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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं. / ITA No. 100/JP/2017
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Shiv Kumar Sushil Kumar Tea Enterprises Pvt. Ltd., E-137-A, Road No. 5, Indraprastha Industrial Area, Kota.	बनाम Vs.	A.C.I.T., Circle-1, Kota.
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: AAFCS 5246 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B.L. Bhojwani (CA)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 14/06/2018
उदघोषणा की तारीख / Date of Pronouncement : 27/07/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

The appeal filed by the assessee emanates from the order of the ld. CIT(A), Kota dated 26/12/2016 for the A.Y. 2013-14, wherein the assessee has raised following grounds of appeal:

"1.(a) That the learned Commissioner of Income Tax (Appeals), on the facts and in the circumstances of the case and in law, has erred in upholding the disallowance made by the learned assessing officer of the deduction of Rs. 88,51,859/- claimed by the assessee company under section 80IA, due to the reason that there was a delay of 31 days in the filing of the return of income and the deduction is not allowable under section 80IA read with section

80AC, if the return of income is filed beyond the due date under section 139(1) of the Income Tax Act, 1961.

(b) *That the tax audit report was filed by the assessee company well in time, along with the audited financial statements. The deduction of Rs. 88,51,859/- admissible to the assessee company under section 80IA was duly mentioned in the tax audit report and thus, the assessee company had made substantial compliance of the provisions of section 80IA, read with section 80AC.*

(c) *That the huge amount of self-assessment tax could not be deposited in time due to shortage of funds. Therefore, it was not possible to furnish a valid return of income on or before the due date. As a result, there was a marginal delay of 31 days in filing the Return of Income.*

(d) *That in CIT v. Jagriti Aggarwal(2011) 339 ITR 610 and many other cases, it has been held that section 139(4) is an extension of section 139(1) and in Asstt. CIT v. Noel Pharma (Appeal No. ITA No. 1664/Hyd/2012) which involves similar facts, the Hon'ble Hyderabad Tribunal made the following observations:*

> *"In view of the mitigating circumstances, the delay can be condoned. Further, as rightly held by the learned CIT (A), the Courts have held that due date for furnishing return of income as per section 139(1) is subject to extended period provided u/s 139(4). In view of this reason also, the order of CIT (A) is to be upheld."*

(e) *That for these and some other reasons, it is prayed that the disallowance of deduction of Rs. 88,51,859/- claimed by the assessee company under section 80IA kindly be deleted.*

2. *That the respondent craves leave to add, alter and amend the Ground(s) of appeal."*

2. Earlier this case has been dismissed by this Tribunal for want of prosecution vide order dated 19/09/2017. Thereafter a Misc Application

was filed and vide order 13/4/2018, the appeal was recalled and fixed for hearing.

3. The brief facts of the case are that the return of income was e-filed by the assessee on 31/12/2013 declaring total income of Rs. 5,14,40,320/-. The assessment was completed U/s 143(3) of the Income Tax Act, 1961 (in short the Act) at an income of Rs. 6,07,62,890/-. The Assessing Officer observed that during the year under consideration, the assessee claimed deduction of Rs. 88,51,859/- U/s 80IA of the Act. The assessee filed its e-return of 31/12/2013, which was beyond the due date of furnishing return. The Assessing Officer also observed that as per Section 80AC of the Act, deduction U/s 80IA was not allowable if return is filed beyond the due date of filing the return U/s 139(1) of the Act. Therefore, the Assessing Officer disallowed deduction U/s 80IA of the Act. The ld. CIT(A) has confirmed the action of the Assessing Officer.

4. Now the assessee is in appeal before the ITAT. The main issue involved in the appeal is confirming the disallowance by the ld. CIT(A) of Rs. 88,51,589/- disallowed U/s 80IA of the Act. The ld. CIT(A) has dealt the issue by holding as under:

> "I have gone through assessee's submission and AO's findings.

From a perusal of the documents available on record it is seen that the appellant's tax audit report was e-filed on 30.09.2013 with the financial statements claiming a deduction u/s 80IA of Rs. 88,51,859/- in the TAR u/s 44AB in form 3CD. However, the return due on 30.11.2013 was filed late by 31 days i.e. on 31.12.2013.

The reason cited by the appellant A/R was that due to shortage of funds, huge amount of self-assessment tax could not be deposited in time. Therefore, it was not possible to e-file the return due to system related restrictions. He has also cited several case laws mentioning that provisions of section 80AC are not mandatory but directory in nature. Therefore a substantial claim or benefit should not be denied to the company for this technical default beyond their control. It has also been emphasized that as per some judgments, it has been accepted that section 139(4) is an extension of section 139(1) and since in the instant case, the return was filed within the time allowed 80IA should be allowed to them. Coming to the facts, if the appellant had e-filed the return within the prescribed time limit also, it could have at best become defective in the absence of non-payment of entire self-amounted tax for which later remedy would be available, so this could not fall as a bonafide reason non-filing of the return within the due date prescribed u/s 139(1) of the I.T. Act.

Filling of return in time to get claim of deduction is the basic precondition under section 80AC and a number of courts have upheld the interpretation that the provision is mandatory in nature. The issue was examined at length and settled in special Bench Judgment in the case of Saffire Garments where THE ITAT RAJKOT BENCH (SPECIAL BENCH) IN Saffire Garments v. Income-tax Officer, Ward 2, Gandhidham 28 taxmann.com 27 (Rajkot) (SB) held-

> *Section 10A read with Section 139 of the Income-tax Act, 1961 - Free trade zone - Filing of Return - Assessment year 2006-07- Whether provisions of proviso to*

sub-section (1A) of section 10A, which provides that no deduction under section 10A shall be allowed to an assessee who does not furnish a return of its income on or before due date specified under section 139(1), is mandatory and not directory - Held, yes - Whether, therefore, Tribunal could not have by its own interpretation held such proviso to be mere directory and allow assessee deduction under section 1OA when said assessee had filed its return of income after due date of filing return - Held, yes

Further, Income Tax Appellate Tribunal - Ahmedabad in the case of ACIT (OSD), Range-1, V/S M/s. Anoli Holding Pvt. Ltd. in ITA. No: 1042/AHD/2012(Assessment Year: 2008-09)held on the issue of claim of deduction in view of provisions of section 80AC that-

..3. We have given a thoughtful consideration to the rival contentions; we have also carefully perused the orders of the authorities below. The undisputed fact is that the return of income for the year under consideration was not furnished on or before the due date as per the provisions of Section 139(1) of the Act. In our considered opinion, provisions of Section 80AC of the Act squarely apply on the facts of the case in hand, Section 80AC 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 80IA or section 80-IAB or section 80-IB or section 80-IC [or section 80-ID or section 80- IE], 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].

14. The Special Bench of the Tribunal at Rajkot had the occasion to consider the following facts in the case of Saffire Garments (supra):-

The assessee, a partnership firm, filed its return of income claiming deduction under section 10A in respect of its profit derived from the export of articles produced in SEZ.

. A. Y. 2008-09 • The Assessing Officer, however, noted that the assessee had filed its return on 31.01.2007 whereas the extended due date for filing return of income for the assessee, being a firm, under the provisions of section 139(1) was 31.12.2006. • The Assessing Officer, further noted that as per proviso to sub-section (1A) of section 10A, introduced with effect from 1 -4-2006, no deduction

should be allowed to assessee who does not furnish return of income on or before the due date.

Accordingly, applying proviso to section 10A(1A), Assessing Officer denied deduction under section 10A.

On appeal by the assessee, the Commissioner (Appeals) upheld the order of Assessing Officer.

On further appeal by the assessee. the Tribunal held provisions of the proviso to subsection (1A) of section 10A to be merely directory and. not mandatory and, therefore, on that basis held that even if return of income was not filed within the time-limit prescribed by section 139(1), the assessee could not be denied deduction under section 10A.

Instant Special Bench of the Tribunal was constituted to consider the following questions.

15. On the aforementioned facts, the Special Bench held as under:-

Scheme of the Act with regard to filing of returns In order to decide the issue, I he whole scheme of the Act needs to be considered. The assessee is required to file the return of income within the prescribed time as per the provisions of section 139(1). This provision of section 139(1) is applicable to all companies and firms irrespective of the fact as to whether they are earning taxable income or not for the current year i.e. from 1-4-2006. In respect of other persons such as individual, HUF, AOP or BOI and artificial Juridical person, the requirement is that if such a person is having taxable income before giving effect to the provisions of section 10A, then also, he is required to file return of income before the due date even if this person is not having taxable income after giving effect to the provisions of section 10A. [Para 11] . A.Y. 2008-09 Consequences of failure to file return within due date It is found that the provisions of the proviso to section 1 OA(IA) is nothing but a consequence of failure of the assessee lo file the return of income within the due date prescribed under section 139(1). For such a failure of the assessee to file his return of income within the due date prescribed under section 139(1), this is not the only consequence. One consequence of such failure is prescribed in section 234A also as per which, the assessee is liable to pay interest on the tax payable by him after reducing advance tax and TDS/TCS if any paid by him apart from some other reductions. Such interest is payable from the date immediately following the due date for filing the return of income and is payable up to the date on which such return of income was furnished by the assessee and if the assessee has not furnished any return of income then the interest is payable till the date of completion of the assessment under section 144. It is held that

above is also one of the consequences of not filing return of income by the assessee within the due date. [Para 11]

16. A similar issue was also considered by the Co-ordinate Bench of Chandigarh in the case of Lakshmi Energy & Foods Ltd. (supra), the relevant facts and findings of the Co-ordinate Bench read as under:-

> *" However, Hon'ble Supreme Court in case of Prem Nath Khanna (supra) held - that "due date" would mean due date as provided u/s 139(1). Therefore we are of the opinion that the decision of CIT Vs. MS Jagriti Aggarwal (supra) is not applicable particularly because there is a specific provision u/s 80AC which prohibits deduction under Part "C" of Chapter VIA unless the returns are filed within time prescribed u/s 139(1). When a specific provision is there in the statute same cannot be interpreted in a way to make the provision redundant. Therefore in our opinion, principle laid down by the Hon'ble High Court in case of CIT Vs. MS. Jagriti Aggarwal (Supra) cannot be applied while interpreting the provision of Sec 80AC.*

32 The Ld. Counsel for the assessee has also relied on the decision of ACIT Vs. Dhir Global Industrial Pvt. Ltd (supra) wherein it was observed that though the . A.Y. 2008- 09 proviso to Sec 10B for filing of return u/s 139(1) for claiming deduction but the same was of directory nature and not mandatory. In our opinion, this judgment of Division Benches is no more valid after pronouncement of the decision of Special Bench in case off Saffire Garments Vs. ITO (supra). Similarly in ITO Vs. S. Venktaya(supra), Hyderabad Bench of the Tribunal held that if return was filed late then despite the provisions of section 80AC the deduction was held to be allowable if such delay is beyond the control of the assessee. This position also stands reversed after the decision of Special Bench in case of Saffire Garments Vs. 1 TO (supra) wherein it is clearly held that the provisions of section 8oAC are of mandatory nature. As far as decision of Hon'ble Delhi High Court is concerned, the same is distinguishable on facts because in that case the assessee did not have positive gross total income in the initial year, therefore could not claim the deduction for such initial year. Thereafter for Assessment year 2001-02 the assessee did not claim deduction despite of the positive profits. This omission was noticed somewhere in 2004 by which time filing of revised return has elapsed and the assessee moved a petition u/s 264 which was held to be maintainable because the deduction was not claimed because of bonafide mistake. Therefore clearly on these facts the applicability of provisions of section 8oAC was not there for consideration because this provision was introduced only from Assessment year 2006-07 and therefore this case is distinguishable. 33 The Ld. D.R. for the Revenue has rightly pointed out to the decision of Amritsar Bench of the Tribunal

in case of Balkishan Vs. ITO (supra) wherein it was clearly observed that provisions of section 80AC are mandatory. Head note reads as under:

"Sec 80IB r.w.s. 80AC of the Income-tax Act, 1961 deduction - profits and gains from industrial undertaking other than infrastructure development undertakings - Assessment year 2006-07 and 2007-08 - where an assessee wants to avail deduction u/s 80IB, he has to necessarily furnish his return of income containing such claim before due date specified in Sec 139(1) - held Yes"

A.Y. 2008-09 Therefore in view of the above legal position and discussion it is clear that once the return is filed late beyond due date provided u/s .139(1) in Section 80ACthen deduction u/s 80IB cannot be allowed."

17. If, we consider the facts of the case in hand in the light of the decisions mentioned hereinabove, we find similarity in the facts. Therefore, respectfully following the decisions of the Special Bench and the Co-ordinate Bench (supra), we set aside the findings of the Id. CIT(A) and restore that of the A.O. Ground nos. 1 & 2 taken together are allowed.

Thus in view of the principle as enumerated in the above case, it is clear that the case laws for extended time limit relied upon by the appellant do not apply on cases involving provisions as envisaged per section 80AC.

Still further, The Income Tax Appellate Tribunal - Bangalore in the case of M/S Pooja Reality Pvt. Ltd., vs Assessing officer on 29 July, 2016 held on this issue as under-

..11. So far as the appeal on merits is concerned, we find that the assessee has claimed deduction u/s. 80IB of the Act, but it was denied on the ground that the return was not filed before the due date prescribed u/s 139(1) of the Act. The provisions of section 80AC are very clear that if the return is not filed before the due date specified under subsection (1) of section 139 of the Act, no deduction u/s. 80IB can be allowed to the assessee. The contention of the assessee that the provisions of section 80AC is directory and not mandatory was examined by the Tribunal in the case of ITO v. Dr. K. Balaraman (supra) and the Tribunal has conclusively held that the provisions of section 80AC were mandatory and not only directory. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:-

"06. The Special Bench (Reference to case of Saffire Garments v. Income-tax Officer, Ward 2, Gandhidhami *examined the whole scheme of the Act. The*

Special Bench found that One consequence of failure to file return of income on or before the due date u/s,139(l) of the Act was levy of interest u/s.234A of the Act as per which, the assessee is liable to pay interest on the tax payable by him after reducing advance tax and TDS/ TCS if any paid by him apart from some other reductions and such interest is payable from the date immediately following the due date for filing return of income and is payable up to the date on which such return of income was furnished by the assessee. Payment of interest u/s.234A of the Act was a consequence for failure to file return of before the due date u/s. 139(1) and the same is mandatory. The Special Bench held that the provisions of the proviso to Section lOA(lA) is nothing but a consequence of failure of the assessee to file the return of income within the due date prescribed u/s 139(1) of the Income tax Act, 1961. For such a failure of the assessee to file his return of income within the due date prescribed u/s 139(1) of the Income tax Act, 1961, this is also only of the mandatory consequence. The Special Bench accordingly held that provisions of the proviso to section 10A(IA) are mandatory and not directory, thus deduction u/s 1 OA(IA) could not be allowed to an assessee who fails to furnish a return of income on or before the due date specified u/s 139(1). The decisions rendered by the division bench of Tribunal on which the CIT(A) placed reliance are no longer good law in view of the later decision of the Special Bench referred to above.

07. The learned. DR also brought to our notice the decision rendered by the ITAT Bangalore Bench in the case of Avasarala Technologies Ltd. Vs. DCIT wherein in the context of deduction u/s.80-IB(10) of the Act, the decision of the Special Bench in the case of Saffire Garment (supra) was followed and it was held that the provisions of Sec.80AC of the Act were mandatory and not directory, thus deduction u/s 80-IB(10) of the Act could not be allowed to an assessee who fails to furnish a return of income on or before the due date specified u/s 139(1).

08. The Id. counsel for the Assessee however reiterated his submission that provisions of Sec.80AC have to be construed as directory and that the provisions of Sec.80IB(10) of the Act are beneficial provisions and need to be interpreted liberally to further the object of the section.

09. We are of the view that in the light of the aforesaid decision of the Special Bench in the case of Saffire Garments (supra) and Avasarala Technologies Ltd.(supra), the plea raised on behalf of the Assessee cannot be accepted. Accordingly, we hold that provisions of Sec.80AC of the Act were mandatory and not directory, thus deduction U/S 80-IB(10) of the Act could not be allowed to an assessee who fails to furnish a return of income on or before the due date specified u/s 139(1) of the Act. We therefore reverse the order of CIT(A) and restore the order of the AO. The appeal of the Revenue is accordingly allowed."

...12. Since the impugned issue is covered by the aforesaid judgments, the deduction u/s. 80IB of the Act cannot be allowed as the claim of the assessee is hit by the provisions of section 80AC of the Act. Therefore, we confirm the order of the CIT(Appeals) in this regard.

THE ITAT MUMBAI BENCH 'D' in Dwarakadas G. Panchmatiya *v.* Assistant Commissioner of Income-tax- 25 (1), Mumbai57 taxmann.com 2 (Mumbai - Trib.) held-

Section 139, read with sections 80AC and 80-IB, of the Income-tax Act, 1961 - Return of income - General (e-return) - Assessment year 2008-09 - For relevant year, assessee filed e- return before due date of filing return of income under section 139(1) - However, assessee submitted physical return of income in Form ITR-V after expiry of prescribed period of 15 days from date of filing of e-return - Whether in terms of Electronic Furnishing of Return of Income Scheme 2007, return of income of assessee would be deemed to be filed when Form ITR-V duly verified was submitted - Held, yes - Whether since said physical return was submitted after expiry of date specified under section 139(1), assessee's claim for deduction under section 80-IB(l 0) was rightly rejected by authorities below - Held yes

THE HIGH COURT AT CALCUTTA Special Jurisdiction (Income Tax) ORIGINAL SIDE IN COMMISSIONER OF INCOME TAX, SILIGURI Versus M/S SHELCON PROPERTIES (P) LTD held on this very issue that-

The benefit in the present case can only be claimed in case of fulfillment of the preconditions laid down under section 80AC of the I.T. Act. When the preconditions have not been fulfilled, the benefit cannot be claimed. There is, as such, no reason to find out whether the direction is directory or mandatory. In any event, when the provision is that the benefit cannot be claimed if the return has not been filed on or before the prescribed day, in our view, it is a mandatory direction which prescribes the consequence of omission to file the return in time. The Courts cannot rewrite the law to do what is just according to them...

.. We are inclined to think that the benefit can only be availed by the assessee if he has filed his return on time. If he has not filed his return on time, the benefits cannot be claimed. 16 For the aforesaid reasons, both the questions framed above are answered in favour of the revenue. The appeal thus succeeds and is allowed.

Under the facts of the case and in view of an entire gamut of legal precedents available as discussed above, I am of the view that since the claim of deduction by the appellant was not accompanied by a return filed u/s 139(1) within the due date prescribed (being 30.11.2013) and was filed late (31.12.2013), the A.O. has rightly rejected the claim. The disallowance of Rs. 88, 51,589/- made is therefore confirmed. This ground of appeal is dismissed."

5. The ld AR of the assessee has reiterated the submissions as made before the ld. CIT(A) and prayed to allow the appeal.

6. On the other hand, the ld DR has relied on the orders of the authorities below.

7. The Bench have heard both the sides on this issue and perused the material available on the record. The assessee company has claimed deduction of Rs. 88,51,859/- U/s 80IA of the Act. However, the return was not filed within the time prescribed U/s 139(1) of the Act. There was clear violation of provisions of Section 80AC of the Act. The delay was of 31 days in filing the return of income. After considering the various case laws relied upon by both the sides, we are of the view that the benefit U/s 80IA of the Act cannot be claimed without fulfilling the conditions laid down in Section 80AC of the Act. The provisions of Section 80AC of the Act are read as under:

"[Deduction not to be allowed unless return furnished.

> **80AC.** *Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—*
>
> (i) *the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;*
>
> (ii) *the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading* "C.—Deductions in respect of certain incomes*",*
>
> *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 provisions of Section 80AC of the Act are very clearly and unambiguous, therefore, there is no reason to find out whether the provisions are directory and mandatory. When the provision is clear and unambiguous then there is no scope for any authority to go beyond such unambiguous and clear provision of the law. The law clearly provides that the deduction shall not be allowed unless the return furnished on or before the due date specified under sub-section (1) of Section 139 of the Act. Therefore, we find no merit in the appeal of the assessee and the order of the ld. CIT(A) is hereby confirmed.

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

Order pronounced in the open court on 27/07/2018.

Sd/-	Sd/-
(विजय पाल राव)	(भागचंद)
(VIJAY PAL RAO)	(BHAGCHAND)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 27th July, 2018
*Ranjan

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

1. अपीलार्थी/The Appellant- M/s Shiv Kumar Sushil Kumar Tea Enterprises Pvt. Ltd., Kota.
2. प्रत्यर्थी/ The Respondent- The ACIT, Circle-1, Kota.
3. आयकर आयुक्त/ The CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 100/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar