

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI S.RIFAUZ RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.7672/MUM/2019
(Assessment Year: 2010-11)**

DCIT -15(2)(1)
3rd Floor, Room No. 357,
Aayakar Bhavan, M.K. Road,
Marine Lines,
Mumbai – 400 020

M/s Hexaware Technologies
Vs. Ltd., Unit No. 152, Millennium
Business Park, TTC,
Industrial Area, Mahape,
Navi Mumbai – 400 710

PAN No. AABCA3203F

(Revenue)

(Assessee)

Assessee by : Shri Rajan Vora, A.R
Revenue by : Shri Gurbinder Singh, D.R

Date of Hearing : 22/06/2021
Date of pronouncement : 28/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-17, Mumbai, dated 17.09.2019, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 29.03.2014 for A.Y. 2010-11. The revenue has assailed the impugned order on the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of deduction under section 80JJA of the Act,1961.
2. The appellant prays that the order of the Ld CIT(A) on the above grounds be set aside and that of the AO be restored.
3. The applicant craves leave to add, amend or alter any grounds or add new ground, which may be necessary.”

2. Briefly stated, the assessee company which is engaged in the business of software solutions and I.T enabled services had e-filed its return of income for A.Y. 2011-12 on 15.10.2010, declaring a total income of Rs. 2,76,42,809/- under the normal provisions of the Act. Further, the assessee had shown its 'book profit' u/s 115JB of the Act at Rs. 79,94,75,627/-. Initially the return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings the assessee on the basis of a letter dated 04.03.2014 had raised a claim for deduction u/s 80JJAA of the Act amounting to Rs.6,08,01,078/-. However, the A.O declined to admit the aforesaid claim of deduction raised by the assessee for two fold reasons, viz. (i) that as the said claim for deduction was neither raised in the original return of income nor by way of a filing of a revised return, therefore, as per the judgment of the Hon'ble Supreme Court in the case of Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC) the same could not be admitted; and (ii) that in support of its claim for deduction u/s 80JJAA the assessee had failed to furnish along with its return of income the report of the accountant as was required per the mandate of clause (b) of sub-section (2) to Sec. 80JJAA, and had furnished a report dated 27.02.2014 in Form No. 10DA r.w. 'Explanation' to sub-section (2) of Sec. 288, vide its letter dated 04.03.2014 i.e after the due date for filing of the return of income u/s 139(1) of the Act. Apart from that, the A.O finding certain specific infirmities in the assessee's claim for deduction u/s 80JJAA rejected the same on merits too. The A.O after rejecting the assessee's claim for deduction u/s 80JJAA assessed its income vide his order u/s 143(3), dated 29.03.2014 at Rs.3,76,42,810/- under the normal provisions of the Act. The 'book profit' of the assessee u/s 115JB was re-casted at an amount of Rs. 80,03,13,976/-.

4. Aggrieved, the assessee assailed the order passed by the A.O u/s 143(3), dated 29.03.2014 before the CIT(A). On a perusal of the records, it

was observed by the CIT(A) that the assessee had claimed deduction u/s 80JJAA of Rs.8,08,01,078/- in respect of the additional wages that were paid to its new regular workmen who were employed in F.Y. 2007-08 and F.Y. 2009-10. It was observed by him that the assessee in support of its claim of deduction u/s 80JJAA had in the course of the assessment proceedings furnished the report of a Chartered accountant in 'Form No. 10DA' along with the 'notes' appended thereto. It was further noticed by him that the A.O by relying on the judgment of the Hon'ble Apex Court in the case of Goeze India Ltd. (supra) had declined to consider the aforesaid claim of deduction, for the reason, that the same was neither raised in the original return of income nor by way of filing of a revised return. On the contrary, the assessee had relied before the CIT(A) on the Circular No. 14(XL-35), dated 11th April, 1955 issued by the Central Board of Revenue (CBR) wherein the tax officers were instructed that it was their duty to assist the tax payers in every reasonable way, particularly in the matter of claiming and securing reliefs. Further, the circular explicitly stated that where a tax payer had out of ignorance or otherwise failed to make a claim which he was legally entitled to make, it would be the duty of the assessing officer to draw attention of the tax payer to such omission. In the backdrop of the aforesaid contention, it was the claim of the assessee that now when the tax payer itself had made a claim in the course of the assessment proceedings, there appeared to be no reason as to why he should be restrained from doing so. Also, the assessee submitted before the CIT(A) that the Government can levy and collect those taxes and only that much taxes that are provided in law. As such, it was the claim of the assessee that the department should collect the due taxes, and in determining the same remained duty bound to allow legitimate deductions and reliefs as were provided in the Act, though the same had not been claimed by the assessee. It was observed by the CIT(A) that the assessee had rebutted the point wise observations of the A.O that the various condition stipulated in Sec. 80JJAA had not been satisfied by the assessee. It was further observed by him that the assessee had drawn support from the fact that on similar facts the

assessee's claim for deduction as was raised in its return of income was allowed by the A.O while framing the assessments for A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2015-16. Observing, that the A.O was bound to assess the correct income and for the said purpose may grant reliefs/refunds on suo motto basis, or do so on being pointed out by the assessee in the course of the assessment proceedings, the CIT(A) was of the view that due to mere procedural lapses or technicalities the assessee could not have been compelled to pay more tax than what was due from him. Accordingly, on the basis of his aforesaid observations the CIT(A) allowed the assessee's claim for deduction u/s 80JJAA of the Act.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Departmental Representative (for short 'D.R') that the CIT(A) instead of restoring the matter to the file of the A.O for verifying as to whether the assessee satisfied the requisite conditions for claim of deduction u/s 80JJAA, had most arbitrarily allowed the same. It was, thus, submitted by the Id. D.R that the order passed by the CIT(A) be set-aside and the matter be restored to the file of the A.O with specific directions to verify the assessee's claim for deduction u/s 80JJAA of the Act.

6. Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee relied on the order of the CIT(A). It was submitted by the Id. A.R that the CIT(A) had rightly observed that though the A.O is precluded from entertaining any claim of deduction that was not raised by the assessee in its return of income otherwise than by way of filing of revised return, however, such restriction by no means could be applied and therein read into the powers vested with the appellate authorities. In support of his aforesaid contention the Id. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT, Central-1, Mumbai Vs. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom). It was submitted by the Id. A.R that the jurisdictional High Court in its aforesaid order, had observed, that

an assessee is entitled to raise before the appellate authorities the additional grounds in respect of the additional claims though not made in the return filed by it. In order to support his contention that CIT(A) has the power to consider the claim made otherwise than in the return of income, reliance was placed by the Id. A.R on the judgment of the Hon'ble High Court of Madras in the case of CIT vs. Abhinitha Foundations (P) Ltd. (2017) 396 ITR 251 (Mad). It was further submitted by the Id. A.R that the aforesaid claim of deduction raised by the assessee was qua the additional wages that were paid by the assessee to its new regular workmen who were employed in F.Y. 2007-08 and F.Y. 2009-10, as well as during the year under consideration. It was averred by the Id. A.R that as there was no change in the facts or the legal position qua the assessee's claim of deduction u/s 80JJAA, which was even allowed in the subsequent years, therefore, there was no valid reason for declining the same during the year in question. In support of his contention that following the rule of consistency the aforesaid claim of deduction was rightly allowed by the CIT(A), the Id. A.R had relied on the judgment of the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC) and that of the Hon'ble High Court of Bombay in the case of DIT (IT) vs. HSBC Assets Management (I) Pvt. Ltd. (2015) 228 taxman 365 (Bom) (Mag). It was further submitted by the Id. A.R that as the complete facts qua the assessee's claim for deduction u/s 80JJAA were there before the A.O in the 'audit report' of the Chartered accountant in 'Form No. 10DA', therefore, the CIT(A) in all fairness had rightly observed that the matter did not merit to be restored to the file of the A.O. In support of his contention that no infirmity could be attributed to the CIT(A) in not restoring the matter to the file of the A.O, the Id. A.R had drawn support from the order of the Hon'ble High Court of Delhi in International Tractors Ltd. Vs. DCIT(LTU), ITA No. 35/2019, dated 07.04.2021. It was submitted by the Id. A.R that in the aforesaid case the assessee had failed to claim deduction u/s 80JJAA in its return of income. Such claim was thereafter raised in the course of the assessment proceedings and was supported by the report of a Chartered accountant in 'Form No.

10DA'. However, the A.O relying on the judgment of the Hon'ble Supreme Court in case of Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC) declined to entertain the aforesaid claim. On appeal, the CIT(A) being satisfied with the explanation provided by the tax payer allowed the said claim. On further appeal, the Tribunal though acknowledged that the CIT(A) had rightly entertained the 'fresh claim' that was raised by the assessee, however, remanded the matter to the A.O in order to verify the details qua the claim that was raised by the assessee. On further appeal, the High Court did not find favour with the view taken by the Tribunal, and observed, that no infirmity did emerge from the order of the CIT(A) who had rightly allowed the legitimate claim that was raised by the assessee. In the backdrop of his aforesaid contention, it was submitted by the Id. A.R that the CIT(A) had rightly allowed the assessee's claim for deduction u/s 80JJAA after considering the point wise rebuttal by the assessee of the observations of the A.O qua the issue that the assessee even otherwise on merits was not entitled for deduction under the aforesaid statutory provision. It was, thus, submitted by the Id. A.R that as the appeal filed by the revenue was devoid and bereft of any merit, therefore, the same did not merit acceptance and was liable to be dismissed.

7. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. The solitary issue involved in the present appeal hinges around the sustainability of the order passed by the CIT(A) allowing the assessee's claim for deduction u/s 80JJAA of the Act. As observed by us hereinabove, for the reason, that the assessee had neither raised the claim for deduction u/s 80JJAA in its original return of income nor by way of filing of a revised return, the A.O, therefore, had declined to take cognizance of the same as was raised on the basis of a letter dated 04.03.2014 that was filed by the assessee along with the 'audit report' of a Chartered accountant in 'Form No. 10DA'. As is

discernible from the records, the assessee's claim for deduction u/s 80JJAA of Rs.6,08,01,078/- was comprised of as under:

| New regular workmen pertaining to | | | |
|--|-------------------------------|-------------------------------|-------------------------------|
| Particulars | F.Y.2007-08 (ie. AY. 2008-09) | F.Y.2008-09 (ie. AY. 2009-10) | F.Y.2009-10 (ie. AY. 2010-11) |
| No. of new regular workmen employed which are entitled for deduction | 1033 | Refer note | 249 |
| Additional wages paid to such new regular workmen | Rs.16,33,28,492/- | Nil | Rs.3,93,41,769/- |
| 30% of the additional wages | Rs.4,89,98,547/- | Nil | Rs.1,18,02,531/- |
| Total claim of deduction for A.Y. 2010-11 | Rs. 6,08,01,078/- | | |

Note – No deduction was claimed in respect of new regular workmen employed in F.Y 2008-09 (corresponding to A.Y 2009-10) since the 10% criteria for increase in the regular workmen was not satisfied in the said year.

Insofar the view taken by the A.O that as the assessee had neither raised a claim for deduction u/s 80JJAA in its original return of income filed u/s 139(1) of the Act nor by way of filing a revised return of income of income u/s 139(5), therefore, the said claim could not be admitted simpliciter on the basis of the letter dated 04.03.2014 that was filed by the assessee along with the report of the Chartered accountant in 'Form No. 10DA' in the course of the assessment proceedings, we find no infirmity in the view so taken. As observed by the Hon'ble Supreme Court in the case of Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC), an A.O is precluded from allowing any such claim or relief to an assessee which had not been raised or made in its return of income, except for where the same had been so raised by way of filing of a revised return. Admittedly, in the backdrop of the aforesaid observation of the Hon'ble Apex Court no infirmity could be related to the view taken by the A.O, who had observed, and rightly so, that de hors the raising of the claim for deduction us 80JJAA in the return of income, the said claim could not be entertained by him. However, the aforesaid embargo as regards entertaining a 'fresh claim' for deduction does not apply to the appellate authorities. Our aforesaid view is duly supported by the judgment of the Hon'ble High Court of Bombay in the

case CIT Vs. M/s Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom). In its aforesaid order, the Hon'ble High Court of jurisdiction had observed, that an assessee is entitled to raise before the appellate authorities additional grounds in terms of additional claims which though had not been made in the return of income so filed by it. Also, we find that the Hon'ble High Court of Madras in the case of CIT, Chennai Vs. Abhinitha Foundations (Pvt.) Ltd. (2017) 396 ITR 251 (Mad), had observed, that even if a claim made by an assessee company does not form part of its original return or even the revised return, it can still be considered by the A.O as well as appellate authorities in case the relevant material is available on record. In both of the aforementioned judgments the Hon'ble High Courts had referred to the judgment of the Hon'ble Supreme Court in the case of Goetze India Ltd. (supra). Accordingly, in terms of our aforesaid deliberations, we are of the considered view that the CIT(A) had rightly admitted the claim for deduction that was raised by the assessee u/s 80JJAA of the Act.

8. We shall now advert to the grievance of the revenue that the CIT(A) had erred in allowing the assessee's claim for deduction u/s 80JJAA, and instead of restoring the matter to the file of the A.O for verifying the assessee's entitlement for deduction under the said statutory provision had most arbitrarily summarily allowed the same. Before proceeding any further, we think it apt to refer to the observations of the CIT(A) on the basis of which he had allowed the assessee's claim for deduction u/s 80JJAA of the Act, which read as under:

“Ground 4: claim of deduction u/s 80JJAA of the Act.

I have perused the records and gone through the facts of the case. I find that the issue raised in this ground pertains to allowability of deduction u/s. 80J JAA of the Act.

During the course of the assessment proceedings, the Appellant claimed deduction of Rs 6,08,01,078 under Section 80JJAA of the Act in respect of the additional wages paid by the Appellant to its new regular workmen employed in FY 2007-08 and FY 2009-10. The report of a Chartered Accountant in the Form 10DA alongwith the notes 'thereto, was also filed by the Appellant with the AO in support of its claim of deduction under Section 80JJAA of the Act. The said deduction remained to be

claimed at the time of filing return. The assessing officer did not allow the claim of deduction u/s 80JJAA made by the assessee in the course of assessment proceedings.

The AO rejected the Appellant's claim on the ground that there was no mistake/ omission in the original return of income filed by the Appellant and as the said claim was not made in the return of income, it cannot be entertained since the assessment proceedings are not intended to provide an opportunity to an assessee to seek" revision/ rectification of the issues. In this regard reliance was placed on the Hon'ble Supreme Court decision in the case of Goetze (India) Ltd vs CIT. On the other hand AR has relied on various case laws where decision in case of Goetze (I) Ltd has been distinguished.

AR has also strongly relied on Central Board of Revenue ('CBR') Circular No. 14 (XL-35) dated 11 April 1955, whereby the CBR has instructed the tax officers that it is their duty to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. Further, the circular explicitly states that where a taxpayer has, out of ignorance or otherwise, failed to make a claim which he is legally entitled to make, it would be the duty of the assessing officer to draw attention of the taxpayer to such omission. Accordingly, when a taxpayer himself makes a claim in the assessment proceedings, there appears to be no reason why he should be restrained from doing so.

AR further submitted that Government can levy and collect only those taxes and only that much taxes that are provided in the law. The assessing authority should collect the due taxes and in determining the tax, it is duty bound to allow legitimate deductions and reliefs as provided in the Act, even though they are not claimed by the assessee. Collection of any tax not provided under law would be in violation of the provisions of the Constitution of India

AO has also stated in the order that various conditions stipulated to avail Deduction u/s 80JJAA have not been met .However AR has given pointwise rebuttal of the same and they have also relied on the fact that on similar facts when appellant company claim said deduction while filing return, they were found eligible and granted 80JJAA deduction in AY 2012-13, 2013-14,2014-15 & 2015-16.

There are various judicial pronouncements favouring contention of appellant. Reliance is placed on following decisions:

- “1) M/s Pruthvi Brokers & Shareholders Pvt. Ltd. (ITA 3808 of 2010) Bombay HC
- 2) Jute Corporation of India Limited v. CIT (187ITR 688) SC
- 3) CIT v. Ramco International (221 CTR 491)(Punjab& Haryana HC)
- 4) Emerson Network Power Ind (27 SOT 593)(Mumbai Tribunal)
- 5) Chicago Pneumatic India Ltd v. DCIT (15 SOT 252))(Mumbai Tribunal”

In view of the above discussion I hold that the AO is bound to assess the correct income and for this purpose, the AO may grant reliefs / refunds suomoto or can do so on being pointed out by the assessee in the course of assessment proceedings. In, my opinion due to mere procedural lapse or technicalities, appellant should not be compelled to pay more tax than what is due from them, accordingly AO is directed to allow deduction u/s 80JJAA This ground of appeal is thus allowed.”

9. As regards the grievance of the revenue, that the CIT(A) had erred in not restoring the matter to the file of the A.O and had summarily allowed the assessee's claim for deduction u/s 80JJAA of the Act, we are afraid that the same does not find favour with us. As is discernible from the assessment order, the A.O despite declining to admit the assessee's claim for deduction u/s 80JJAA of the Act, had however, also dealt with the same on merits, and had concluded that qua the infirmities in the aforementioned claim the assessee was even otherwise not eligible for the same. However, in the course of the proceedings before the CIT(A), we find, that the assessee had point wise rebutted the observations of the A.O, and considering the same the CIT(A) had held the assessee to be eligible for claim of deduction u/s 80JJAA of the Act. We have given a thoughtful consideration and are unable to persuade ourselves to subscribe to the claim of the Id. D.R that the CIT(A) ought to have restored the matter to the file of the A.O for verifying the assessee's entitlement for claim of deduction u/s 80JJAA of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of International Tractors Ltd. vs. DCIT (LTU), ITA No. 35/2019; dated 07.04.2021, wherein involving identical facts the Hon'ble High Court had set-aside the order of the Tribunal that had restored the issue as regards the assessee's entitlement for deduction u/s 80JJAA to the file of the A.O. It was observed by the Hon'ble High Court that as the CIT(A) had allowed a legitimate claim of the assessee, therefore, there was no justification on the part of the Tribunal to have restored the matter to the file of the A.O for fresh adjudication. Apart from our aforesaid observations, we also find that the A.O in the assessee's own case for A.Y. 2012-13 to A.Y. 2015-16 had held the assessee to be eligible for claim of deduction u/s 80JJAA of the Act. In the totality of the aforesaid facts, we are of the considered view that as the assessee's claim for deduction u/s 80JJAA is duly substantiated by the 'audit report' filed by a Chartered accountant in 'Form No.10DA' along with the 'notes' appended thereto, there would thus be no justification in restoring the matter to the file of the A.O, which in our considered view would be an idle

formality, neither in the interest of the revenue nor that of the assessee. At this stage, we may herein observe that neither any infirmity as regards the assessee's entitlement for claim of deduction u/s 80JJAA is discernible from the records nor anything has been placed before us by the Id. D.R to negate the view taken by the CIT(A) that the assessee was eligible for deduction under the aforesaid statutory provision. We, thus, in the backdrop of our aforesaid deliberations concur with the view taken by the CIT(A), who in our considered view had rightly allowed the assessee's claim for deduction u/s 80JJAA of the Act. Accordingly, concurring with the well reasoned view taken by the CIT(A), we uphold the same.

10. Resultantly, the appeal filed by the revenue being devoid and bereft of any merit is dismissed.

Order pronounced in the open court on 28.06.2021

Sd/-

(S. Rifaur Rahman)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28.06.2021

*PS: Rohit

Sd/-

(Ravish Sood)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai