IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

BEFORE Dr. O.K. NARAYANAN, VICE-PRESIDENT
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

I.T.A.No. 1252/Mds/2012
Assessment year : 2008-09

M/s. Gemini Communication Ltd., No.1, Dr. Ranga Road, Alwarpet, Chennai –600018. PAN – AAACG 2531K. (Appellant)	Vs.	The Assistant Commissioner of Income-tax, Company Circle-II(2), Chennai-34. (Respondent)

Appellant by : Shri M. Narayanan
Respondent by : Shri Anirudh Rai, IRS, CIT

Date of Hearing : 28th August , 2012
Date of Pronouncement : 28th August , 2012

O R D E R

PER Dr. O.K. NARAYANAN, VICE-PRESIDENT

This appeal is filed by the assessee. The relevant assessment year is 2008-09. The appeal is directed against the order of the Commissioner of Income-tax(Appeals)-III at Chennai

dated 19.3.2012 and arises out of the assessment completed under sec.143(3) of the Income-tax Act, 1961.

2. The assessee, in this case has filed its return of income by "TAPAL" on 30.9.2008. Thereafter the assessee again filed the return electronically on 6.11.2008. A taxable income of ₹13,69,59,409/- was declared.

3. Initially, the return was processed under sec.143(1) on 19.3.2010. Thereafter the assessment was selected for scrutiny and the assessment was completed under sec.143(3) on 31.12.2010.

4. In computing its total income, the assessee had claimed deduction under sec.80IC amounting to ₹ 6,29,60,111/-. This claim of deduction made by the assessee was disallowed by the Assessing Officer on the ground that the return filed by the assessee by "TAPAL" before due date of filing of return could not be accepted as a valid return. The only return entitled to be recognized for the assessment is the return electronically filed by the assessee but beyond the due date. On that ground the Assessing Officer held that the return was not filed within the time and therefore, the deduction claimed by the assessee could not

be allowed. This view of the Assessing Officer has been upheld by the Commissioner of Income-tax(Appeals). The assessee is aggrieved and therefore, the second appeal before us.

5. The grounds raised by the assessee in the present appeal read as below :

> "1. The order of the Commissioner of Income Tax(Appeals) in dismissing the claim of the appellant u/s 80IC vide jurisdictional grounds is against the provisions of law and contrary to facts and circumstances of the case.
>
> 2. The CIT(Appeals) erred in observing that the return filed in the "Tapal" on 30.09.2008 and the return filed electronically on 06.11.2008 is one and the same. The AO who passed the order u/s143(3) not denied the above mentioned returns filed by the appellant; also the present AO who send the remand report too confirmed the same.
>
> Apart from the above, when the matter came up before the Madras High Court, the council who represented the Department also confirmed the filing of both the returns by the appellant. But in a later point of time the CIT(A) raised the doubt about filing and jurisdictional validity is denial of natural justice.

3. The CIT(Appeals) also not taken into consideration that the disallowance of claim u/s 80IC made by the AO u/s 143(1) is not falling within the purview of prima facie adjustment and only adjustment of arithmetical error in the return is permitted.

4. The CIT(Appeals) went wrong in shifting the bundle of mistakes done by the department in the course of recording of return register etc., on the heads of the appellant and blaming the appellant that it is a simple case of non filing of the return on 30.09.2008 is clear case of in-equitous in nature."

6. We heard Shri M. Narayanan, the learned counsel appearing for the assessee. The learned counsel explained that sec.139(1) speaks of filing of a return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. The prescription authorized in this section is only with regard to the form, verification and such other particulars and not the mode of delivery, either manually or electronically. The learned counsel continued to argue that the scheme of the Rules prescribes various forms, which spell out various columns of details required to be furnished, and this is what is meant by form, for example like Form ITR-1, ITR-2, Saral

etc. and not the mode of furnishing this form manually or electronically. The prescription that the return has to be filed electronically as imposed by the CBDT is beyond its delegated legislative powers which defeats the benefit available to the assessee under sec.80-IC by curtailing it by operating sec.80-AC. This is an unauthorized condition which is ultra vires of the Act. The relevant meaning of form for the present discussion is 'a legal document with blank spaces to be filled in'.

7. The learned counsel further contended that when it comes to the notice of the Tribunal or the reference court that an authority purporting to act in terms of the statute has acted beyond the terms of the provision by which power is conferred on the authority, it is permissible to the adjudicatory forum to refrain from giving effect to such patently ultra vires act of the subordinate authority purporting to act in terms of a statute though in fact it is inconsistent with the statute. The learned counsel has placed reliance on the decision of the Hon'ble Madras High Court in the cases of Second ITO v. M.C.T. Trust and Others (102 ITR 138) and CIT v. Elgi Equipments Ltd. (242 ITR 460).

8. The learned counsel further argued that as per sec.292B, the return filed by the assessee manually on 30.9.2008 in ITR-6 contains the same details that are required to be filed electronically. As the return is filed in accordance with the section and the Rule is made beyond the competence of the Board, the Rule that return has to be filed electronically alone is ultra vires the Act. It cannot make the return as invalid. Further, sec.292B also does not make the return filed manually as invalid. Therefore, as a consequence, sec.80AC does not apply.

9. Shri Anirudh Rai, the learned Commissioner of Income-tax, appearing for the Revenue argued at length and supported the orders passed by the lower authorities.

10. In the present case, the claim of the assessee for deduction made under sec.80IC has been disallowed by the assessing authority by taking recourse to sec.80AC. Sec.80AC provides that where the assessee has claimed deduction under sec.80IC etc. such deduction shall not be allowed unless the assessee furnishes a return on or before the due date specified under sec.139(1).

11. In the present case, the assessee has filed the return manually before the due date prescribed under sec.139(1). The electronic return alone was filed after the due date. The CBDT has prescribed to file the returns electronically. Therefore, the Assessing Officer held that the electronically filed return alone can be considered as a lawful return and as the same was filed beyond the due date for filing the return under sec.139(1), the assessee is not entitled for deduction under sec.80IC by virtue of the provision contained in sec.80AC. The Assessing Officer held that the manual return filed by the assessee before the due date, cannot be taken cognizance of. This view has been upheld by the Commissioner of Income-tax(Appeals).

12. But we are not in a position to agree with the view taken by the lower authorities. As argued by the learned counsel appearing for the assessee, the statute consisting of Act and Rules speak of filing of return before due date and contents of that must be furnished in that return. The format has been prescribed by the Rules and also the contents have been prescribed by the Rules. Filing of the return also has been prescribed by the Act. Nowhere in the Act or Rules, there is a mandatory provision that the return must be filed only

electronically. This compulsion has been made as a result of the direction issued by the CBDT. As rightly argued by the learned counsel, the direction of the CBDT cannot go beyond the Act and Rules. It cannot overtake the apparent words of the statute. Therefore, what we can hold is that filing of return electronically is a directory provision and if the return is filed manually on or before due date, such return cannot be ignored. The maximum the Assessing Officer can ask the assessee is to file the return again electronically, so that the technicality of processing is satisfied. This is only for the administrative convenience of the Income-tax department.

13. Therefore, the Assessing Officer is not justified in ignoring the manual return filed by the assessee before the due date of filing of return. For the purpose of sec.139(1), the assessee has filed its return before the due date. That return is absolutely valid in law. Therefore, the claim of the assessee for deduction under sec.80IC cannot be denied on the ground of law stated in sec.80AC. On this point, we accept the contention of the assessee and set aside the orders of the lower authorities. We direct the Assessing Officer to accept the manual return filed by the assessee as a valid return for all purposes of Income-tax Act.

14. Now, the question is whether the assessee is entitled for deduction under sec.80IC and if so, to what extent, etc. This ground was not examined on merit by the lower authorities.

15. Therefore, this issue on merit is remitted back to the Assessing Officer with a direction to examine the claim of the assessee made under sec.80IC for deduction. The Assessing Officer shall examine all the relevant materials, particulars and details and hear the assessee and thereafter will come to a lawful conclusion on this subject.

16. In result, this appeal filed by the assessee is allowed.

Order pronounced in the open court at the time of hearing on Tuesday, the 28th of August, 2012 at Chennai.

Sd/-	Sd/-
(Challa Nagendra Prasad)	(Dr.O.K.NARAYANAN)
Judicial Member	Vice-President

Chennai,
Dated the 28th August , 2012

mpo*

Copy to: 1. Assessee
2. Department
3. CIT
4. CIT(A)
5. DR