

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 11/Chny/2023

निर्धारण वर्ष / Assessment Year: 2017-18

Marudhamalai Sri Dhandapani  
Spinning Mills,  
142B Bettathapuram Pudur,  
Karmadai Post – 641 104.

**[PAN: AAGFM-4590-F]**

(अपीलार्थी/Appellant)

Deputy Commissioner of  
v. Income Tax,  
Centralized Processing Centre,  
Bengaluru – 560 500.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.03.2023

घोषणा की तारीख/Date of Pronouncement

: 06.04.2023

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 06.12.2022 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

"1. The order of the CIT (Appeals) NFAC, Delhi dated 06.12.2022 in DIN and Order No. ITBA/NFAC/S/250/2022-23 / 1047835762 (1) for the Assessment Year 2017-18 is contrary to Law and facts in the circumstances of the case.

2. CIT (A), NFAC, DELHI erred in confirming the disallowances of the claim u/s 80(I)(A) of the Act, by the DCIT, CPC, Bangalore for want of Audit Report in Form No. 1 OCCB while processing the return of Income for issuing intimation order dated 09.03.2019 without appreciating the fact that Audit Report under Section 1 OCCB dated 10.09.2017 could not be uploaded due to technical and Server issues.

3. Both DCIT,CPC, Bangalore and CIT (Appeals) NFAC, Delhi failed to appreciate the fact that fresh Form No.1 OCCB has been filed electronically under acknowledgement No.620738141180518 on 18.05.2018 and is very much on record.

4. Both the DCIT,CPC, Bangalore and CIT (Appeals) NFAC, Delhi, erred in not considering the response filed by your Appellant on 18.05.2018 in response to Notice u/s 143(2)(a) electronically issued on 10.05.2018 enclosing Form 10CCB.

5. CIT (Appeals) NFAC, Delhi failed to appreciate the fact that, proper claim has been made in the return of Income under Chapter VIA deductions in Page No. 17 - PARA 12(b) and as well as in Audit report u/s 44AB dated 10.09.2017 filed electronically on 10.09.2017 (Form No. 3CD- Para 33) -

6. The CIT (Appeals) NFAC failed to appreciate the fact that the limited scope of processing the return u/s 143( 1) of the Act was completely overlooked and brushed aside and ought to have appreciated that the intimation u/s 143(1 )(a) was wrongly construed as final assessment order, thereby withholding the rejection of the claim of deduction under consideration in the computation of taxable total income.

7. The CIT (Appeals) NFAC failed to appreciate the facts that the Assessing Officer erred in not considering the audit report in FORM 1 OCCB electronically submitted in response to his Notice u/s 143(2)(a) on 18.05.2018, while processing the intimation.

8. Both the Assessing Officer as well as CIT (Appeals) NFAC, Delhi erred in not appreciating the fact that the claim of deduction u/s 80(I)(a) is being allowed right from the Assessment year 2012-13 and thereafter.

9. Both the authorities below failed to consider the decision of decision of the **Hon. Supreme Court in the case of GM Knitting Industries (p) Ltd reported in 376 ITR 476(SC).**, in which Hon Supreme Court observed that "the filing of Form10CCB along with return of income is procedural, though the rule made it mandatory Violation of said rule would not take away the substantive right of the assessee in claiming the deduction under section 80IA.

10. Both the authorities below (DCIT, CPC, Bengaluru, and CIT(A)/NFAC,Delhi) erred In not considering the decision of the jurisdictional High Court (CHENNAI) in the Case of "M/S L&T Chennai-Tada tollways private Limited Vs ITO, Corporate Ward 4(4) Chennai in TCA No.654/2019 delivered on 02-02-2021, where in held that "wherein Form No.1 OCCB is on file before completion of assessment proceedings t heassessee is entitled for the claim of deduction U/S80IA"

11. The Assessing Officer and the CIT (Appeals) NFAC, Delhi erred in without disallowing the ESI, PF payments amounting to Rs.299360/- appreciating the fact that your appellants have deposited contributions of employer and employee towards Provident Fund and ESI beyond due date prescribed under relevant Acts, but before due date of filing the return of Income under section 139(1)."

3. The brief facts of the case are that, the appellant is a partnership firm engaged in the business of manufacture and sale of cotton yarn. The appellant had filed its return of income for the assessment year 2017-18 on 24.10.2017, admitting a total income of Rs. 61,23,360/-, after making a claim of deduction u/s. 80IA of the Income-tax Act, 1961 (hereinafter referred to as "the Act") amounting to Rs.

58,15,804/-. The appellant had also filed tax audit report as required u/s. 44AB of the Act in Form no. 3CB & 3CD on 24.10.2017. However, the report of an Accountant as required u/s. 80IA of the Act, in form no. 10CCB has been electronically filed on 18.05.2018. The return of income filed by the assessee has been processed by the AO, CPC, Bengaluru and issued intimation u/s. 143(1) of the Act on 09.03.2019 and determined total income of Rs. 1,22,86,520/-, by disallowing deduction claimed u/s. 80IA of the Act, for the reason that the assessee did not file Form No. 10CCB along with return of income filed for the relevant assessment year.

4. The assessee carried the matter in appeal before the first appellant authority and argued that when the return of income has been filed on or before due date prescribed u/s. 139(1) of the Act, then merely for non-filing of Form no. 10CCB along with return of income, deduction claimed u/s. 80IA of the Act cannot be denied. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents, including the decision of Hon'ble Supreme Court in the case of Prakash Nath Khanna vs CIT 266 ITR 1 (SC), held that the assessee is not entitled for deduction u/s.

80IA of the Act, for non-filing of audit report in Form no. 10CCB along with return of income filed for the relevant assessment year. Therefore, rejected arguments of the assessee and sustained additions made by the AO towards disallowance of deduction claimed u/s. 80IA of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Ld. Counsel for the assessee, referring to the decision of ITAT, Chennai Benches in the case of Aquasub Engineering vs DCIT reported in 2022 (10) TMI 80, ITAT Chennai, submitted that the issue is squarely covered in favour of the assessee, where it has been clearly held that filing of Form no. 10CCB is not mandatory but directory and further, when such audit report has been filed before completion of assessment, then deduction claimed u/s. 80IA of the Act, cannot be denied. He had also relied upon the decision of Hon'ble Madras High Court in the case of CIT vs Ramani Realtors (P) Ltd 2015 (1) TMI 395 – Madras High Court.

6. The Ld. DR, on the other hand referring to provisions of section 80IA of the Act, and provisions of section 80AC of the Act, submitted that unless the assessee filed return of income on or before due date prescribed u/s. 139(1) of the Act, deduction claimed under Chapter VI A cannot be allowed. Further, return of income filed by the assessee is considered as valid return, if said return is accompanied by audit report as prescribed under the law. Since, the assessee did not file audit report in Form no. 10CCB along with return of income before the due date prescribed under the law, the AO has rightly disallowed deduction claimed u/s. 80IA of the Act and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has filed return of income on 24.10.2017, which is on or before due date prescribed u/s. 139(1) of the Act. It is also an admitted fact that the assessee has claimed deduction u/s. 80IA of the Act, in the said return of income filed for the relevant assessment year on or before due date prescribed u/s. 139(1) of the Act. Admittedly, the assessee has filed

Form no. 10CCB on 18.05.2018, which is much before the AO issued intimation u/s. 143(1) of the Act on 09.03.2019. In other words, the audit report in Form no. 10CCB was made available to the AO before he completes the assessment u/s. 143(1) of the Act. From the above, it is very clear that although, the assessee did not file Form no. 10CCB, along with return of income on or before due date prescribed u/s. 139(1) of the Act, but said audit report was made available to the Assessing Officer before he completes the assessment u/s. 143(1) of the Act. Therefore, we are of the considered view that the AO ought to have considered audit report filed by the assessee in Form no. 10CCB and allow deduction claimed u/s. 80IA of the Act. This legal proposition is supported by the decision of Hon'ble Supreme Court in the case of CIT vs GM Knitting Industries Pvt Ltd., [2015] 376 ITR 456 (SC), where it has been clearly held that even though necessary certificate in Form no. 10CCB along with return of income had not been filed, but same was filed before the final order of assessment was made, the assessee was entitled to claim deduction u/s. 80IA of the Act. A similar issue had been considered by the Hon'ble Madras High Court in the case of CIT vs Ramani Realtors P Ltd (Supra), where it has been held that filing of

audit report is directory in nature, but not mandatory and thus, when such audit report was made available to the Assessing Officer before completion of assessment, the AO ought to have allowed deduction claimed by the assessee.

8. The ITAT, Chennai Benches in the case of Aquasub Engineering vs DCIT (Supra) had considered an identical issue and relevant findings of the Tribunal are as under:

*"4. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that the assessee filed original return of income vide acknowledgement No.280954121311017 dated 31.10.2017 u/s.139(1) of the Act. But, this return was not accompanied by audit report in Form No.1 OCCB but made claim of deduction u/s.801A of the Act. The CPC, Bengaluru issued intimation u/s.143(1) of the Act, whereby the claim of deduction u/s.801A of the Act was denied amounting to Rs.20,70,31,480/- vide intimation dated 14.05.2018. Subsequently, the assessee filed revised return of income vide acknowledgment No.627323361280518 dated 28.05.2018 and claimed deduction u/s.801A of the Act, as claimed originally and also filed audit report in Form no.1 OCCB. This return of income was also processed by CPC, Income Tax Department, Bengaluru and issued intimation on 25.03.2019 again disallowing the claim of deduction, which is impugned intimation u/s.143(1) of the Act. This return was revised by the assessee within the time limit available u/s.139(5) of the Act. The Department processed the return of income i.e., revised return filed on 28.05.2018, only on 23.05.2019 when the audit report in Form No.10CCB was available with the Department. It means that the Department has disallowed the claim of deduction even though the assessee was entitled for claim of deduction. This issue has been covered in favour of assessee and against the Revenue by the decision of the Co-ordinate Bench of the Tribunal in the case of ACIT vs. Shanthi Gears Ltd., in ITA No.3068/CHNY/2017, order dated 04.03.2022, wherein the*



*Tribunal considered various case laws considered this issue vide para's 6 to 8 as under:*

*6. On the other hand, the learned Counsel for the Assessee however read out the relevant provision of Section 80AC of the Act and the relevant reads as under:*

*"80AC : Where in computing the total income of an Assessee of the previous year relevant to the Assessment Year commencing on the 1st day of April, 2006 or any subsequent assessment year; any deduction is admissible under section 80/A or section 80/AB or section 80B or section 80/C (or section 80D or section 80E), no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."*

*The learned Counsel for the Assessee stated that the precondition of Section 80C of the Act is furnished on the return of income of the Assessee on or before the due date specified under sub-section 1 of Section 139 of the Act. The learned Counsel for the Assessee relied upon the various decisions which are as under: [1] ACIT, Company Circle-I(2), Coimbatore Vs. M/s. Precot Meridian Limited, Coimbatore in ITA No.1214/Mds/2012 dated 29th April, 2013. [2] DCIT-5(2)(1), Mumbai Vs. M/s. JSW Infrastructure Limited, Mumbai in ITA No.3708 & 3709/Mum/2018 dated 08.11.2019. [3] DCIT 15(3) Vs. Kamdhenu Builders and Developers, Navi Mumbai in ITA No.7010/Mum/2010 dated 27.01.2016. [4] ACIT vs. Monarch Innovative Technologies Private Limited in ITA No.4815/Mum/2016 dated 12.02.2018. [5] National Thermal Power Company Limited Vs. Commissioner of Income Tax in Tax Ref. Case No.4 of 1988 dated 04.12.1996. [6] Commissioner of Income Tax Vs. Jayant Patel in Tax Case No.1742 of 1986 dated 21.09.1998. 7. The learned Counsel for the Assessee particularly referred to the decision of the Co-ordinate Bench of Mumbai Tribunal in the case of DCIT, Mumbai Vs. M/s. JSW Infrastructure Limited, Mumbai (supra), wherein exactly identical issue was considered and decided in favour of the Assessee, wherein the Tribunal vide paragraph no.9 as under:*

"9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below along with case laws cited by both parties. We find that the learned CIT(A) has recorded categorical findings, in light of the provision of section 80AC and held that nowhere, in the section, it was provided that unless, the Assessee makes a claim in its return filed u/s.139(1), the said claim is allowable. We further observed that as per provision of section 80AC, it is mandatory for the Assessee to file return of income on or before the due date specified u/s. 139(1) to claim the benefit of any deduction provided u/s.80/A/80I8/80/C/80/D and 80IE, but nowhere in the said section, it was provided that unless, the Assessee makes claim for deduction in the return filed u/s.139(1), the said claim is allowable. We further noted that the learned CIT(A) recorded categorical finding, in the light of the decision of /TAT Chennai Bench, in the case of ACIT Vs. Precot Meridian Limited (supra), where it was held that, once original return is filed u/s.139(1) within due date specified under the Act, then any deduction claimed in the revised return filed within due date specified u/s. 139(5) shall be allowed. We further, noted that the learned CIT(A) had also taken a support from the decision of /TAT, Mumbai Bench, in the case of Kamadhenu Builders & Developers Vs. Additional CIT, where it was observed that section 80A(5) only requires filing of return, but nowhere it suggest that claim should be made in the original return and not by way of original return, further when the original return of income was filed within the due date, then the revised return filed, thereafter before completion of assessment proceedings is to be considered by the Assessing Officer, because the Act has been given opportunity to the Assessee to file revised return u/s.139(4) for removal of any defect or any omissions in the original return and that if both the returns were filed within time limit prescribed under the law, then conditions prescribed u/s.80/B(1)) of the I.T.Act, 1961 are fulfilled. In this case, the Assessee has filed a return u/s.139(1) within due date specified date, but the claim for deduction u/s. 80/A, in respect of second unit was not made, however a revised return was filed u/s. 139(5) within due date specified under the Act and made additional claim for deduction, in respect of second unit. When original return was filed within due

*date specified u/s.139(1), then any revised return filed within the due date specified u/s. 139(5) to rectify any mistakes or omissions or wrong statements made in the return already filed u/s.139(1), then the revised return takes, the nature of the original return filed within due date specified u/s.139(1) and consequently, the Assessee fulfills the conditions prescribed u/s.80AC of the Act, in order to be eligible for deduction u/s.80IA of the I. T. Act, 1961. The learned CIT(A) after considering the relevant facts has rightly deleted the additions made by the Assessing Officer towards disallowances of deduction claimed u/s.80IA of the IT.Act, 1961. We do not see any reasons to interfere in the order of the learned CIT(A) and hence, we are inclined to uphold the findings of the learned CIT(A) and reject the ground taken by the Revenue."*

*8. We have heard the rival contentions and gone through the facts and circumstances O] the case. We have noted that the provisions of Section 801A(5) only requires filing of return of income but nowhere it states that the claim should be made in the original return and not by way of original return. Further, when the original return was filed within the due date, then the revised return filed, thereafter, before the completion of assessment proceedings, is to be considered by the Assessing Officer, because the Act has given an opportunity to the Assessee to file his return u/s.139(4) of the Act for the removal of defects or omission in the original return.*

*4.1 In view of the above, the revised return of income filed by the assessee on 28.05.2018 and consequent processing of return by the Department by issuing intimation u/s.143(1) of the Act dated 25.03.2019, the impugned order, the assessee has revised the return validly and within the time available u/s.139(5) of the Act and has also accompanied by the audit report in Form no.10CCB of the Act. Hence, we are of the view that the authorities below have wrongly disallowed the claim of deduction. Respectfully following the Co-ordinate Bench decision in the case of Shanthi Gears Ltd., supra, we allow the claim of assessee and direct the AO accordingly."*

9. In this view of the matter and by respectfully following the decision of Madras High Court in the case of CIT vs Ramani Realtors P Ltd (Supra), we are of the considered view that the AO and CIT(A) were erred in not allowing deduction claimed u/s. 80IA of the Act for non-filing of Form no. 10CCB along with return of income filed by the assessee for the relevant assessment year. Thus, we direct the AO to allow deduction claimed u/s. 80IA of the Act.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 06<sup>th</sup> April, 2023 at Chennai.

**Sd/-**  
**(महावीर सिंह )**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /**Vice President**

**Sd/-**  
**(मंजुनाथ. जी)**  
**(MANJUNATHA. G)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 06<sup>th</sup> April, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |