

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.652/Del/2023
निर्धारणवर्ष/Assessment Year: 2019-20**

Sanjay Kukreja, A-362, Defence Colony, New Delhi.	बनाम Vs.	ACIT Circle-54(1), New Delhi.
PAN No.AIQPK9454L		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Mayank Agarwal, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	02.11.2023
उद्घोषणाकीतारीख/ Pronouncement on	30.01.2024

आदेश / O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld.CIT(A)-(NFAC), Delhi dated 11.01.2023 for the AY 2019-20 in denying the deduction claimed u/s 80-IA of the Act for non-filing of Form 10CCB before due date specified in section 44AB of the Act.

2. Brief facts are that the assessee filed return of income on 31.10.2019 declaring income of Rs.13,73,52,170/- after claiming

deduction of Rs.51,54,192/- u/s 80IA of the Act. The ADIT(CPC) issued letter dated 04.06.2020 proposing various adjustments including disallowance of deduction claimed u/s 80IA of the Act on account of failure to file Form 10CCB before the due date specified u/s 139(1) of the Act. Assessee filed revised return on 24.06.2020 to correct various adjustments proposed and along with the revised return the assessee filed Form 10CCB for the deduction claimed u/s 80IA of the Act. The return was processed u/s 143(1) on 26.08.2020 denying the claim for deduction u/s 80IA of the Act. The assessee filed appeal before the Ld.CIT(A) and contended that filing of Form 10CCB along with the return of income before the due date for filing return u/s 139(1) is only directory and not mandatory. However, the Ld.CIT(A) rejected the claim of the assessee and sustained the disallowance of deduction u/s 80IA of the Act.

3. Ld. Counsel for the assessee placing reliance on various judgments of various High Courts including the jurisdictional High Court in the case of CIT Vs. Contimeters Electricals Pvt. Ltd. in ITA No.1366/2008 dated 02.12.2008 submits that filing of audit report along with the return of income before the due date specified u/s 139(1) is only directory and not mandatory and since the assessee has filed Form 10CCB along with the revised return the claim for

deduction u/s 80IA should not have been disallowed. The Ld. Counsel for the assessee submits that similar view has been taken by the Madras High Court in the case of CIT Vs. AKS Alloys Pvt. Ltd. 18 taxmann.com 25 and this decision was also affirmed by the Hon'ble Supreme Court in the case of CIT Vs. GM Knitting Industries Pvt. Ltd. 71 taxmann.com 35.

4. Ld. DR placed reliance on the orders of the Ld. CIT(Appeals).

5. Heard rival submissions. The only issue is to be decided is as to whether the Form 10CCB is mandatorily to be filed along with the return or the due date specified u/s 139(1) of the Act for claiming deduction u/s 80IA of the Act. We observe that the Hon'ble Delhi High Court in the case of CIT Vs. Contimeters Electricals Pvt. Ltd. (supra) held that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before framing of assessment the requirement of section 80IA(7) would be met observing as under:

“According to the Commissioner of Income Tax since no audit report, duly verified and signed in the prescribed Form no.10CCB under Rule 18BBB had been furnished along with the return, the condition for claiming deduction had not been satisfied and, therefore, the action of the Assessing Officer in allowing rebate u/s 80-IA was erroneous and prejudicial to the interest of the Revenue.

After issuance of the notice the Commissioner of Income Tax passed the order dated 29.03.2007 whereby he held that he was fully satisfied that the assessment which had been completed by the Assessing Officer was prejudicial to the interest of the Revenue and that it was erroneous in as much as the assessee had not satisfied the conditions laid down u/s 80-IA and consequently the deduction under that section for the sum of Rs.14,27,351/- had been wrongly allowed. The CIT(A), therefore, cancelled the assessment which had been earlier framed and directed the AO to complete the assessment as per law, in terms of the directions given in the said order.

*Being aggrieved by the said order, the assessee preferred an appeal before the Tribunal which was allowed by the Tribunal by virtue of the impugned order. The Tribunal took the view that the provisions of section 80IA(7) with regard to filing of the audit report along with the return were not mandatory and were merely directory. In coming to such conclusion, the Tribunal referred to the decisions of the Gujarat High Court in **CIT vs. Gujarat Oil & Allied Industries, 201 ITR 325 (Guj.)**. In that decision the provisions of Section 80J(6A) were considered. The wording of Section 80J(6A) is similar to that of section 80-IA(7) which is in issue in the present appeal. The Gujarat High Court took the view that the word 'shall' which occurs in section 80J(6A) be read as 'may' and that the requirement of filing of an audit report along with the return was only to be taken as directory in nature. The Gujarat High Court took the view that in case the audit report is submitted at any time before the framing of the assessment, there would be substantial compliance with the provisions of Section 80J(6A).*

*The Tribunal also relied on the decision of the Madras High Court in **CIT vs. A.N. Arunachalam, 208 ITR 481 (Mad.)**, which, again, while considering the provisions of Section 80J(6A), took the same view as that of the Gujarat High Court.*

We notice that there are other decisions of other Courts taking the same view. The decisions being, CIT vs. Shivanand Electricals (1994) 209 ITR 63 (Bombay); Zenith Processing Mills vs. CIT (1996) 219 ITR 721 (Guj.); Cit vs. Jayant Patel (2001) 248 ITR 199 (Mad.) and CIT vs. Mahalaxmi Rice Factory (2007) 294 ITR 631 (P&H).

In view of this long line on decisions of various High Courts in considering the provisions of Section 80J(6A) which are similar to the provisions of Section 80IA(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of the assessment, the requirement of section 80IA(7) would be met.”

6. We find that similar view has been taken by the Hon'ble Madras High Court in the case of CIT Vs. AKS Alloys Pvt. Ltd. (supra), wherein it has been held as under:

“5. In so far as it relates to the substantial question of law (1) is concerned, namely, whether the filing of audit report in Form 10CCB is mandatory, it is well settled by a number of judicial precedents that before the assessment is completed, the declaration could be filed. In fact, the said issue came to be decided by the Karnataka High Court in the case in CIT v. ACE Multitaxes Systems (P.) LTD. [2009] 317 ITR 207 (Kar.), wherein it was held that when a relief is sought for under Section 80IB of the Act, there is no obligation on the part of the assessee to file return accompanied by the audit report, thereby, holding that the same is not mandatory. Therefore, it is clear that before the assessment is completed if such report is filed, no fault could be found against the assessee. That was also the view of the Delhi High Court in the case in CIT v. Contimeters Electricals (P.) Ltd. [2009] 317 ITR 249/ 178 Taxman 422 (Delhi), wherein the Delhi High Court, by following the judgements of the Madras High Court in CIT v. A.N. Arunachalam [1994] 208 ITR 481 / 75 Taxman

529 and in CIT v. Jayant Patel [2001] 248 ITR 199/ 117 Taxman 707 (Mad.) held that the filing of audit report along with the return was not mandatory but directory and that if the audit report was filed at any time before the framing of the assessment, the requirement of the provisions of the Act should be held to have been met.

6. *That is also the consistent view of the other High Courts, including the High Court of Bombay in CIT v. Shivanand Electronics [1994] 209 ITR 63 / 75 Taxman 93 (Bom.), apart from Gujarat High Court in Zenith Processing Mills v. CIT [1996] 219 ITR 721 (Guj.) and Punjab and Haryana High Court in CIT v. Maholaxmi Rice Factory [2007] 294 ITR 631/ 1.63 Taxman 565 (Punj. & Har).*

7. *The Calcutta High Court in the case in the CIT v. Berger Paints (India) Ltd. [2002] 254 ITR 503/r20031 126 Taxman 435 (Cal.) has also concurred with the said view which was followed by the Tribunal in this case.*

8. *Mr. T. Ravikumar, the learned counsel for the appellant is not able to produce any other judgement contrary to the above said views consistently taken.*

9. *In the light of the above, by virtue of hierarchy of judgements which are against the Revenue, the substantial question of law (1) would not arise at all for consideration.”*

7. Similar view has been taken by the Hon’ble Allahabad High Court in the case of PCIT vs. Surya Merchands Ltd. 387 ITR 105 and the Hon’ble High Court of Uttrakhand in the case of CIT Vs. Sanjay Kumar Bansal 35 taxmann.com 514, and Honb’ble Karnataka High Court in the case of CIT vs. ACE Multi Taxes Systems Pvt. Ltd. 317 ITR 207. The ratios of the above decision squarely applying to the facts of the case, we hold that filing of audit report in Form 10CCB

before the due date for filing of return of income u/s 139(1) is only directory and not mandatory for the year under consideration. Thus, we direct the AO to allow deduction claimed u/s 80IA of the Act. Grounds raised by the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30/01/2024

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 30/01/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi