

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.6477/Del/2013
(Assessment Year: 2007-08)

ACIT, Circle-33(1), New Delhi	Vs.	Pearls of Beauty, 3107/29, Ranjit Nagar, New Delhi PAN:AAAFP5617N
(Appellant)		(Respondent)

Assessee by :	Sh. PK Mishra, Adv
Revenue by:	Sh. UC Dubey, Sr. DR
Date of Hearing	05/01/2017
Date of pronouncement	28/03/2017

ORDER

PER N.K.SAINI, A. M.

1. This is an appeal by the department against the order dated 19.09.2013 of the Id CIT(A)-XXVI, New Delhi for the Assessment Year 2007-08. The only effective ground raised in this appeal reads as under:-

"1. The Id CIT(A) has erred in allowing deduction of Rs. 29965494/- u/s 80IC of the IT Act, 1961 without appreciating the fact that the assessee has not claimed deduction u/s 80IC in his return of income."

2. The facts of the case in brief are that the assessee filed e-return of income on 15/11/2007 declaring an income of Rs. 31290590/- after claiming deductions u/s 80IB and 80IC of the Income Tax Act, 1961 (herein after 'the Act'). The said deductions were not allowed while processing the return by the CPC, Bangalore for the reason that it was a belated return. Subsequently, the assessee filed application u/s 154 of the Act seeking a claim of deduction amounting to Rs. 30392103/- u/s 80IB and 80IC of the Act. The AO did not allow the claim of the assessee by observing as under:-

- i) On perusal of Schedule VIA of the ITR it is seen that the assessee as well as per System, total deduction of Rs.4,28,609/- has only been claimed under Chapter VIA. Deduction u/s 801C is not available unless it is claimed in the return of income.*
- ii) Assessee's accounts are subject to audit u/s 44AB of the Act. There is Audit report u/s 44AB in Form 3CD furnished by the assessee.*
- iii) No Audit report in Form No. 10CCB for claim of deduction u/s 80IB & 801C is filed along with the application."*

3. Being aggrieved by the order of the AO the assessee carried the matter before the Id CIT(A) and submitted as under:-

GROUND NO.1:

The ground is general in nature and specific grounds have been raised separately.

GROUND NO. 2 & 3:

The appellant filed application u/s 154 of the Act on 23.03.2012 and the order has been passed on 24.09.2012 i.e at the fag end of the statutory period of six months for disposal of application filed u/s 154 of the Act as provided in sub-section- (8) of section 154. During the intervening period the Id. AO did not allow even a single opportunity of being heard to the appellant. Hence the Id. AO has rejected the claim of the appellant arbitrarily.

Under the principles of natural justice, it was incumbent upon him to issue a 'show cause' and provide a fair opportunity of being heard to the assessee before rejecting the claim of the assessee. The Id. AO was duty bound to call for details/documents in respect of claim made by the assessee in case he desired so or not satisfied with the claim made by the assessee. Hence, the action of the Id. AO in rejecting the application of the assessee without providing any opportunity of being heard to the assessee is against the principles of natural justice and therefore the same deserves to be quashed.

GROUND NO.4:

In the order passed u/s 154 of the Act the Id. AO has observed as under: "... As per intimation obtained from the ITD database, it was found that the return of income for A. Y. 2007-08 in this case was due to be filed on 31.10.2007 whereas the assessee filed its return on 15.11.2007. It being a belated return, deduction u/s 80IB & 80IC were not allowed while processing the return by the CPC Bangalore."

The due date for filing the return of income for A.Y. 2007-08 was 31.10.2007 which was subsequently extended to 15.11.2007 vide order no. F.No. 225/147/2007~ITA-II(Pt.) dated 31st October, 2007 issued by CBDT u/s 119 of the Act (APB - 32).

The appellant filed its return of income on 15.11.2007 i.e within the extended due date (as notified) and therefore the return of income was not late at all and was filed within time and the appellant was entitled to deductions under Chapter VI-A duly claimed in the return of income which was a valid legal claim in accordance with the provisions of the Act.

GROUND NO. 5:

In the order passed u/s 154 of the Act, the Id. Assessing Officer has observed that as under:-

" i) On perusal of Schedule VIA of the ITR, it is seen that the assessee as well as, as per system, total deduction of Rs.4,28,609/- has only been claimed under Chapter VIA. Deduction u/s 80IC is not available unless it is claimed in the return of income."

The contention of the Id. AO is factually incorrect in view of the following submissions:

In the return of income filed electronically the appellant claimed deductions under Chapter VI-A amounting to Rs. 3,03,94,103/- as under:-

<i>Under section 80 IB</i>	<i>Rs. 4,26,609/-</i>
<i>Under section 801C</i>	<i>Rs. 2,99,65,494/-</i>
<i>Total</i>	<i>Rs. 3,03,94,103/-</i>

The amount of deductions under Chapter VI-A amounting to Rs. 3,03,94,103/- is duly appearing in the Income tax acknowledgment (APB -1).

The appellant has downloaded the copy of return of income filed with the department from the website of the department which has been placed in the paper book (APB - 2 to 24).

In this copy of return the deductions of Rs. 4,26,609/- u/s 80IB and Rs.2,99,65,494/- u/s 80IC are duly appearing in the schedules of 'Deduction u/s 80IB and 'Deduction u/s 80IC and also in 'Schedule VI-A deductions under Chapter VI-A' forming part of the Income tax return (APB - 20 & 21).

Hence the deductions u/s 80IB & 80IC claimed by the appellant were duly appearing in the return of income which is available on the records of the department and were allowable to the appellant. Hence the finding of the Id. AO that the appellant had only claimed deduction u/s 801B only and not u/s 80IC is factually incorrect and he has grossly erred in arriving at such finding.

Therefore, in view of the above facts, the action of the Id. AO in not allowing the deduction u/s 801C deserves to be set aside as the same is not tenable on the facts of the case and it is prayed that the deduction u/s 80IC amounting to Rs. 2,99,65,494/~ may please be allowed to the appellant.

GROUND NO.6:

The Id. AO has rejected the application filed by the appellant u/s 154 of the Act stating as under:-

" The contents of the application have been perused. The claim of deduction u/s 80IB & 80IC is not admissible due to the following facts:

ii) Assessee's accounts are subject to audit u/s 44AB of the Act. There is no Audit Report u/s 44AB in Form 3CD furnished by the assessee.

iii) No audit report in Form No. 10CCB for claim of deduction u/s 80IB & 80IC is filed along with the application.

The above fact clearly reveals that the assessee has failed to substantiate the claim of deduction u/s 801B & 80IC of the Act..."

The contention of the Ld. AO is not sustainable in the eyes of law in view of the following facts:-

The return filed electronically is a paperless return and as per the provisions of section 139D of the Act there is no requirement to file audited balance sheet, profit & loss account and other annexures such as audit report u/s 44AB or other sections under which claim of deductions have been made by the assessee either with the return of income or separately. Section 139D provides as under:

In accordance with the above provisions the Board has issued Circular No. 5/2007 a copy of which has been placed in paper book (APB- 33 to 35).

Clauses (i) & (ii) of Para 6 of the Circular provide as under:

.....

.....

Therefore as per the provisions of the Act and as clarified by CBDT in Circular No. 5/2007 dated 26.07.2007 the appellant was not required to furnish the audit report u/s 44AB & in Form No. 10CCB for claim of deduction u/s 80IB & 80IC with the return of income though the same were obtained within the due date of filing of return and a mention of the same was duly appearing in the Income tax return filed by the appellant (refer APB-2). The original audit reports were to be filed only in case the return of the appellant was chosen for scrutiny. The proceedings u/s 154 are not scrutiny proceedings at all.

In fact the appellant had filed application for rectification of intimation u/s 143 (1) and for allowing deductions under Chapter VI-A which had been denied to the appellant on the ground that the return was filed late (due to system software error) while there was no delay in filing the return of income. As such the admissibility of deductions under Chapter VI-A were not in dispute provided the return was filed in time. Hence while filing application u/s 154 of the Act the appellant was not required to file the audit reports along with the application as the same were also not required to be filed along with return of income filed electronically.

Therefore the Id AO has grossly erred in giving a finding that no audit report u/s 44AB & in Form 10CCB was filed along with the application and the assessee has failed to substantiate the claim of deduction u/s 80IB & 80IC ignoring the Circular issued by the CBDT and the provisions contained in the Act. The contention of the Id. AO is factually incorrect as the claim made by the appellant duly stood substantiated in the return of income.

Hence the action of the Id. AO in not allowing deductions u/s 80IB & 80IC does not have legal legs to stand and deserves to be quashed.”

4. The Id CIT(A) after considering the submissions of the assessee directed the AO to allow the claim by observing as under:-

“5.1 I have also gone through the downloaded e-return for the AY 2007-08 filed before me during the appellate proceedings. It is evident from the impugned order and the submission of the appellant that the appellant was not heard before increasing its liability over and above

the demand created u/s 143(1). Such an order u/s 154 passed by the AO is held not only contrary to the provisions of section 154(3) but also against the set principles of natural justice, hence; the AO's action can be faulted. However, this appeal is being decided keeping in view provisions of section 154(3) and principles of natural justice, therefore, the appellant's grievance gets addressed herein after. Grounds of appeal no. 2 and 3 are decided accordingly.

5.2 In view of above, it is held that the due date for filing the ROI for the relevant AY was extended to 15.11.2007 vide order no. F.No. 225/147/2007-ITA-II(Pt) dated 31.10.2007 of the Director, ITA-II, CBDT; therefore, the appellant's ROI filed on 15.11.2007 cannot be said belated as it is within the extended due date and thus the claim of deductions under Chapter VI-A in the ROI cannot be disallowed on the premise that the ROI is belated. On perusal of the downloaded e-return for the relevant AY filed before me during the appellate proceedings, it is evident that the appellant has claimed deductions both u/s 80IB and 80IC, therefore, the AO's finding that the appellant has not claimed deduction u/s 80IC in the ROI is held erroneous.

5.3 Earlier before the introduction of annexure less forms the audit reports were required to be submitted with the AO on or before the due date of filing of the ROI, otherwise it attracted penal provisions u/s 271B and denial of certain deductions under chapter VIA as the case may be. But after the introduction of annexure less forms i.e. ITR4, ITR5, ITR6 etc., the Tax Audit Reports are not required to be submitted along with the ROI nor these are to be submitted separately any time before or after the due date. However, one should get the Tax Audit Report from his CA before the due date of submitting the ROI and fill the relevant columns of the ROI based on such reports. The relevant portion of clauses (i) and (ii) of para 6 of the Circular 5 of 2007 is extracted as under:

"The report of audit under section 44AB is not to be attached with the return. It should not be furnished separately also before or after the due date. However, an assessee should get the report of audit from an accountant under said section before the due date of the furnishing of the return and should fill out the relevant columns of these forms on the basis of such report. The assessee should retain the report with himself. It may be furnished in original during the assessment proceedings. No penalty under section 271B shall be initiated or levied for not furnishing the tax audit report on or before the due date. However, if the audit report has not been obtained before the due date, provisions of section 271B shall be attracted.

(ii) These returns are not to be accompanied with any other document including any statutory form or report of audit (other than the report under section 92E) which is otherwise required to be furnished before the due date or along with the return for making any claim. The provisions of the law shall be deemed to have been complied with in respect of the requirement of the filing of the attachments or documents or reports along with the return. No penalty shall be initiated/levied for not furnishing such documents if such documents were otherwise obtained before the specified date, if any, provided in the statute. All these

documents should be retained by the taxpayers and be furnished in original during the scrutiny proceedings."

4.3.1 Now as per above Circular, furnishing of audit reports has been done away with after the introduction of annexure less forms. However, from the AY 2013 -14, again the furnishing of the e-audit reports within due date of filling of the ROI has been brought into. Here, in view of the above circular and judicial pronouncements in respect of section 154, I am of the view that the audit report cannot be called while deciding the issue u/s 154 as it has to be decided on the basis of material already available on the record and thus the reasoning given by the Assessing Officer in this regard is held erroneous.

5. In view of the above, I am of the considered view that the appellant's claim of deductions u/s 80IB and 80IC in the ROI cannot be disallowed on the premises that the ROI was belated and audit reports were not filed. I have also considered the judgement of the Hon'ble Delhi High Court in the case of Court on its own motion v/s CIT (order dated 14.03.2013) and CBDT Instruction No. 03/2013 dated 05.07.2013. Keeping in view the facts in entirety, the above findings and submission of the appellant, the AO is directed to allow the claim of deductions u/s 80IB and 80IC in the ROI of the relevant AY. Consequential relief shall be given by the AO. However, the AO is free to take any adverse decisions in respect of deductions u/s 80IB and 80IC in case of the appellant in scrutiny without prejudice to above findings."

5. Now the department is in appeal.
6. The Id DR strongly supported the order passed by the AO and reiterated the observation made in the assessment order dated 24.09.2012.
7. In his rival submission the Id counsel for the assessee strongly supported the impugned order passed by the Id CIT(A) and further submitted that the assessee made the claim for deduction u/s 80IB and 80IC of the Act in the computation of income as well as in the return of income filed with the department. A reference was made to Page nos. 2 and 23 of the assessee's paper book.
8. We have considered the submission of both the parties and carefully gone through the material available on record. In the present case, it appears that the AO did not accept the application moved by the assessee u/s 154 of the Act for the following reasons:-
 - "i) On perusal of the Schedule VIA of the ITR, it is seen that the assessee as well as per system, total deduction of Rs. 428609/- has only been claimed under Chapter IVA. Deduction u/s 80Ic is not available unless it is claimed in the return of income.*
 - ii) Assessee's accounts are subject to audit u/s 44AB of the Act. There is no Audit report u/s 44AB in Form 3CD furnished by the assessee.*
 - iii) No audit report in Form NO. 10CCB for claim of deduction u/s 80IB and 80IC is filed along with the application."*

9. However, the ld CIT(A) in the impugned order categorically stated that the return filed by the assessee was within the extended period so it could not be said to be delayed return. He also mentioned in para 5.2 of the impugned order that the downloaded e return for the relevant assessment year revealed that the assessee had claimed deduction both u/s 80IB and 80IC of the Act. The said observation is correct, as evident from Page No. 2 and 23 of the assessee's Paper Book which are copies of the computation of income and downloaded return of income in Form No. ITR V/. At Page No. 2 the assessee mentioned in the computation of income, the deduction u/s 80IB amounting to Rs. 428609/- and u/s 80IC for Rs. 29965494/-. The said figures are also mentioned at Page No. 23 which is copy of the return of income filed by the assessee. We, therefore, by considering the totality of the facts as discussed hereinabove, do not see any valid reason to interfere with the finding of the ld CIT(A).
10. In the result the appeal of the department is dismissed.

Order pronounced in the open court on 28/03/2017.

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Sd/-

**(N.K.SAINI)
ACCOUNTANT MEMBER**

Dated: 28/03/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi