

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.3083/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Sharp Designers & Engineers India P.Ltd.,
Office No.14, A Wing,
1st floor, Mahalaxmi Heights,
S.No. 32/7, 32/8, 33/4,
Pune Mumbai Road,
Near ‘Key Hotel’ , Pimpri,
Pune- 411 018.

PAN : AAACK7637E

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle 9, Akurdi, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor B. Phadke
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 21.04.2022
घोषणा की तारीख / Date of Pronouncement : 10.05.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee’s appeal for A.Y. 2014-15 is directed against the CIT(A) - 8, Pune’s order dated 27/10/2017 passed in case No. PN/CIT(A) -8/ACIT, Cir 10/741/2017-18/301 involving proceeding u/s. 143(3) of the Income Tax Act, 1961 ; in short "the Act.

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance raised herein that both the lower authorities erred in law and on facts in disallowing its deduction claim u/s 80IA of the I.T. Act amounting to Rs.14,96,121/-. Mr. Phadke took us to the CIT(A)'s detailed discussion affirming the Assessing Officer's action to this effect as under.

4. *“Briefly stated, the facts of the case are that the appellant is a company which is engaged in manufacturing of various engineering and fabricated products and generation of electric power through Windmills. The assessee filed its ROI on 29.11.2014, declaring total income at Rs. 3,67,72,210/-. The case was selected in scrutiny through CASS and statutory notices were issued accordingly. The appellant made a claim of Rs. 14,96,121/- as deduction u/s. 80IA(4) of the Act during the course of assessment proceedings, which was otherwise not made in the return of income. However, the AO disallowed the same on the grounds that there is no provision under the Act to make amendment in the ROI by modifying it by way of an application at the assessment stage without revising the ROI. In support of his finding, he placed reliance on the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. 284 ITO 323. It is against the said finding, and the consequent disallowance, that the appellant is in appeal before me.*

5. In **Ground No. 1**, the appellant has alleged that the AO has erred in rejecting the claim made by the appellant u/s. 80IA(4) during the course of assessment proceedings. The appellant filed written submissions in DAK on 24/10/2017, in which it has been admitted that the claim was inadvertently not made in the original ROI. It is also stated that the time to find revised return could be e-filed. It has been argued that the claim being genuine should have been allowed by the AO. To support its contentions the appellant has placed reliance on CBDT Circular No. 14(XL-35) dated 11/04/ 1955 and

argued that the CBDT Circular, envisages that the AO should be lenient in allowing genuine claim for deduction which the assessee has failed to claim for any reason. It has also relied on the following case laws to contend that the claim should have been admitted by the AO:-

- a) CIT V/s. Pruthvi Brokers & Shareholders Pvt. Ltd (2012) 349 ITR 0336 (Bom.)*
- b) National Thermal Power Co. Ltd V/s. CIT 220 ITR 383 (SC)*
- c) CIT V/s. Prabhu Steel Industries Pvt. Ltd 171 ITR 530 (Bombay)*
- d) Steel Ingots V/s. CIT, 86 Taxman 440 (MP)*
- e) CIT V/s. Bhopal Sugar Industries Ltd. 233 ITR 429 (MP)*
- f) CIT V/s. Motor Industries Company Ltd. 229 ITR 137 (Karn.)*

6. I have duly considered the above submissions of the appellant. The CBDT Circular relied upon by the appellant, is dated 11/04/1955, hence it is a very old Circular, and various cases have been decided since then, regarding the admissibility of claims which are otherwise not made in the ROI. One such case is that of Hon'ble Supreme Court in the case of Goetze India Ltd (Supra) wherein the Hon'ble Apex Court has clearly held that the AO is not empowered to entertain claims that are not made in the ROI or in the revised ROI. Hence the AO has rightly relied upon the case of Goetze India Ltd. in not admitting the claim of the appellant. Moreover, the CBDT Circular relied upon by the appellant is only advisory and advises the AOs to provide necessary guidance to the assesseees for making eligible claims. The AO's are expected to bring to the notice of the assesseees the correct law and procedures to help them make eligible claims. The Circular by no means expects the AO to go beyond the prescribed procedures and statutory provisions, to allow relief to the assesseees, as and when claimed by them. As per the Circular, the AO could have, at best, guided the appellant to file a revised ROI to stake a the claim u/s. 80IB(4). But from the records it is seen that the original return was filed on 29/11/2014. This return could have been revised u/ s. 139 (5) of the

Act before the expiry of 1 year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Accordingly, the last date for filing revised ROI for the appellant was 31.03.2015. However, the notice u/s. 143(2) was issued only on 16/09/2015 by which time the date for filing revised ROI was already over. Hence, it was not possible for the AO to advise the appellant to file a revised return u/s. 139(5) to stake a claim of deduction. Considering the totality of facts, and the law laid down in this regard, the reliance placed by the appellant on CBDT Circular, is misplaced.

7. *The appellant has also relied upon the following case laws in support of its contention that the AO should have entertained his claim during the course of appellate proceedings, which are being distinguished hereunder-*

a) CIT Vs Pruthvi Brokers (2012) 349 ITR 0336 (Bom.)

In this case the Hon'ble High Court of Bombay has duly considered the decision of the Hon'ble Apex Court in the case of Goetze India (supra) and held that assuming that the AO cannot admit the claim, the CIT (A) & the Tribunal should examine its admittance. Hence its finding is primarily on admission of claim at the appellate stage and not at the assessment stage. Therefore this case cannot be relied upon for arguing that the AO should have admitted the claim of the appellant.

b) National Thermal Power Co.Ltd V/s.CIT 220 ITR383(SC)

In this case also the Hon'ble Supreme Court held that if at the appellate stage before the Tribunal it is found that a non taxable item is taxed, the assessee cannot be prevented from raising that question before the Tribunal.

The Appellant has relied upon the above judgment and argued that if a question can be raised at the appellate stage before the ITAT, how can the assessee be prevented from making such a claim before the AO before the completion of the assessment. This argument of the appellant is contrary to the decision of Hon'ble Supreme Court in the case of Goetze India Ltd, and is therefore is not acceptable.

**c) CIT V/s. Prabhu Steel Industries Pvt. Ltd 171 ITR 530
(Bombay)**

In this case the Hon'ble Bombay High Court held that "The claim having been made in the course of the assessment proceedings, the ITO was obliged to entertain it and consider it on merits." However, the said judgment is dated 30/01/1987 and therefore cannot be considered in the light of the judgment of the Hon'ble Supreme Court in case of Goetze India Ltd. dated 24/03/2006.

d) Steel Ingots V/s. CIT, 86 Taxman 440 (MP) *The said case deals with admittance of additional ground on the point of law before the Tribunal. It was held that if a legal ground is raised before the Tribunal, the Tribunal is bound to admit the same. The case has nothing to do with admittance of a new claim made before the AO during assessment proceedings. The appellant has relied upon the ratio laid down in this case that "The eventual destination of every litigation is justice, and as such technicality should not be permitted to prevail as speed breaker in the course of dispensation of justice". However, the said ratio will not be applicable to the AO in the light of the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. (Supra). Moreover, the said judgment relied upon is dated 06/02/1996 which is much before the case of Goetze India (supra).*

**e) CIT V/s.Bhopal Sugar Industries Ltd.233 ITR 429
(MP)**

In this case, the issue before the Hon'ble high court was regarding powers of Tribunal to admit a claim made for the first time. It was held that "there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for just decision of the case." Hence the issue before the Hon;ble court was not related to an additional claim made before the AO during assessment. Moreover, the judgment relied upon is dated 06/03/1997 which is much before the case of Goetze India (Supra).

**f) CIT V/s. Motor Industries Company Ltd. 229 ITR 137
(Karn.)**

This case is also on the powers of appellate authority and not that of the AO. It was held that "It is now well settled that when the assessment is not under s. 143(1), the appellate authority may permit the assessee to claim a deduction or exemption in appeal, which he had not claimed before the ITO, particularly when the relevant material is on record". Moreover, the judgment relied upon is dated 27/08/1997 which is much before the case of Goetze India (Supra).

8. *Hence it can be seen from all the decisions above, relied upon by the appellant, that they are in respect of the powers of the appellate authorities to admit additional claims that were not made in the original or revised ROI. The argument of the appellant, that in view of all these decisions, the AO should have admitted the claim of the appellant , is totally misplaced. After the decision of Hon'ble Supreme Court in the case of Goetze India Ltd., the AO cannot admit any claim which has not been made in the original ROI or in the revised ROI. Accordingly, it is held that the AO has rightly rejected the claim of the appellant u/s. 80IA(4) which was neither made in the original ROI nor any revised ROI. **Ground No.1 is dismissed.***

9. The appellant has taken an **alternative argument** that the claim be admitted by the CIT(Appeal) during appellate proceedings. For this contention, reliance has been placed on the decision of Hon'ble Bombay High Court in the case of CIT V/s Pruthvi Brokers (supra).

10. I have duly considered the alternative plea of the appellant and also perused the case relied upon. In the case of Pruthvi Brokers (supra) though the Hon'ble Court held that a claim which is otherwise not made before the AO can be admitted at appellate stage, it also observed that the appellate authority can exercise its discretion in admitting the claim depending on the facts of each case. In para 15 of its order the Hon'ble Court observed that –

“15. It is indeed a **question of exercise of discretion whether or not to allow an assessee to raise a claim which was not raised when the return was filed or the assessment order was made.** As held by the Supreme Court there may be several factors justifying the raising of a new plea in appeal and each case must be considered on its own facts.

11. Hence the order of Hon'ble High Court in the case of Pruthvi Developers does not give a blanket direction that in each and every case the appellate authority shall admit the claim of the assessee raised for the first time. It gives discretion to the appellate authority to examine the claim of the appellant on the basis of facts and law and thereafter take a call whether it should be admitted or not. Accordingly the alternative plea of the appellant will be considered after examining the facts and law applicable to the case.

12. It is an undisputed fact that the claim for deduction u/s 80IA(4) was not made in the original ROI filed by the appellant. The appellant has also acknowledged, that revised ROI could not be e-filed as time for filing revised income had also lapsed. It however furnished a revised ROI in hardcopy, albeit after the expiry of due date. Such a

Revised Return, filed beyond the stipulated date, is non-est in the eyes of law. Hence it is clear that the impugned claim was neither made in the original ROI nor in revised ROI. In this background it is important to refer to the provisions of section 80AC of the Act, which are reproduced below:

"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, 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."

13. *The above provisions make it clear, that for claiming deduction u/s 80IA, the ROI must be filed within time stipulated u/s 139(1) of the Act. The question that arises is - what kind of ROI is being referred here? The answer is, that it refers to those returns in which a claim u/s 80IA/IB/IC/ID has been made. This argument is substantiated by the simultaneously inserted 4th proviso to section 139(1) w.e.f 01.04.2006, which reads as below:*

***"[Provided also** that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, **without giving effect to the provisions of** section 10A or section 10B or section 10BA or **Chapter VI-A** exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and*

verified in the prescribed manner and setting forth such other particulars as may be prescribed .]"

14. Hence section 80AC r/ w 4th proviso to section 139(1), ensures that returns claiming deduction under chapter VIA, must be **filed within the time specified u/s 139(1) of the Act.** The intent here is, that the claim must be made within the specified time, for it to become eligible. If the claim is not made within the due date, by not including it in the ROI, then filing such ROI (without the claim), within the stipulated time, is of little relevance. Therefore, the focus of section 80AC is on ensuring a timely claim, by filing a timely return. **The legislative intent behind introducing section 80AC and 4th proviso to section 139(1), simultaneously, w.e.f 01.04.2006, is to impose stringent guidelines on the assesseees, claiming deduction u/s 80IA to 80IE, to file their ROI containing the claim, on or before the due date prescribed u/s 139(1), for the claim to become eligible.**

15. In the light of the discussion above, what has to be seen is whether the relevant claim has been made within the stipulated time, by filing the ROI containing the said claim, u/s 139(1) of the Act. The answer in the present case is NO. The appellant has not made the claim within the stipulated time as it has failed to include the same in the ROI filed u/s 139(1) of the Act. Moreover, this is not the first time that the appellant has failed to make the claim in the original return. In AY 2010-11 also, the appellant had failed to make the claim even though the original ROI was filed on time. Later the ROI was revised and the claim was made in the revised Return. However the AO applied the provisions of section 80AC and rejected the claim in the revised return on the grounds that deduction u/s 80IA(4) cannot be made in the revised Return if the same has not been made in the original return. The action of the AO was upheld by Ld.CIT(A)-V, Pune, vide order dated 12.09.2014, in Appeal No.

PN/CIT(A)-V, Rg.9/ 136/ 13-14. The finding of Ld.CIT(A)-V, Pune, in AY 2010-11 is reproduced below:-

"9. I have carefully considered the facts of the case as well as reply of the appellant. The dispute in this case revolves around the claim of deduction u/s. 80IA(4) of Income-tax Act, 1961 in respect of wind mill units. As stated in the assessment order, the appellant was having three wind mill units at Satara, Coimbatore and Ambheri which started functioning as per chart on page 3 of the assessment order. The appellant had the option to claim the deduction for any ten consecutive years out of fifteen years beginning from the year in which the undertaking started generating power or commences transmission and distribution of power as per Sec.80IA(2) of Income-tax Act. Thus, when the appellant opts for the claim, the assessment year becomes initial assessment year and thereafter, the appellant is required to claim deduction in 10 consecutive assessment years. In this case, the appellant filed its original return on 29.09.2010, however, claim u/s. 80IA(4) of Income-tax Act was not made by exercising the option u/s. 80IA(2) of Income-tax Act. Thereafter, revised return of income was filed 06.01.2012 in which claim of deduction u/s. 80IA(4) of the Income-tax Act was made. For this purpose, the appellant obtained 10CCB certificate dated 28.12.2011 in which declaration was made by M/ s. Palnitkar and Patwardhan, C.As. The same reads as under:

"We have examined the balance sheet of the above industrial undertaking or enterprise styled M/s Sharp Engineers Windmill Division' and belonging to the assessee M/s. Khinvasara Investments Private limited (Permanent Account No. AAACK7637E) as at 31/03/2010 and the Profit and loss account of the said industrial undertaking or enterprise for the year ended on that date which are in agreement with the books of account maintained at the head office at above address and branches at NA. We have obtained all the information and

explanations which to the best of our knowledge and belief were necessary for the purpose of the audit, in our opinion, proper books of account have been kept by the head office and the branches of the industrial undertaking or enterprise aforesaid visited by us so far appears from our examination of books, and proper returns adequate for the purposes of audit have been received from branches not visited by us, subject to the comments given below:-

- (i) The company has divided its windmill income by dividing windmills into separate divisions on the basis of Geographical locations.*
- (ii) The companies manger has opted Financial year 2009-10 as the Initial assessment year under section 80IB with respect to all windmill divisions, however section 80IA restricts the claim to 15 years from the date the respective project was commissioned, hence the last eligible year for claiming deduction U/s 80/A deduction with respect to each windmill division will be as Follows Satara windmills upto financial year 2013-14, in respect of all other windmill divisions upto Financial year 2019-20.*
- (iii) While arriving at the current years deduction under section 801 A, the company has not considered the unabsorbed loss if any pertaining to the windmill division, it is explained that loss if any incurred in windmill division has been fully setoff against the income from manufacturing business in the respective years and there is no carried forward loss for current Assessment year i.e. A. Y. 2010-11."*

10. The Assessing Officer, relying upon the provisions of Sec. 80AC held that this claim should have been made in the return filed u/s. 139(1) of Income-tax Act, 1961. The Assessing Officer noted that though original return was filed within time allowed u/s.139(1) of

Income-tax Act but since the claim u/s. 80IA(4) of Income-tax Act was not made in that return, the appellant was not entitled to deduction u/s. 80IA (4) of Income-Tax Act. At this point of time, it is imperative to go through the provisions of Sec; 80AC of Income-tax Act. Sec. 80AC of income-tax Act was brought into statute vide Finance Act 2006, w.e.f 01.04 .2006 i.e . effective from A.Y. 2006-07. The same reads as under:

[Deduction not to be allowed unless return furnished.

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 80-IA or section 80-IAB or section 80-IB or section 80-IC ⁶⁶ [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(I) of section 139.]

65 . *Inserted by the Finance Act, 2006, w.e.f. 1-4-2006*

66. *Inserted by the Finance Act, 2007 w.e.f. 1-4-2008"*

11. *Simultaneously, 4th proviso to Sec. 139(1) of the Income-tax Act was inserted w.e.f. 01.04.2006 which reads as under:*

⁹ [Provided also that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of section 10A or section 10 B or section 10 BA or Chapter VI-A exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and

setting forth such other particulars as may be prescribed.]

9. Inserted by the Finance Act, 2005 w.e.f. 1-4-2006."

12. If section 80AC of Income-tax Act is read with conjunction with the above referred proviso to Sec. 139(1) of Income-tax Act, it becomes clear that for making claim u/s. 80IA of Income-tax Act w.e.f. A.Y. 2006-07, the appellant is required to file it's return of income not only u/s. 139(1) but claim the deduction u/s. 80/A(4) of Income-tax Act in the return too. The appellant claims that no where Sec.80AC of Income-tax Act stipulates that the claim of deduction should be made in the return filed u/ s. 139(1)of the Income-tax Act as section says that return of income should be filed u/s. 139(.1) which the appellant has done in this case. This stand of the appellant is contrary to the legal position established by the Act w.e.f. 2006-07 by virtue of Sec. 80AC of Income-tax Act, 1961 r.w.s. the above proviso to Sec. 139(1) of Income tax Act. The appellant 's claim of deduction u/ s. 80IA(4) of Income-tax Act for the first time in revised return of income filed u/s. 139(5) of Income-tax Act, 1961 is also not in sync with the provisions of that section as choosing initial year in revised return of income cannot be said to be either omission or wrong statement stipulated in Sec. 139(5) of the Income-tax Act. Therefore, view taken by the Assessing Officer on this ground cannot be faulted with. This view also finds support from the decision of Amritsar Bench of the Tribunal in the case of Bal Kishan Dhawan HUF Vs. ITO[2012] 18 taxmann.com234. In this case, though the claim was made in Sec. 139(4) of Income-tax Act, nevertheless Tribunal in it's order categorically held that Sec. 80AC not only contains the time limit for claiming deduction u/s. 80IB but also indicates the consequences that would follow if return of income containing claim of deduction is not furnished before, the due date specified in Sec. 139(1) of Income-tax Act. The bench held that provisions of Sec. 80AC of Income-tax Act are mandatory and if the assessee wants to avail deduction u/s. 80IB of Income-tax Act, he has to necessarily furnish his return of income containing such claim within the time permissible u/s. 139(1) of Income-tax Act. Since, language of the section is negatively

worded and it provides in clear terms that deduction u/s. 80IB of Income-tax Act shall not be allowed if the return of income containing such claim is not furnished by the due date specified u/s. 139(1) of Income-tax Act, it is clear that the appellant shall not be entitled to such deduction. For the sake of clarity, relevant portion of the order is reproduced as under:

"13. Bare perusal of Section 80AC reveals that it had not only contained the time limit of claim for deduction u/s 80-IB is required to be filed but also the consequences that would follow if the return of income containing such claim/deduction is not filed before the expiry of due date specified u/s 139(1) of the Act. Thus Section 80AC of the Act provides the consequences that would follow if the return of income containing claim us 80-IB is not furnished before the due date specified in Section 139(1). The language of Section 80AC in this behalf is quite dear. It is well settled principle of construction of statute that the statutory enactment must obviously be constitute according to the plain meaning and that the scope of legislation on the intention of legislation cannot be enlarged when the language of the provisions is plant and unambiguous. In our view the language of Section 80AC is quite plain and unambiguous as much as it is specifically provides for the consequences that would follow if the return of income containing claim for deduction u/ s80iB is not furnished before the due date specified in Section 139(1) of the Act.

14. It is quite apparent on bare perusal of Section 80AC that the provisions contained therein are mandatory. In as much as it is specifically provides for the consequences that would follow if the return of income is not furnished with in the time limit specified in Section 139(1) of the Act. It is well settled if the assessee wants to avail deduction u/s 80IB he has to necessarily furnish his return of income containing such claim before the due date specified in Section 139 (1). The language of

Section 80AC is negatively worded in as much as it provides dear terms that deduction u/s 80IB shall not be allowed if the return of income containing such claim is not furnished by the due date specified in Section 139(1). In the face of such dear language of Section 80AC, we have no hesitation to hold that the provisions of section 80AC are mandatory in nature and therefore failure to furnish the return of income filed in due date specified in Section 139(1) would disentitle the assessee for the claim of deduction u/s 80IB.

15. *Section 80AC is also in the nature of limit of time within which the claim for deduction u/s 80IB must be preferred. The time limit for preferring the claim of deduction u/s 80IB is time limit specified in Section 139(1) of the Act. If the claim for deduction u/s 80IB is not made as in the manner and as per time limit specified in Section 80AC, the claim for deduction u/s 80IB gets **time barred. It is well settled that an Act must be done** strictly in the **manner provided by law. If the law requires as Section 80AC requires that deduction u/s 80IB cannot be available unless the return is furnished before the due date specified in Section 80AC, the claim of the assessee for deduction cannot be entertained in** contravention of the provisions of section 80AC.*

16. *At the time of hearing, the Id. authorised representative for the assessee relied heavily upon the judgments of the Hon'ble jurisdictional High Court in Ms. Jagriti Aggarwal (supra) for the proposition that the time limit specified in Section 139(1) gets automatically extended by the time limit specified in Section 139(4). It was submitted that the assessee in the present case has furnished return of income before the due date specified in Section 139(4) of the Act and therefore return of income furnished by him should be taken as one furnished u/s 139(1). We have carefully perused the judgment of Hon'ble jurisdictional High Court, we find that the aforesaid issue has*

been rendered in the context of the provisions of section 54 of the Act. We have also perused the provisions of section 54 and find that they materially differ for those of Section 80AC. Careful perusal of Section 54 shows that it does not provide for the consequences that would follow. Section 54 merely directs the assessee without providing for the consequences that would follow if that Act was not done before the specified time limit. Section 80AC, on the other hand, specifically provides for the consequences that would follow if the return of income is not furnished before the due date specified in Section 139(1) of the Act. Secondly fourth proviso to Section 139(1) specifically requires inter-alia of Chapter VIA exceeds the maximum amount which is not chargeable to Income-tax. The fourth proviso has been inserted in the Income-tax Act, 1961 w.e.f. 1.4.2006 and is specified to the claim of deduction u/s 10A, 10B or Section 10BA by Chapter VIA. As stated earlier, the matter before the Hon'ble High Court was in the context of Section 54 and therefore there was no occasion to consider the applicability of 4th proviso to Section 139(1) in that case, in this view of the matter, the judgment of the Hon'ble High Court in Jagriti Aggarwal (supra) has hardly any bearing on the issue under appeal. For simple reasons the judgment re tied upon by the Id. Authorized representative for the assessee have no relevance to the issue under appeal before us. In view of the foregoing, the order passed by the Id. CIT(A) is confirmed for the aforesaid stated reasons."

13. Thus, it is clear that the appellant cannot claim deduction u/ s. 80IA(4) of Income - tax Act by exercising it's option u/s. 80IA(2) of Income-tax Act in a revised return of income when no claim was made in the original return of income in view of clear provisions of Sec. 80AC r.w. 4th proviso to Sec. 139(1) of Income-tax Act, inserted vide Finance Act 2006 w.e.f. 01.04.2006 i.e. A.Y. 2006-07.

14. *The appellant has relied upon the decision of Hon'ble Mumbai Tribunal 's order in the case of Yash Developers Vs. ITO in ITA No. 809/Mum/2011 wherein the claim u/s. 80IB(10) of Income-tax Act made in belated return of income filed u/s. 139(4) of Income-tax Act, 1961 was accepted by the CIT(A), relying upon the decision of Hon'ble Bombay High Court in the of Trustees of Tulsidas Gopalji Charitable & Chaleshwar Temple CIT(1994) 207 ITR 368(Bom) which has been upheld by the Mumbai Tribunal . In this regard, it is seen that reliance of the appellant on the above case law is misplaced as proviso (fourth) to Sec. 139(1) r.w.s 80AC of Income-tax Act was brought into the statute vide Finance Act 2006 w.e.f. A. Y. 2006 -07, while the decision of Bombay High Court pertains to A. Y. 1972- 73 much before the above amendment. Therefore, in view of the above position, I am unable to follow the above decision of Hon'ble Mumbai Tribunal in the case of Yash developers(supra).*

15. Accordingly, it is held that the appellant is not entitled to deduction u/s. 80IA(4) of Income-tax Act by opting initial assessment year in revised return of income as the claim is not in conformity with the provisions of Sec. 80AC r.w.s. 139(1) fourth proviso of the Income-tax Act."

16. *In the light of the discussion above, the alternative plea of the appellant - to admit the claim of the appellant u/s 80IA(4) in this appeal, cannot be considered in view of the provisions of section 80AC r/w 4th proviso to section 139(1) of the Act.*

Accordingly, the alternative plea of the appellant is dismissed.

3. Mr. Phadke vehemently contended during the course of hearing that the assessee had very well filed its books of account as well as computation but could not claim the impugned deduction in its return. This crucial fact itself forms the most clinching reason for us to affirm to impugned

disallowance. We note with the able assistance of from revenue side that legislature has not only prescribed filing of a return within the “due date” prescribed u/s. 139(1) as a pre condition for claiming section 80IA by way of inserting a special provision i.e. 80AC vide Finance Act 2007 w.e.f. 2008 but also Section 80A(5) further stipulates that chapter VI deduction is not to be allowed if the assessee fails to make a claim to this effect in its return of income. We therefore reject the assessee’s arguments quoting Goetze India Ltd. Vs. CIT (2006) 284 ITO 323 SC and CIT V/s. Pruthvi Brokers & Shareholders Pvt. Ltd (2012) 349 ITR 0336 (Bom.). We rather note that hon’ble jurisdictional high court’s decision in (2019) 107 taxmann.com 220 (Bom.) EBR Enterprises Vs. Union of India holds that such a failure on the assessee’s part is indeed very fatal to its deduction claim. We adopt stricter interpretation in light of Commissioner of customs V/s Dilip Kumar (2018) 9 SCC 1(SC) (FB) to affirm CIT(A)’s finding under challenge. The assessee fails in its sole grievance therefore.

4. This assessee’s appeal is dismissed in above terms.

Order pronounced in the Open Court on this 10th day of May, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th May, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-8, Pune.
4. The Pr.CIT-5,Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.

6. गार्ड फ़ाइल / Guard File.
// True Copy //

अदेशानुसार / BY ORDER,

S.No.	Details	Date	Initials
1	Draft dictated on	21.04.2022	
2	Draft placed before author	06.05.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.