



IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI

**BEFORE SHRI R.C.SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

**ITA No.4082/Mum/2016
(Assessment Year :2012-13)**

ITO 25(1)(2) 4 th Floor, C-101 Pratyakshkar Bhavan BKC, Bandra (E) Mumbai – 400 051	Vs.	M/s. Status Quo Lifestyle Co., 237, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri(W) Mumbai – 400 053
PAN/GIR No.		ABRFS2523G
Appellant)	..	Respondent)

Revenue by	Shri Chetan Anjaria
Assessee by	Shri Pramod Kumar Parida
Date of Hearing	09/08/2018
Date of Pronouncement	27/08/2018

आदेश / ORDER

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue against the order of CIT(A)-37, Mumbai dated 29/03/2016 for A.Y.2012-13 in the matter of the order passed u/s.143(3) of the IT Act.

2. In this appeal Revenue is aggrieved for deleting the disallowance of deduction u/s.80IC(ii) of the IT Act.
3. Rival contentions have been heard and record perused.
4. Facts in brief are that assessee is a partnership firm with 4 partners and carries on its business of manufacturing readymade-garments at its factory situated in Himachal Pradesh which is a special category state; thus, the Assessee is entitled to claim its eligible deduction u/s.80-IC(ii).

The due date for filing return was on 30/09/2012, return was filed on 25/09/2012, however audit report was filed on 29/09/2012. The Assessing Officer disallowed the claim by holding that the Assessee has not furnished the Audit Report in Form No.10CCB alongwith Return of Income. AO also observed as under:

"In order to verify the purchase, notice u/s. 133(6) was issued to certain parties on random basis. Out of five parties, replies were received for 2 parties, the details of the claim as per assessee's record and parties is as under:-

	Total Purchases to assessee (Rs.)	Sales as per parties account (Rs.)	Sundry Creditors as per Assessee (Rs.)	Sundry Creditors as per parties account (Rs.)
Good Good Wears	2439150	2439150	64150	64150
Sangam Wearers P. Ltd.	17583211	24660308	9897730	9898101
Excel Enterprises	224900	NIL	NIL	NIL
J R Textiles	1317927	NIL	NIL	NIL
Superwind Knitters Ltd.	4085286	4567657	2421813	2421813

It can be observed from the above chart that the balance payable by the assessee as sundry creditors, total purchase and payments made during the F.Y. are not in agreement with the books of the assessee.

Total 5 notices issued to the parties, 2 have not been responded and replies received from 3 parties are tabulated as above.

The above facts also shows that the accounts of the assessee have not been properly maintained but the auditors have certified that the balance sheet, profit and loss account are in agreement with the books of accounts maintained.

In view of the above facts and circumstance of the case, the assessee is not entitled to claim the deduction u/s. 80IC(ii) of the IT. Act as the accounts of the assessee have not been audited in time and submitted alongwith the return of income. Hence the income' claimed as exempt of Rs. 1,28,18,818/- is added to the total income of the assessee. Penalty u/s. 271(1)(c) is hereby initiated for concealment of income."

Hence, the claim is disallowed"

5. By the impugned order CIT(A) allowed claim by observing that as the Audit Report is completed and filed before the due date of filing of Return u/s 139(1) which is before the completion of assessment, the deduction u/s. 80-IC is allowed to the assessee.

6. The issue with regard to filing of Audit Report is covered in favour of assessee by the decision of Supreme Court in case of CIT vs. G.M. Knitting Industries Pvt. Ltd., (2015) 376 ITR 456 (SC) wherein Hon'ble Supreme Court held as under:-

"there is sufficient compliance when Audit Report (in Form No. 10CCB) is not filed alongwith the Return but is filed before the assessment was completed. The Assessee is entitled to deduction "

7. Similar view has been taken by the Hon'ble Bombay High Court in case of Shivanand Electronics (1994) 209 ITR 63 (Bom). This view was also supported by the following judicial pronouncements:

- (2016) 387 ITR 105 (ALL) Pr. CIT Vs Surya Merchant Ltd
- (2009) 317 ITD 249 (Del) CIT Vs Centimetres Electricals P. Ltd
- (2009) 317 ITR 207 (Kar) CIT Vs ACE Multitaxes Systems P Ltd
- (2001) 248 ITR 199 (Mad) CIT Vs Jayant Patel
- (2001) ITR 481(Mad) CIT Vs A.N, Arunachalam

8. Respectfully following the decision of the Hon'ble Supreme Court and Hon'ble Bombay High Court, we do not find any infirmity in this part of order of CIT(A) for holding that since audit report was filed before due date of filing return u/s.139(1) before completion of assessment.

9. It is clear from the order of CIT(A) that he has not controverted the findings recorded by AO with regard to the discrepancy in the purchases

so found by the AO on issue of notice under section 133(6). The AO has disallowed assessee's claim of deduction under section 80 IC(ii) not only on the ground of filing of Audit Report but also on the ground of discrepancy in the purchases shown by the assessee. Since the CIT(A) has not controverted the finding of AO with regard to the discrepancy in the purchases so found, we are restored the matter back to the file of CIT(A) for deciding afresh the computation of deduction under section 80-IC(ii) in terms of discrepancy so pointed out by the AO in the purchases. In so far as the CIT(A)'s conclusion for filing of Audit Report before completion of assessment proceeding is concerned, we are in agreement with him.

9. In the result, appeal of the Revenue is allowed in part in terms indicated herein above.

Order pronounced in the open court on this 27/08/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 27/08/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai