

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

**BEFORE SHRI RAVISH SOOD (JUDICIAL MEMBER) AND  
SHRI RATHOD KAMLESH JAYANTBHAI  
(ACCOUNTANTMEMBER)**

**ITA. No. 62/RPR/2019  
C.O. No. 7/RPR/2019  
(arising out of I.T.A. No. 62/RPR/2019)**

**(Assessment Year: 2008-09)**

DCIT -(2)(1),  
Raipur (C.G.)

Manilal Dayalji & Co.,  
Vs. Gola Bidi Works,  
Amapara, Dhamtari

PAN No.AAGFM4587N

(Revenue)

(Assessee)

Assessee by : Shri R. B. Doshi, CA  
Revenue by : Shri G. N. Singh, DR

Date of Hearing : 07/06/2022  
Date of pronouncement: 09/06/2022

**ORDER**

**PER RAVISH SOOD, J.M :**

The present appeal filed by the department is directed against the order passed by the CIT(A)-1, Raipur, dated 02.08.2018, which in turn arises from the order passed by the A.O under section 147 r.w.s 143(3) of the Income-tax Act, 1961 (for short "the Act") dated 31.03.2015 for Assessment Year 2008-

09. Also the assessee is before us as a cross-objector. The department has assailed the impugned order on the following grounds of appeal before us :

- “1. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 15,20,513/- on account of disallowance of deduction u/s 80IB of the Income Tax Act, 1961 made by the AO without verifying the issue of eligibility of deduction u/s 80IB of the Act?"
2. "Whether on points of facts and on point of law, the Ld. CIT(A) was justified in relying on the decision of the jurisdictional Hon'ble ITAT in the case of assessee itself who erred in giving a finding which is contrary to evidence on record as per the certificate issued by the General Manager, Regional Industries Centre, Sambalpur on 18.02.2013, stating that the assessee has operated a Micro Scale Industry not a Small Scale Industry before the end of previous year, as the status of small scale industry is mandatory for claiming of deduction as per provisions of section 80IB(14)(g) of the Act?"
3. "Whether on points of facts and on point of law, the Id. CIT(A) was justified in allowing relief to the assessee, without verifying the basic finding of the case that the assessee is not a small scale Industry and besides it is also not situated in industrially backward state specified in the Eighth Schedule of the Act.?"
4. "Whether on points of facts and on point of law, the Hon'ble ITAT, being a first fact finding authority was justified in giving relief to the assessee without verifying the eligibility criteria of the assessee as per legal parameter of the provisions of section 80-IB(4) of the Act.”
5. "Whether on points of facts and on point of law, the Id. CIT(A) was justified in giving of a finding which is against the ratio of decision of Hon'ble Supreme Court in the case of DCIT, Circle-11(1), Bangalore Vs Ms/ Ace Multi Axes Systems Ltd in civil appeal No. 20854 of 2017 wherein it is held that the assessee is not entitled to benefit of exemption if it loses its eligibility as a small scale industrial undertaking in a particular assessment year even if in initial year eligibility was satisfied ?"
6. Whether on facts & circumstances of the case and points of law, the Ld. CIT(A) having concurrent powers of the AO as per the due provisions of law u/s 250(4) of the I T Act, was justified in giving the finding that assessee is entitled for deduction u/s 801B of the Act without verifying the eligibility criteria of the assessee?"
7. Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of Hon'ble Delhi High Court in the case of CIT-II vs. Jansampark Advertising & Marketing (P.) Ltd. reported in [2015] 56 taxmann.com 286(Delhi) wherein it was held that "in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry on facts would naturally shift to door of Commissioner (Appeals) and Tribunal who are

also forums of fact finding and they having notice want of proper inquiry, cannot close chapter simply by allowing appeal and deleting additions made."

8. "Whether on points of law and facts & circumstances of the case, the Ld. CIT(A) was justified in accepting fresh evidence produced by the assessee if any, without allowing the AO, proper opportunity to examine the same, thereby violating the provisions on law under Rule 46A of the I.T. Rules?"
9. Whether the Ld. CIT(A) was justified in law by holding the decision in favor of the assessee and against the revenue, though there is no direct nexus between the conclusion of fact and primary fact upon which that conclusion is based?
10. Whether on points of facts and on point of law, the Id. CIT(A) was justified in allowing relief to the assessee without verifying the fact that the assessee is not a small scale Industry and besides it is also not situated in industrially backward state specified in the Eighth Schedule of the Act, thereby rendering the decision which is perverse?"
11. The order of Hon'ble ITAT is erroneous both in law and on facts".
12. "Any other ground that may be adduced at the time of hearing."

2. Succinctly stated, the assessee firm which is engaged in the business of manufacturing of *bidis* without aid of power had e-filed its original return of income for AY 2008-09 on 29.09.2008, declaring an income of Rs. 4,48,16,560/-(after claim of deduction u/s 80IB of Rs. 15,20,513/-). Original assessment was thereafter framed by the AO vide his order passed u/s 143(3) of the Act, dated 14.12.2010 determining the income of the assessee at Rs.4,52,28,800/-.

3. Thereafter, the AO taking cognizance of the fact that though the assessee had claimed a deduction of Rs. 15,20,513/- u/s 80IB of the Act, but in support of its said claim of deduction had

neither filed the audit report in Form No. 10CCB nor a certificate from the competent authority that it was a Small Industrial Undertaking (SSI), reopened its case u/s 147 of the Act.

4. During the course of the reassessment proceedings though the assessee filed a copy of the 'audit report' in Form No. 10CCB, but failed to place on record a certificate from the competent authority that it was a SSI. Holding a conviction that the assessee's claim for deduction u/s 80IB was not in order, the AO vide his order passed u/s 147 r.w.s. 143(3), dated 31.03.2015 declined its claim for deduction 80IB and reassessed its income at Rs. 4,67,49,313/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT (Appeals). It was observed by the CIT(Appeals) that the assessee in support of its claim for deduction u/s 80IB had not only in the course of the reassessment proceedings filed the 'audit report' in the prescribed Form No. 10CCB, but had also placed on record a copy of the same in the course of the proceedings before him. Holding a conviction that the filing of an 'audit report' was merely in the nature of a procedural and a directory requirement and the same could validly be filed in the course of the appellate proceedings, the CIT(Appeals) drawing

support from the order of the Tribunal in the assessee's own case for AY 2009-10 wherein identical facts were involved, allowed its claim for deduction u/s 80IB of the Act. For the sake of clarity the relevant observations of the CIT(A) are culled out as under:

“2.3 The case was reopened on the ground that assessee has not filed report in the form 10CCB for claiming deduction u/s 80IB. Appellant has contended that report was duly filed during the assessment proceedings. Appellant has submitted that the report was filed during reassessment proceedings also, still the disallowance has been made. A copy has been filed during appeal proceedings also. Appellant has filed copy of letter dated 19/03/2015 addressed to DCIT Circle-2(1), Raipur wherein at point No. 2(b) it has been mentioned that the copy of audit report u/s 10CCB was filed during assessment proceedings is once again being filed. On these facts no disallowance is warranted. In the case of Medicap Ltd 323 ITR 554 the Hon'ble MP High Court has held the finding of Hon'ble ITAT that audit report is procedural and directory in nature and can be filed at the appeal stage. Similarly, Mumbai bench of ITAT in the case of Kewal Kiran Clothing Pvt Ltd in ITA No. 2173/Mum/2009 has held that where the assessee has filed audit report before CIT no adverse inference can be drawn. In assessee's own case for the AY 2009-10 the jurisdiction ITAT had held on similar facts that deduction u/s 80IB is allowable. On these facts appeal is allowed.”

6. The Revenue being aggrieved with the order of the CIT (Appeals) has carried the matter in appeal before us.

7. We have heard the Ld. Authorised Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. AR to drive home his contentions.

8. Controversy involved in the present appeal lies in a narrow compass, viz. (i). that as to whether or not the CIT(Appeals) is

justified in concluding that as the filing of an 'audit report' in Form 10CCB is procedural and directory in nature, therefore, pursuant to filing of the same by the assessee i.e, both in the course of the reassessment proceedings and also in the course of the proceedings before him, no adverse inference qua its entitlement for deduction u/s 80IB was liable to be drawn; and (ii) that as to whether the failure on the part of the assessee to file a certificate from the competent authority evidencing that it was registered as a "SSI" would divest its entitlement towards deduction u/s 80IB of the Act.

9. We have given a thoughtful consideration to the aforesaid issues in hand. In so far the filing of an 'audit report' as prescribed in Form No. 10CCB by the assessee is concerned, we concur with the view taken by the CIT(Appeals) that as the same is merely a procedural or a directory requirement, therefore, the same could validly be filed by the assessee at the appellate stage. As the case of the assessee firm was reopened qua its claim of deduction u/s 80IB of the Act, therefore, now when the assessee in the course of the reassessment proceedings had a/w its letter dated 19.03.2015 filed the 'audit report' in the prescribed Form No. 10CCB, then, the AO could not have brushed aside the same

and remained under an obligation to consider the same. Apart from that, we find that the Hon'ble High Court of Madhya Pradesh in the case of CIT Vs. Medicaps Ltd. (2010) 323 ITR 554 (MP), had held, that as filing of an audit report is merely a procedural and directory requirement in nature, therefore, the same can be filed even at the appellate stage. Accordingly, now when the assessee had filed the 'audit report' in the prescribed Form No. 10CCB before the CIT(Appeals), then, the same as per the aforesaid judicial pronouncement was to be taken as a due compliance of the statutory obligation cast upon it. In fact, we find that involving identical facts the Tribunal while disposing off the assessee's appeal for AY 2009-10 in ITA No. 32/RPR/2014, dated 09.03.2018, had by drawing support from the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Medicaps Ltd. (supra) observed, that as the assessee had filed the 'audit report' in the prescribed Form No. 10CCB in the course of the revision proceedings u/s 263 of the Act, the same, thus, was to be construed as a due compliance of the procedural and directory requirement of filing of the same on the part of the assessee. We, thus, in terms of our aforesaid observations are of the considered view that as the assessee had filed the 'audit

report' in the prescribed Form No. 10CCB both in the course of the reassessment proceedings as well as in the course of the proceedings before the CIT(Appeals), therefore, the same was to be construed as a due compliance of the procedural and directory requirement envisaged under law, and thus, no adverse inferences as regards its entitlement for deduction u/s 80IB was liable to be drawn on the said count.

10. Adverting to the observation of the AO that as the assessee firm had failed to obtain and place on record a certificate from a competent authority that it is a SSI, therefore, for the said reason it was not entitled for deduction u/s 80IB of the Act, we are afraid that the same does not find favour with us. On a perusal of Clause (g) of sub-section (14) of Sec. 80IB, we find that the same contemplates the definition of a "small-scale industrial undertaking" and reads as under :

“(g). “small scale industrial undertaking” means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951).”

As is discernible from Clause (g) of sub-section (14) of Sec. 80IB, the same only contemplates the definition of a SSI i.e an industrial undertaking which as on the last day of the previous year is regarded as a small-scale industrial undertaking under

Sec. 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951). As such, what is required is that the stipulations for being regarded as a SSI under the Industries (Development and Regulation) Act, 1951 (65 of 1951) are required to be complied with and there is no obligation cast upon the assessee to file any certificate from the competent authority that it is registered as a SSI. Involving identical facts, we find that the assessee's claim for deduction u/s 80IB was, inter alia, dislodged by the CIT vide his order passed under Sec. 263 of the Act for AY 2009-10. However, on appeal, the Tribunal had vide its order passed in ITA No. 32/RPR/2014, dated 09.03.2018 vacated the adverse inferences drawn by the CIT on the aforesaid count and, had observed, that the registration of the assessee as a SSI was not a precondition for availing deduction u/s 80IB of the Act. Be that as it may, we find that the assessee had vide its letter dated 25.01.2017 filed before the CIT(Appeals) a copy of its registration certificate as a SSI (Page 3 of APB). On the basis of our aforesaid observations, we are of the considered view that no adverse inferences qua the entitlement of the assessee for deduction u/s 80IB could have been drawn, for the reason that the assessee had in the course of the assessment proceedings failed to place

on record its certificate of registration as a SSI. We, thus, not finding any infirmity in the view taken by the CIT(Appeals) who had held the assessee's claim for deduction u/s 80IB of the Act as being in order, uphold his order.

11. Resultantly, the appeal filed by the revenue is dismissed in terms of our aforesaid observations.

12. Apropos the cross-objection of the assessee, it was submitted by the ld. AR that as the same is merely supportive of the order of the CIT(Appeals), therefore, as instructed the same is not pressed.

13. Considering the concession of the ld. AR the cross-objection filed by the assessee is dismissed as not pressed.

14. Resultantly, the appeal filed by the revenue is dismissed and the cross-objection filed by the assessee is dismissed as not pressed.

Order pronounced in the open court on 09/06/2022.

**Sd/-**  
**(Rathod Kamlesh Jayantbhai)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Ravish Sood)**  
**JUDICIAL MEMBER**

Raipur  
Dated: 09.06.2022  
\*GP/Sr.PS\*

**Copy of the Order forwarded to:**

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

BY ORDER,  
//True Copy//  
(Sr. Private Secretary)