in

Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "Total Taxable income" cannot be denied to assessee, subject to fulfillment of necessary conditions therein …… authorities below have erred in denying claim of assessee under section 80G of the Act……".

**Conclusion – CSR – Income Tax Act 1961**

As per Explanation 2 to section 37(1) of the Income tax act 1961 any expenditure incurred towards CSR activities as referred to in section 135 of the Companies Act 2013 including Donations given relating to CSR shall not be allowed as Business expenditure and shall be deemed to not be incurred for the purpose of business. Therefore in the Computation of Income the same is to be added to profit before tax to arrive at Profits and Gains of Business or Profession under Chapter IV-D of the Income tax act.

However CSR expenditure/Donations relating to CSR are eligible for deduction under Chapter VIA under section 80 G if conditions thereof are satisfied except Donations given up to eligible CSR amount to **Swachh Bharat Kosh** and **Clean Ganga Fund** as specified in section 80G(2)(a)(iiihk) and (iiihl) of the IT Act.If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

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