

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 311/VIZ/2018
(Asst. Year : 2014-15)**

JCIT, Central Circle-2,
Visakhapatnam.

vs. M/s. Creative Engineering
Constructions, D.No. 1-113-
20/1, MIG-165 & 166,
Sector-8, MVP Colony,
Visakhapatnam.

(Appellant)

PAN No. AAEEFC 8121 E
(Respondent)

**C.O.No. 92/VIZ/2018
(Arising out of ITA No. 311/VIZ/2018)
(Asst. Year : 2014-15)**

M/s. Creative Engineering
Constructions, D.No. 1-113-
20/1, MIG-165 & 166,
Sector-8, MVP Colony,
Visakhapatnam.

vs. JCIT, Central Circle-2,
Visakhapatnam.

PAN No. AAEEFC 8121 E
(Applicant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri V. Appala Raju – Sr.DR

Date of hearing : 03/01/2019.
Date of pronouncement : 11/01/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue and the cross objection by the assessee are directed against the order of Commissioner of

Income Tax (Appeals)-3, Visakhapatnam, dated 29/03/2018 for the Assessment Year 2014-15.

2. Facts of the case, in brief, are that the assessee is a partnership firm, engaged in the business of construction of residential and commercial buildings, had filed its e-return of income on 13/11/2014 by admitting NIL income after claiming deduction of Rs. 2,52,66,114/- under section 80IB (10) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') . The case of the assessee was selected for scrutiny through CASS and a notice under section 143(2) was served on the assessee and assessment was completed under section 143(3) of the Act on 13/12/2016. During the course of assessment proceedings, the Assessing Officer has noted that the assessee-firm has shown income chargeable under the head 'business & profession' at Rs.2,52,66,114/- and claimed the entire amount as deduction under section 80IB (10) of the Act. The Assessing Officer has asked the assessee that Form No. 10CCB was filed along with the return of income or not. In response, it was submitted that return was filed on 13/11/2014 and Form No. 10CCB was filed during the course of assessment proceedings, electronically, on 13/12/2016. The Assessing Officer after considering the explanation of the

assessee, he has observed that the assessee has not fulfilled the conditions of furnishing the prescribed audit report i.e. Form No. 10CCB along with the return of income so as to be eligible to claim deduction under section 80IB (10), therefore, claim made by the assessee was denied.

3. On appeal before the Id. CIT(A), the assessee has relied on the decision of the Jaipur Bench of the ITAT in the case of *Khetan Tiles Private Ltd. Vs. ACIT* in ITA No. 353/JP/2017, by order dated 09/08/2017 and submitted that Form No. 10CCB can be filed during the course of assessment proceedings also. The Id. CIT(A) by considering the argument of the AR of the assessee and also by considering the decision of the ITAT, Jaipur Bench in the case of *Khetan Tiles Private Ltd. (supra)* directed the Assessing Officer to allow the claim of deduction under section 80IB (10) of the Act.

4. On being aggrieved, the revenue carried the matter in appeal before the Tribunal.

5. Ld. Departmental Representative relied on the order passed by the Assessing Officer, whereas Id. counsel for the assessee has strongly relied on the order of the Id. CIT(A).

6. We have heard both the sides, perused the material available on record and orders of the authorities below.

7. The only short issue involved in this appeal is whether Form No. 10CCB has to file along with return of income or can be filed during the course of assessment proceedings. This issue has been decided by the coordinate bench of the Jaipur Tribunal in the case of *Khetan Tiles Private Ltd.* (supra) by considering the decision of the Hon'ble Supreme Court in the case of *CIT Vs. G.M. Knitting Industries (P) Ltd.* [(2015) 376 ITR 456] and has observed that even though necessary certificate in Form No. 10CCB along with return of income had not been filed, but same was filed before final order of the assessment was made, the assessee was entitled to claim deduction under section 80IB (10) of the Act. The Id.CIT(A) by following the above decision, directed the Assessing Officer to allow the deduction under section 80IB (10) of the Act. The relevant portion of the order of the Id. CIT(A) is extracted as under:-

"6.1) I have carefully gone through the assessment order and the submissions of the appellant. There is no dispute about the fact that the appellant is eligible for deduction U/S 80IB(10) of the Act. Further, there is no dispute about the fact that the appellant submitted the audit report electronically on 13.12.2016 during the course of the assessment proceedings. As such, there was substantial compliance with the requirement of Rule 12(2) providing for e-filing of Audit Report in Form No 10CCB The Only issue to be decided is whether the requirement of Rule 12(2) is directory or mandatory in nature. On a careful perusal of the decision of Hon'ble Jaipur Bench of the ITAT in the case of Khetan Tiles Private Limited (Supra), I found that this issue has been duly considered by the ITAT. The

relevant portion of the order is extracted hereunder:

"6. We have heard the rival submissions and pursued the material available on record. It is not in dispute that the assessee was entitled to deduction under section 80IA of the Act. The provisions of section 80IA(8) under consideration reads as under: "(8) Where the assessee is a person other than a company or a cooperative society, the deduction under sub-section (1) from profits and gains derived from on industrial undertaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by on accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant."

7. Admittedly, in support of claim of deduction under section 80IA, the audit report in prescribed Form 10CCB has been filed by the assessee company during the course of assessment proceedings. The Hon'ble Supreme Court in CIT vs. G.M. Knitting Industries (P) Ltd. (supra) dismissed the appeal of Revenue and confirmed the view taken by Madras High Court in case of CIT vs. AKS Alloys (P.) Ltd. [2012] 18 taxrnann.com 25 (Mad.) holding that "Even though necessary certificate in Form 10CCB along the return of income had not been filed but some was filed before final order of the assessment was made, the assessee was entitled to claim deduction under section 80-IB." In light of the above, we agree with the contention of the Id AR that while filing of the audit report is mandatory, the further condition that it should be filed with the return or income is directory in nature and so long as the audit report has been filed during the course of assessment proceedings, substantial compliance has been made. In the result, ground no. 1 of the assessee's appeal is allowed."

The aforesaid decision squarely applies to the case of the appellant. Respectfully following the decision of the Hon'ble Jaipur Tribunal (which is in turn based on the decision rendered by Hon'ble Supreme Court in the case of G.M. Knitting Industries Pvt. Ltd.), I hold that the Assessing Officer is not justified in disallowing the deduction claimed by the appellant

u/s 80IB(10) of the Act. The Assessing Officer is directed to allow the deduction of Rs.2,52,66,114/- claimed by the appellant u/s 801B(10) of the Act."

8. No material has been brought to our notice to show that the above said order has been modified or reversed by the Hon'ble High Court. Further, Id. Departmental Representative could point out any contrary decision. Therefore, respectfully following the decision of the ITAT, Jaipur Bench in the case of *Khetan Tiles Private Ltd.* (supra), we find no infirmity in the order passed by the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

9. The Cross Objection filed by the assessee is in support of the order of the Id. CIT(A). As the assessee has no grievance against the order of Id. CIT(A), the Cross Objection filed by the assessee has become infructuous and is dismissed accordingly.

10. In the result, appeal filed by the Revenue as well as cross objection filed by the assessee is dismissed.

Order Pronounced in open Court on this 11th day of Jan., 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 11th Jan., 2019.

vr/-

Copy to:

1. *The Assessee – M/s. Creative Engineering Constructions, D.No. 1-113-20/1, MIG-165 & 166, Sector-8, MVP Colony, Visakhapatnam.*
2. *The Revenue – JCIT, Central Circle-2, Visakhapatnam.*
3. *The Pr.CIT (Central), Visakhapatnam.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.