

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 61& 194/Del/2021  
Assessment Year: 2015-16& 2016-17**

Income-tax Officer,  
Ward 23(3), New Delhi

Versus

Shree Bhawani Power Projects  
Pvt. Ltd., D-21, Panchsheel  
Enclave, New Delhi.

**PAN: AAKCS6414P**

(Appellant)

(Respondent)

Revenue by : Mr. M. Baranwal, Ld. Sr. DR

Assessee by : Mr.Hiren Mehta, Ld. CA

Date of hearing : 03.08.2022

Date of order : 29.08.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

These appeals have been preferred by the Revenue Department against the orders dated 30.06.2020 and 17.02.2020, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-8, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16 and 2016-17 respectively.

**2.** The facts and issues involved in the instant appeals are almost similar except the quantum of additions and variation in the orders as the same have been passed u/s 147/143(3) and 143(3) of the Act respectively in ITAs No. 61/Del/2021 and 194/Del/2021. Therefore, for the sake of brevity, we are deciding ITA No. 61/Del/2021 for the assessment year 2015-15 as a lead case and the result of the same shall be applicable mutatis mutandis to ITA no. 194/Del/2021 as well.

**3.** Brief facts, relevant for adjudication of the instant appeal, are that the AssesseeCompany is engaged in the business of generation of power at Manglad Hydro Power Project, MauzaMajhewali, Tehsil Rampur, Bushahpur, Distt. Shimla (HP). The Assessee filed its return of income declaring income of Rs.10,39,040/- on 25.09.2015. Subsequently, the proceedings u/s. 147 of the Act were initiated by issuing notice u/s. 148 of the Act on dated 26.03.2019 after recording the reasons (which are reproduced at page 2 of the assessment order) to the effects that the Assessing Officer has reason to believe that the Assessee is not admissiblefor deduction u/s. 80IA of the Act and at least an income of Rs.1,85,97,591/- chargeable to tax has escaped assessment for A.Y. 2015-16 within the meaning of section 147 of the Act.

The Assessing Officer further noticed that the Assesseehas claimed deduction of Rs.1,85,97,591/- u/s. 80IA of the Act, in its return of income filed u/s. 139 of the Act filed on 25.09.2015, along with which, though the Assessee e-filed the report in Form 3CA but the report in Form No. 10CCB was not e-filed which was filed subsequently on dated 17.04.2019 during the course of re-assessment proceedings.

The Assessing Officer, therefore, observed that the audit report in form No. 10CCB was not in possession of the Assessee, as it was neither filed earlier nor along with the return of income filed on 13.04.2019 in response to notice u/s. 148 and that similar disallowance was also made in assessment for A.Y. 2016-17 on the similar facts.

Accordingly, the Assessing Officer concluded, since the Assessee failed to file the relevant report in Form No. 10CCB either along with the return filed u/s. 139(1) or in response to notice u/s. 148, no deduction u/s. 80IA of the Act is admissible to him and accordingly, denied the deduction of Rs. 1,85,97,591/- claimed by the Assesseeu/s. 80IA of the Act and added the same to the total income of the Assessee.

4. Being aggrieved, the Assessee challenged the addition in appeal before the Id. Commissioner, who vide impugned order allowed the claim of Assessee by concluding as under :

**“4. DECISION:** The contents of the assessment order and the written submissions of the appellant have been carefully considered. Ground 3 is general and no submissions have been made by appellant. Therefore, the same is not being adjudicated.

**4.1 Grounds No. 1 & 2 :** Grounds No. 1 & 2 are directed against the addition of Rs. 1,85,97,591. It is seen that exactly similar controversy in appellant's own case for A.Y. 2016-17 in appeal no. 10250/18-19 has been decided by this office vide order dated 17/02/2020. In the said appellate order the claim of the appellant for deduction u/s 80IA(4) of the Act was allowed. The relevant portion of the appellate order for A.Y. 2016-17 is reproduced below

4.2 "Ground no. 2 is directed against addition of Rs. 2,30,62,232/-. It is uncontroverted that the assessee company is engaged in the activity of generation of electricity and fulfilling all the conditions prescribed in section 80IA. The appellant is therefore entitled to claim deduction u/s 80IA on eligible profits. The company commenced its business activity during A.Y. 2011-12 and claimed the deduction u/s 80IA for the first time which was allowed. Further, A.Y. 2016-17 is the sixth year during which the deduction has been claimed. All conditions prescribed u/s 80IA of the Act are being fulfilled by the appellant. Thus, the only reason for denial of deduction u/s 80IA by the AO is on account of failure on the part of the assessee to electronically file the audit report in Form No. 10CCB along with the return of income. The assessee filed its return of income on 06.10.2016 but failed to file audit report in Form No. 10CCB which was filed on 04.08.2018 during the course of assessment proceedings for A.Y. 2016-17. It has been explained by the appellant that, claim under section 80IA(4)(iv)(a) related to 100% deduction of total income allocable to hydro power generation company was made in the return of income online filed before due date of filing and duly mentioned in tax audit report filed along with return. Further, for late submission of form under rule 12(2) the contention of the appellant is that submission of Form under Rule 12 is an additional requirement to support the claim of deduction under section 80IA and filing of form is directory in nature and not a mandatory requirement. Thus, the short controversy involved in this appeal is to determine whether late filing of Form No.10 CCB before the finalization of the assessment suffices the requirements of section 80IA so as to allow the benefit of deduction u/s 80IA or not.

4.3 The Appellant has relied on a number of case laws in support of its contention that Filing of audit report along with return is not mandatory and only directory and assessee cannot be made to suffer if it filed audit report in Form 10CCB in the course of assessment

proceedings and not along with return. In the case of CIT Vs. G.M. Knitting Industries Pvt. Ltd. &Anr. (2015) 71 Taxmann.com 35 (SC) it was held asunder:

4.4 "Even though necessary certificate in Form 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 80-1B."

In this case Hon'ble Supreme Court dismissed the appeal of Revenue and confirmed the view taken by Madras High Court in case of CIT v. AKS Alloys (P.) Ltd. [2012] 18 taxmann.com 25 (Mad.) holding above. The facts of the case of the appellant are pari-materia with the facts in the above case. The only inconsequential difference being that in the case before Hon'ble Supreme Court Form No. 10CCB was filed physically during assessment proceedings whereas in the present case Form No. 10CCB was filed electronically during assessment proceedings.

4.5 All other case laws relied upon by the appellant have followed the above referred proposition settled by the Supreme Court. Therefore, respectfully following the order of Supreme Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra) it is held that filing of audit report is directory in nature and if the audit report is filed before the completion of assessment, requirement of the section 80IA would be, met. Hence, the addition of Rs. 2,30,62,232/- is hereby deleted and the AO is directed to allow the claim of deduction u/s 80IA to the appellant. The ground of appeal No. 2 is hereby allowed.

**4.1.2** In the present appeal for A.Y. 2015-16 it is seen that during the course of the reassessment proceedings the appellant filed Form 10CCB vide e-acknowledgement no. 464522211170419 on 17.04.2019, much before the reassessment order was passed on 07.12.2019. Therefore, following the appellate order for A.Y. 2016-17, as referred above, the addition of Rs. 1,85,97,591/- is hereby deleted and the AO is directed to allow the claim of deduction u/s 80IA to the appellant. The Grounds of appeal No.1& 2 are hereby allowed."

**5.** Being aggrieved with the impugned order, the Revenue is in appeal before us.

**6.** The Ld. Sr. DRMr. M. Baranwal, against the impugned order submitted that the Id. Commissioner has erred in law and facts in deleting the addition made on account of denying the claim of deduction u/s. 80IA of the Act. Further erred in law and facts in ignoring the provisions of Rule 12 inserted w.e.f. 01.04.2013 which makes it a requirement to furnish

form 10CCB electronically. Further, erred in law and facts in not considering the fact that if such lapses are to be cured during the assessment proceedings, then there should not have been any requirement for bringing the amendment to the Rules.

**6.1** Mr. Baranwal further by drawing our attention to the Rule 12(2) of the Rules and section 80IA(7) of the Act, submitted that filing of the report in Form No. 10CCB along with return of income is mandatory and the ignorance of the same cannot be taken as an excuse. Further, proviso to Rule 12(2) of the Rules, cast a clear onus upon the Assessee to file the audit report along with the return of income. The Assessee is a habitual defaulter and not complying with the mandatory provisions of law. Even otherwise, the proceedings u/s. 147 of the Act are for the benefit of the Revenue and not for the Assessee and are aimed at garnering the "escaped income" of an Assessee, the same cannot be allowed to be converted as "Revisional or Review" proceedings at the instance of the Assessee, thereby making the machinery unworkable, as mandated by the Hon'ble Apex Court in the case of CIT vs. Sun Engineering Works (P) Ltd. (1992) 64 Taxman 442(SC).

**7.** On the contrary, the Id. AR Mr. Hiren Mehta submitted that the Assessee had claimed deduction u/s. 80IA of the Act to the tune of Rs.1,85,97,591/-. Though the Assessee e-filed report in Form 3CA along with its Return of Income on dated 25.09.2015, but could not file report in Form No. 10CCB. Therefore, vide notice dated 29.10.2019 u/s. 142(1) of the Act, the Assessee was show caused to submit explanation and justification on allowability of claim in view of the provisions of section 80IA(7) read with Rule 12. In response to the said show cause, the Assessee vide its reply dated 11.11.2019 claimed that as per provisions of Rule 12(2) of the Income Tax Rules, 1962 (in short "the Rules") till the assessment year 2012-13, no audit report or other documents were required to be attached with the return of income. However after insertion of proviso to Rule 12(2) w.e.f. 01.04.2013, the audit report in Form No.

10CCB needs to be filed electronically. Though Form No. 10CCB was prepared at the time of audit and duly signed by the auditors, however the same was kept for presentation manually during the scrutiny/assessment as done in the assessments u/s. 143(3) for assessment years 2012-13 and 2014-15, in which the deduction claimed u/s. 80IA(4)(iv) was allowed.

However, the return for the assessment year 2015-16 was processed u/s. 143(1) and therefore the duly signed form No. 10CCB could not be presented since the case was made under self-assessment u/s. 143(1). The filing of audit report in form No. 10CCB electronically escaped the attention of the Assessee and when it came to notice of the Assessee, the same was immediately filed online on 17.04.2019.

Mr. Mehtafurther contended that the Assessee had clearly claimed deduction u/s. 80IA of the Act in its return of income itself and due to technical glitches, the Assessee was unable to upload the report in Form 10CCB along with the return of income. However, it is an admitted fact that the Assessee submitted the same online before finalization of the re-assessment proceedings/order. Hence, in view of the Hon'ble apex Court judgment in the case of G.M. Knitting Industries Pvt. Ltd. (supra), the filing of the report in form No. 10CCB during the assessment proceedings amounts to sufficient compliance.

Mr. Mehta further claimed that in view of the judgment passed by the Hon'ble Gujrat High Court in the case of CIT vs. Mayur Foundation (2005) 274 ITR 562(Guj), when the matter is pending before the Tribunal by way of appeal, it could be said that the assessment proceedings are pending. Further, the proceedings before the Tribunal are meant to correctly assess the tax liability of the Assessee. If this be so, it follows that the assessment proceedings cannot be said to be complete and is pending till the appeal is heard and disposed of by the Tribunal and the order of the Tribunal is given effect to by the Assessing Authority by computing the correct tax liability of the Assessee. Therefore, the

judgment as relied upon by the Id. DR in the case of Sun Engineering Works (P) Ltd. (supra) is not applicable to the facts of the instant case.

**8.** Heard the parties and perused the material available on record. We observe that the Assessing Officer while disallowing the deduction claimed by the Assessee and making the addition, mainly relied upon the facts that the report in form No. 10CCB, which was filed on 17.04.2019 in response to notice u/s. 148 of the Act on dated 13.04.2019, was not in possession of the Assessee as it was neither filed earlier nor along with the return of income filed on 13.04.2019. Since the insertion of Rule 12 w.e.f. 01.04.2013, it was mandatory to file such report electronically by the due date of furnishing of return. The various case laws relied upon are of the era when the tax audit reports and other relevant reports were not required to be filed with the return of income.

**8.1** On the contrary, Id. Commissioner while relying upon the appellate order passed by himself in the Assessee's own case for the assessment year 2016-17, wherein the contentions of the Assessee to the effects "*that if Form 10CCB is being filed before finalization of the assessment, then it suffices the requirement of section 80IA so as to allow the benefit of deduction u/s. 80IA of the Act. Further, filing of audit report along with return is not mandatory and only directory and Assessee cannot be made to suffer if it filed audit report in Form 10CCB in the course of assessment proceedings and not along with return as per dictum laid down by the Hon'ble Apex Court in the case of CIT Vs. G.M. Knitting Industries Pvt. Ltd. &Anr. (2015) 71 Taxmann.com 35 (SC), where it was held " Even though necessary certificate in Form 3AA 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 80-1B."* was considered by the Id. Commissioner and finally held "*that the facts of the case of the Assessee are pari-materia with the facts in the above case. The only inconsequential difference being that in the case of before the Hon'ble Supreme Court, Form 3AA was filed physically during the assessment proceedings, whereas in the*

*present case Form No. 10CCB was filed electronically during the assessment proceedings. Therefore, respectfully following the order of Hon'ble Apex Court, in the case of G.M. Knitting Industries Pvt. Ltd. (supra), it is held that filing of audit report is directory in nature, if the audit report is filed before the completion of assessment, requirement of the section 80IA of the Act would be met. Hence, the addition of Rs.2,30,62,232/- is hereby deleted and the Assessing Officer is directed to allow claim of deduction u/s. 80IA of the act to the appellant”.*

In the present case, the Id. Commissioner, ultimately while relying upon the said order passed for the assessment year 2016-17, came to the conclusion that in this case it is seen that during the course of the reassessment proceedings the appellant filed form 10CCB vide e-acknowledgement No. 464522211170419 on 17.04.2019 much before the reassessment order which was passed on 07.12.2019, therefore, following the appellate order for A.Y. 2016-17, as referred above, the addition of Rs.1,85,97,591/- is hereby deleted and the Assessing Officer is directed to allow the claim of deduction u/s. 80IA of the Act to the appellant.

**8.2** In order to adjudicate the issue under controversy properly, let us reproduce the provisions of Rule 12 of the Rules and section 80IA of the Act, prior to and post amendment which came into effect from 01.04.2013 as applicable to the instant case:

**Section 12 prior to 7<sup>th</sup> Amendment which came into effect from 01.04.2013:**

*“[Return of income and return of fringe benefits.*

*12. (1) The return of income required to be furnished under sub-section section (3) or sub-section (4A) or sub-section (4B) or sub-section (4C) or sub-section (4D) of section 139 or clause (i) of sub-section (1) of section 142 or sub-section (1) of section 148 or section 153A [\*\*\*]*

relating to the assessment year commencing [on the 1st day of April, 2012]] shall,—

[(a) in the case of a person being an individual where the total income includes income chargeable to income-tax, under the head,—

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(h) [\*\*\*]

[(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or Form SUGAM (ITR-4S) or Form No. ITR-4 or Form No. ITR-5 or Form No. ITR-6 shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or **any documentor copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act.**

**Rule 12 after 7th amendment in the Rules, effective from 01.04.2013 wherein provision has also been inserted :**

**[Return of income and return of fringe benefits.**

**12.** (1) The return of income required to be furnished under sub-section (1) or sub-section (3) or sub-section (4A) or sub-section (4B) or sub-section (4C) or sub-section (4D) [or sub-section (4E)] [or sub-section (4F)] of

section 139 or clause (i) of sub-section (1) of section 142 <sup>1</sup>[or section 148] or section 153A [\*\*\*] relating to the assessment year commencing [on the 1st day of April, <sup>1a</sup>[2022]] shall,—

[(a)

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(h)

[(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or <sup>18</sup>[Form SUGAM (ITR-4)] or Form No. ITR-5 or Form No. ITR-6 [or Form No. ITR-7] shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or **any document or copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act:**]

[**Provided** that where an Assessee is required to furnish a report of audit specified under sub-clause (iv), (v), (vi) or (via) of clause (23C) of section 10, section 10A[, section 10AA], clause (b) of sub-section (1) of section 12A, section 44AB [, section 44DA, section 50B], section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E, [section 115JB, <sup>5</sup>[section 115JC] or section 115VW] [or to give a notice under clause (a) of sub-section (2) of section 11] of the Act, **he shall furnish the same electronically.**]

**Section 80-IA (7) prior to 01.04.2013:**

*“(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the **deduction is claimed have been audited by an 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.”*

**Section 80-IA (7) as on date:**

*“(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been **audited by an accountant, as defined in the Explanation below sub-section (2) of section 288**,<sup>18</sup>**before the specified date referred to in section 44AB** and the Assessee furnishes by that date] the report of such audit in the prescribed form<sup>19</sup> duly signed and verified by such accountant.”*

**8.3** On perusing the provisions prior to and post amendment made in 2013 in the Rule 12 of the Rules and section 80IA(7) of the Act, it clearly reflects that earlier the Assessee was supposed to furnish the report in Form 10CCB in 'physical form' whereas w.e.f. 01.04.2013, the Assessee is supposed to furnish the said report 'electronically'.

The Hon'ble Apex Court passed the judgment on 24.07.2015 and clearly laid down the dictum *that even if Form 3AA was not filed along with the return of income, but the same was filed during the assessment*

*proceedings and before the final order of assessment was made, that would amount to sufficient compliance. Therefore, inference can be drawn that if the report in Form No. 10CCB was not filed along with return of income electronically, but filed during the assessment proceedings itself, then the substantive right cannot be denied, as also held by the Hon'ble Madras High Court in the case of L & T Chennai-Tada Tollway Ltd. vs. ITO, Corporate Ward 4(4) Chennai (2021) 128 taxmann.com 172 (Madras) to the effect "that a substantive right cannot be denied or taken away by virtue of a Rule, which is only a machinery provision. In any event, the benefit granted u/s. 80IA is a special benefit bearing in mind that Industrial Undertakings would undertake infrastructural projects."*

It is admitted fact that the Assessee by e-filing Form 3CA along with its return of income filed on dated 25.09.2015 itself, claimed the deduction under consideration and it is also not the case of the Revenue that the Assessee is not entitled and/or not fulfilled the conditions set out for claiming the said deduction. Therefore, it cannot be said that the Assessee has claimed the benefit first time in the proceedings u/s. 147 of the Act, and hence not allowed as per judgment of Hon'ble Apex Court in the case of Sun Engineering Works (P) Ltd. (supra). Had the claim not been filed by the Assessee in its return of income, then certainly, the Assessee would not be entitled to claim the said deduction under the proceedings u/s. 147 of the Act, but it is not the case here. Hence, the contention of the Id. DR to the effect that the Assessee as per judgment of the Hon'ble Apex Court in the case of Sun Engineering Works (supra) is not entitled to claim the deduction under challenge, is not tenable.

Even otherwise, we observe that the legislature in its wisdom made the beneficial provisions for the deduction(s) under chapter VI-A of the Act, being social welfare legislation and claim of deduction u/s. 80IA is a substantive right and therefore, the purpose thereof cannot be defeated and frustrated.

Even otherwise we do not find any reason and/or material to contradict the findings of the Id. Commissioner in coming to the conclusion for allowing the benefit of deduction claimed u/s. 80IA of the Act. Hence, in cumulative effect, we are inclined to uphold the impugned order. Consequently, the appeal (ITA No. 61/Del/2021) of the Revenue Department is liable to be dismissed, hence ordered accordingly.

**9. ITA no. 194/Del/2021**

In view of decision in ITA no. 61/Del/2021, ITA no. 194/Del/2021 also dismissed.

**10.** In the result, both the appeals filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 29/08/2022.

Sd/-

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-