



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2164/Mum./2016
(Assessment Year : 2012-13)

Uma Developers
2/103, Manas Anand
Near Jalaja Hotel
Dongri Pada, G.B. Road
Thane (W) 400 607
PAN - AABFU8250F

..... Appellant

v/s

Income Tax Officer
Ward-3(4), Mumbai

..... Respondent

Assessee by : Shri Rajesh S. Shah
Revenue by : Shri Chaudhary Arun kumar Singh

Date of Hearing - 29.07.2019

Date of Order - 11.10.2019

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the assessee is against order dated 15th January 2016, passed by the learned Commissioner of Income Tax (Appeals)-2, Aurangabad, for the assessment year 2012-13.

2. The grievance of the assessee in the present appeal is with regard to the disallowance of deduction claimed under section 80IB(10) of the Income-tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of builders and developers. While pursuing such activity, the assessee had undertaken construction of a housing project at Akash Ganga Complex, Ghodbunder Road, Thane (West). For the assessment year under dispute, the assessee filed its return of income on 31st March 2013, declaring nil income after claiming deduction under section 80IB(10) of the Act. In the course of assessment proceedings, the Assessing Officer while examining assessee's claim of deduction under section 80IB(10) of the Act, having found that conditions of section 80AC of the Act have been violated, issued notice requiring the assessee to show cause as to why the deduction claimed under section 80IB(10) of the Act should not be disallowed. Of course, in the said show cause notice, the Assessing Officer alleged various violation of various other conditions prescribed under section 80IB(10) of the Act. To ascertain the correct facts, the Assessing Officer also conducted independent enquiry with Thane Municipal Corporation. In response to the said show cause notice, the assessee filed its reply justifying the deduction claimed under section 80IB(10) of the Act. As regards non-compliance to the provision of section 80AC of the Act, the assessee submitted that the said provision is directory and not mandatory. After considering the submissions of the assessee in totality, the Assessing Officer observed that as per section 80AC of the

Act, for claiming deduction under section 80IB(10), the assessee must file its return of income within the due date of filing of return of income under section 139(1) of the Act. Thus, he observed, since the assessee had not filed its return of income within the due date provided under section 139(1) of the Act, as per section 80AC of the Act the assessee would not be eligible to claim deduction under section 80IB(10) of the Act. Further, the Assessing Officer held that certain conditions of section 80IB(10) of the Act have also not been fulfilled by the assessee. Accordingly, he rejected assessee's claim of deduction under section 80IB(10). Being aggrieved with such disallowance, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals), however, agreed with the Assessing Officer that due to non-compliance of the provisions of section 80AC of the Act, the assessee is not eligible to claim deduction under section 80IB(10). Since, learned Commissioner (Appeals) upheld the disallowance of assessee's claim of deduction under section 80IB(10), in the aforesaid premises, he did not venture into the other issues relating to non-fulfillment of conditions of section 80IB(10) itself.

5. The learned Authorised Representative submitted, the conditions imposed under section 80AC of the Act for filing the return of income within the due date of section 139(1) of the Act for claiming deduction

under section 80IB(10) of the Act is not a mandatory requirement, but is a directory provision. He submitted, section 80IB(10) of the Act being a beneficial provision, should be construed liberally, hence, assessee's claim of deduction should not be disallowed due to technical lapse. In support of such contention, he relied upon the following decisions:-

- i) *Tulsidas Gopalji Charitable & Chaleshwar Temple Trust v. CIT, [1994] 207 ITR 368 (Bom);*
- ii) *ITO v/s Yash Builders, ITA no.809/Mum./2011, 31.01.2014; and*
- iii) *Anand Shelters Developers and Builders Pvt .Ltd. v/s ACIT, ITA no.1606/Pun./2016, dated 20.10.2017.*

6. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer and learned Commissioner (Appeals), submitted, the provision of section 80AC of the Act is mandatory and not directory. If the assessee does not fulfill the condition of section 80AC of the Act, deduction claimed under section 80IB(10) of the Act cannot be allowed. The learned Departmental Representative submitted, the fact that the provision of section 80AC of the Act is mandatory has been upheld by the Hon'ble Calcutta High Court in CIT v/s Shelcon Properties Pvt. Ltd., 370 ITR 305 (Cal.). Further, he submitted, when the language used in the provision is plain, simple and unambiguous, it cannot be interpreted in a different

manner to provide benefit to the assessee. He submitted, the provisions contained under a taxing statute have to be interpreted strictly as per the language used therein. He submitted, if there is a scope for more than one interpretation in respect of a deduction/exemption provision, the interpretation favourable to the Revenue has to be adopted. In this context, he relied upon the decision of the Hon'ble Supreme Court in Commissioner of Customs (Import) v/s Dilip Kumar & Co. & Ors., C.A. no.3327/2007, dated 30th July 2018. Thus, he submitted, since the assessee has not fulfilled the condition of section 80AC of the Act, it is not eligible to claim deduction under section 80IB(10) of the Act. Further, in support of his contention, the learned Departmental Representative relied upon the following decisions:-

- i) *CIT v/s Shelcon Properties Pvt. Ltd., [2015] 370 ITA 305 (Cal.);*
- ii) *Umeshchandra Dalakoti v/s ACIT, ITA no.07/2012, dated 27.08.2012 (U.K. HC); and*
- iii) *M/s. Saffire Garments v/s ITO [2013] 140 ITD 6.*

7. In rejoinder, the learned Authorised Representative submitted, the decision in case of Dilip Kumar & Co. & Ors. (supra) would not be applicable to the facts of the present case as the Hon'ble Supreme Court was interpreting a exemption notification. He submitted, there is

no change in situation even now as regards interpretation of beneficial provisions which require liberal interpretation.

8. We have considered rival submissions and perused material on record. We have also examined in detail the relevant case laws cited before us. The issue in dispute lies in a very narrow compass. To be precise, the issue for consideration is, whether the condition imposed under section 80AC of the Act is mandatory and if so, whether for non-fulfillment of condition of section 80AC of the Act the assessee would be ineligible to claim deduction under section 80IB(10) of the Act. Before, we proceed to deal with the issue at hand, it is necessary to have a look at the provision contained under section 80AC of the Act (applicable to A.Y.-2012-13), which reads as under:-

"80AC. Deduction not to be allowed unless return furnished.- 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 80-IA 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."

9. As per the aforesaid provision, no deduction under certain provisions, including section 80IB of the Act, would be allowable to the assessee for any assessment year commencing on/or after first day of April 2006, unless, he furnishes return of income for such assessment

year on/or before the due date specified under sub-section (1) of section 139 of the Act. Admittedly, in the facts of the present case, the assessee has not furnished its return of income for the impugned assessment year within the due date prescribed under section 139(1) of the Act. While the Departmental Authorities have rejected assessee's claim of deduction under section 80IB(10) of the Act due to non-fulfillment of the condition of section 80IC of the Act, it is the claim of the assessee that the condition imposed under section 80AC of the Act is directory and not mandatory. Therefore, if the assessee files the return of income within the time permitted under sub-section (4) and (5) of section 139 of the Act, it will be eligible for deduction under section 80IB(10) of the Act.

10. On a reading of section 80AC of the Act, the impression one gets is, the language used in the provision is plain and simple and leaves no room for any doubt or ambiguity. Therefore, in our view, the aforesaid provision has to be interpreted in the touchstone of the ratio laid down in the Constitution Bench decision of the Hon'ble Supreme Court in case of Dilip Kumar & Co. & Ors. (supra). The Hon'ble Supreme Court, after taking judicial note of a catena of decisions of the Hon'ble Supreme Court as well as different High Courts on the issue of interpretation of taxing statute, and more particularly, interpretation of charging and exemption provisions, have held that when the words in

a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature. However, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Further, if the plain construction leads to anomaly and absurdity, the Court having regard to hardship and consequence that flow from such a provision can even explain the true intention of the legislature. The Hon'ble Court observed, the 'plain meaning' suggests that when the language is plain and unambiguous, the Court has to read and understand the plain language as such and there is no scope for any interpretation. The Hon'ble Supreme Court went on to observe that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort to be made to look to other supporting material especially in taxation statute. The Hon'ble Court observed, it is well settled that in a taxation statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in

interpretation of a tax statute. Strictly, one has to look to the language used. There is no room for researching intendment or drawing any presumption. Furthermore, nothing has to be read into nor anything to be employed other than essential inferences while considering a taxation statute.

11. After deliberating upon the ratio laid down in various decisions, the Hon'ble Supreme Court observed, while interpreting the taxing statute, if there is any ambiguity with regard to the charging provisions the benefit must necessarily go in favour of subject/assessee, but, in case of any ambiguity in exemption notification, benefit of doubt must go in favour of the Revenue and such exemption should be allowed to be availed only to those subjects / assessees who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and the person claiming the benefit of such notification must satisfy all the conditions precedent for availing exemption. The question whether a particular subject falls within the exemption clause has to be strictly construed. Once, the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the exemption clause liberally. Thus, a person claiming exemption has to establish that his case squarely falls within the exemption clause.

12. If we apply the principle laid down in the aforesaid decision of the Hon'ble Supreme Court to the facts of the present case, it is quite clear that as per the provision of section 80AC of the Act, which is very much clear and unambiguous in its expression, for claiming deduction under section 80IB(10) of the Act, it is a mandatory requirement that the assessee must file its return of income within the due date prescribed under section 139(1) of the Act, notwithstanding the fact whether or not the assessee has actually claimed deduction in the said return of income. Once the return of income is filed within the due date prescribed under section 139(1), even without claiming deduction under the specified provisions, the assessee can claim it subsequently either in a revised return filed under section 139(5) of the Act or by filing a revised computation during the assessment proceeding. In that situation, the condition of section 80AC would stand complied. The words used in section 80AC of the Act being plain and simple, leave no room for a different interpretation. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in the decision cited supra, the provision contained under section 80AC of the Act has to be construed strictly as per the language used therein. Otherwise, the very purpose of enacting the provision would be defeated and the provision would be rendered otiose.

13. No doubt, the decision of the Tribunal, Pune Bench, in M/s. Anand Shelters Developers and Builders Pvt .Ltd. (supra), supports the contention of the learned Authorised Representative that the provision of section 80AC of the Act is directory. However, the foundation of this decision is the decision of the Hon'ble Andhra Pradesh High Court in ITO v/s S. Venkataiah, ITA no.114/2013, dated 26th June 2013, as well as some other decisions of the Tribunal. Whereas, the Hon'ble Calcutta High Court in Shelcon Properties Pvt. Ltd. (supra) and the Hon'ble Uttarakhand High Court in Umeshchandra Dalakot (supra) have clearly and categorically held that the provision contained under section 80AC of the Act is mandatory. Further, the Special Bench of the Tribunal in Saffire Garments (supra) while considering parimateria provision contained under the proviso to section 10A(1A) of the Act has held that the condition imposed requiring furnishing of return of income within the due date prescribed under section 139(1) of the Act for availing deduction is mandatory. It is relevant to observe, the Hon'ble Delhi High Court in CIT v/s Unitech Ltd., ITA no.236/2015, dated 5th October 2015, while considering somewhat a similar issue relating to interpretation of section 80AC, has observed that while the decisions of the Hon'ble Calcutta High Court in Shelcon Properties Pvt. Ltd. (supra) and of the Hon'ble Uttarakhand High Court in Umeshchandra Dalakot (supra) are

directly on the issue and support the case of Revenue that section 80AC of the Act is mandatory, but, the Court observed that the decision of the Hon'ble Andhra Pradesh High Court in *S. Venkataiah* (supra) was one declining to frame a question of law thereby affirming the order of the Tribunal. Thus, ultimately the Hon'ble Delhi High Court left open the issue whether the provision of section 80AC of the Act is directory or mandatory. It is to be noted that the Tribunal, Pune Bench, primarily proceeded on the basis that if there are two conflicting views on a particular issue, the view favourable to the assessee has to be taken. However, after the decision of the Hon'ble Supreme Court in *Dilip Kumar & Co. & Ors.* (supra) the legal position has materially changed and the provisions providing for exemption / deduction have to be construed strictly in terms with the language used therein and if there is any doubt, the benefit should go in favour of the Revenue. Certainly, the Tribunal, Pune Bench, did not have the benefit of the aforesaid judgment of the Hon'ble Supreme Court while rendering its decision.

14. Thus, considering the overall facts and circumstances of the case in the light of the decisions referred to above and more particularly applying the ratio of the decision of the Hon'ble Supreme Court in *Dilip Kumar & Co. & Ors.* (supra), we hold that the condition imposed under section 80AC of the Act has to be fulfilled for claiming deduction under

section 80IB(10) of the Act. Since, the assessee has not fulfilled the aforesaid condition, deduction claimed under section 80IB(10) of the Act has been rightly denied by the Departmental Authorities. Accordingly, the order passed by learned Commissioner (Appeals) is upheld. Grounds raised are dismissed.

15. In the result, appeal is dismissed.

Order pronounced in the open Court on 11.10.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 11.10.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai