

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 610/JP/2017
निर्धारण वर्ष/Assessment Year : 2014-15

Asstt. Commissioner of Income-tax, Circle-2, Ajmer.	बनाम Vs.	Shri Ramesh Kshetrapal, Kutchery Road, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABEPK 2831 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri R.A. Verma (Addl.CIT)
निर्धारित की ओर से / Assessee by : Shri Mahendra Gargieya & Hemang
Gargieya (Advocates)

सुनवाई की तारीख / Date of Hearing : 25.10.2017.
घोषणा की तारीख / Date of Pronouncement : 27/10/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the Revenue is directed against the orders of the Ld. CIT(A)-
Ajmer, dated 24.05.2017 pertaining to A.Y. 2014-15.

The Revenue has raised the following grounds of appeal:-

- "1. Whether looking to the facts and circumstances of the case the Ld. CIT(A) is justified in deleting the disallowance of deduction u/s 80IA(7) amounting to Rs. 1,03,98,814/- on account of non-furnishing of Audit Report inform 10CCB electronically along with the return of income.
2. The appellant craves to add, amend, alter, delete or modify the above grounds of appeal before or at the time of hearing."
2. Only effective ground is against deleting the disallowance of deduction u/s 80IA(7) of the Income-tax Act, 1961 (hereinafter referred to as the Act).

3. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income-Tax Act, 1961(hereinafter referred to as the Act) was framed vide order dated 30/12/2016. While framing the assessment, the Assessing Officer observed that the assessee was issued a notice u/s 142 dated 06.10.2016 to show cause whether specified report of Audit electronically (Form 10CCB) along with ITR was filed and also submit a copy of the same. The Assessing Officer declined the claim of deduction u/s 80IA on the ground that assessee failed to file report in Form 10CCB along with original return. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions, deleted the disallowance. Aggrieved by this, the Revenue is in further appeal before this Tribunal.

4. Ld. D/R supported the order of the Assessing Officer.

5. On the contrary, Ld. Counsel for the assessee reiterated the submissions as made in the written submissions and submitted that the issue is covered in favour of the assessee. Therefore, he supported the order of the Ld. CIT(A).

6. We have heard the rival contentions, perused the material available on record. The Ld. CIT(A) has decided this issue by observing as under:-

"4.3 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. It is seen that in this case, return of income was filed by the appellant u/s 139(1) on 30.11.2014. No audit report was filed by the appellant along with return of income filed on 30.11.2014. However, the appellant e-filed the audit report in Form 10CCB on 16.12.2015, the copy of which was produced on 24.10.2016 during the course of assessment proceedings. The assessment u/s 143(3) was made on 30.12.2016. The Audit Report is dated 29.11.2014. Thus, it is clear that the assessee had obtained the audit report in Form

10CCB before filing the return of income on 30.11.2014, though the report was e-filed only on 16.12.2015. To prove the fact that Audit Report and report in Form No. 10CCB had already been obtained by the appellant before filing the return of income on 30.11.2014, the appellant has filed affidavit of Shri Pramod Kumar Sharma, CA, who had carried out the audit as prescribed u/s 801A(7). The AO has disallowed the claim of the appellant for deduction of Rs. 1,03,58,814/- made u/s 80IA on the ground that the appellant had not filed audit report in form 10CCB along with the return of income filed by him as required u/s 80IA(7). The appellant, relying on the following decisions has contended that furnishing of the audit report in form 10CCB for claiming deduction u/s 80IA is directory because such requirement falls in the realm of procedure for furnishing evidence in support of the claim and can be furnished while allowability of the claim is being considered by the authority concerned:

- (i) *C.I.T. Vs DR. L.M.Singhvi*
289 ITR 0425 (Rajasthan High Court)
- (ii) *C.I.T. Vs. Gujarat Oil and Allied Ind.*
201 L T.R. 325 (Guj).
- (iii) *C.IT Vs. A.N.Aruna Chalam.*
208 I.T.R. 481 (Madras)
- (iv) *C.I.T. Vs. Shivnand Electronics*
209 I.T.R. 63.
- (v) *Zenith Processing Mills Vs. C.I.T.*
219 I.T.R. 721
- (vi) *CIT. Vs. Mahalaxmi Rice Factors*
294 I.T.R. 631.
- (vii) *C.I.T. Vs. Conti Meters Technical(P) KTD.,*
317 IT.R 249.
- (viii) *A. C.I. T Circle 2 Vs. Hi-line Pers Pvt. Ltd., (New Delhi).*

I have gone through the decisions relied upon by the appellant carefully. The Delhi High Court in the case of CIT, Delhi vs. Contimeters Electrical Pvt. Ltd. (317 ITR 249) Delhi, while deciding the issue of furnishing of audit report u/s 801A(7) during the course of assessment proceedings has observed as under:

"The Tribunal took the view that the provisions of section 80-IA(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 decision of the Gujarat High Court in CIT v. 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 v. 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 v. Shivanand Electricals (1994) 209 ITR 63 (Bombay); Zenith Processing Mills v. CIT (1996) 219 ITR 721 (Guj.); CIT v. Jayant Patel (2001) 248 ITR 199 (Mad) and CIT v. 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 80- IA(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 80-IA(7) would be met."

The Jurisdictional High Court relying on the decision of Supreme Court in the case of CIT vs. National Taj Traders (121 ITR 355) SC, after comparing the provisions of section 32AB(5) with the provisions of section 80J(6A) has held "that the first requirement is that the statement of accounts for the previous year relevant to the assessment year for which the deduction is claimed have to be audited and the second is that the assessee must furnish along with the return of his income, the report of such audit in prescribed form as a proof of accounts. The audit forms substantive foundation for claiming allowance and such foundation must exist at the time of filing reference viz., the accounts must have been audited before claiming deduction in a return, and in the absence of which such deduction cannot be claimed. Compliance of the aforesaid requirement is mandatory before deduction is claimed. So far as such compliance along with the return is concerned, it is directory and this procedural compliance can be made as such, during the course of assessment proceedings".

In the case under consideration, it is seen from the copy of audit report in Form No. 10CCB filed by the appellant that the audit report was obtained by the appellant on 29.11.2014 and return of income was filed by the appellant on 30.11.2014. Thus, at the time of making the claim for deduction u/s 80IA in the return of income filed by the appellant, the compliance of the requirement of obtaining the audit report at the time of claiming deduction u/s 80IA has been made by the appellant. Therefore, following the decision of Jurisdictional High Court referred above and other decisions relied upon by the appellant, it is held that deduction of Rs. 1,03,98,814/- claimed by the appellant u/s 80IA could not have been disallowed by the AO on the ground that the audit report in Form No. 10CCB was not furnished by the appellant along with the return of income filed by him. Accordingly, disallowance made by the AO of the claim of Rs. 1,03,98,814/- made by the assessee u/s 80IA is hereby deleted."

It is evident that the Ld. CIT(A) has recorded that the assessee has obtained the Audit Report in Form 10CCB before filing the return of income on 30.11.2014. Further, the Ld. CIT(A) has followed the Judgment of the Hon'ble Jurisdictional High Court rendered in the case of **CIT vs. Dr. L. M. Singhvi (2007) 289 ITR 0425 (Raj HC)**. Therefore, we do not see any reason to interfere into the finding of the Ld. CIT(A), same is hereby affirmed. Thus, Ground raised in this appeal is dismissed.

7. In the result, appeal of the Revenue in ITA No. 610/JP/2017 is dismissed.

Order is pronounced in the open court on Friday, the 27th day of October 2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य/Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य/Judicial Member

Dated:- 27/10/2017

Pooja/

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. The Appellant- ACIT, Circle-2, Ajmer.
2. The Respondent – Shri Ramesh Kshetrapal, Kutchery Road, Ajmer.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 610/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar