IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.1316/Bang/2017 : Asst.Year 2013-2014

M/s.Opto Circuits (India) Limited No.38, Electronic City Road Bangalore – 560 100. **PAN : AAACO2165P.**	v.	The Assistant Commissioner of Income-tax, Circle 5(1)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Shiva Prasad Reddy, ITP
Respondent by : Sri.Sumer Singh Meena, CIT-DR

Date of Hearing : 28.09.2022		**Date of Pronouncement : 30.09.2022**

O R D E R

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 24.03.2017. The relevant assessment year is 2013-2014.

2. The grounds raised read as follows:-

"1. The learned AO ought to have appreciated that the deduction of Rs.1,09,55,99,171 u/s 10AA of the Act cannot be denied on the sole ground that the return of income is not filed within the specified due date u/s 139(1) since there is no such condition prescribed under the section.

2. The learned AO erred in disallowing the deduction u/s 35(1)(i) of the Act based on the nomenclature adopted by the appellant in the profit and loss accounts / return of income even though the expenditure is general expenditure deductible under section 37 of the Act as business expenses of the R&D, Product Development Division.

3. The appellant prays leave to add, alter, amend or delete any of the grounds taken at the time of hearing."

We shall adjudicate the above grounds as under:

Deduction u/s 10AA of the I.T.Act.

3. The assessee is a company engaged in the business of manufacturing and trading of medical equipments. For the assessment year 2013-2014, the return of income was filed by declaring income of Rs.118,39,63,780 after claiming deduction u/s 10AA of the I.T.Act amounting to Rs.109,55,99,171. The assessment was selected for scrutiny and assessment u/s 143(3) of the I.T.Act was completed vide order dated 31.03.2016. In the said assessment order, the assessee's claim of deduction u/s 10AA of the I.T.Act was disallowed for the reason that the assessee had filed return of income belatedly on 22.03.2014 and not within the time limit prescribed u/s 139(1) of the I.T.Act.

4. Aggrieved, the assessee filed an appeal before the first appellate authority. The CIT(A) confirmed the view taken by the A.O. The relevant finding of the CIT(A) in this regard reads as follows:-

> *"6.1 Now I proceed in analyzing the reasons why the proviso of sec.10A and 10B is not provided for Sec.10AA. One of the conditions for claiming deduction under the section is that the appellant to file certificate from Chartered Accountant along with the return. Section 10A is Special provision in respect of newly established undertakings in free trade zonhe, etc. Sec.10B is Special provisions in respect of newly established hundred per cent export-oriented undertaking, whereas Sec.10AA is a special provision in respect of newly established Units in Special Economic Zones and the scheme of deduction available of almost same as deduction available under Sec.10A & 10B and some of the sub-sections such as 5 & 6 of Sec.10A and 10B are applicable to Sec.10AA also. The due date for return of income is 30/11/2013 for the A.Y. 2013-14 whereas the return of income filed on 23/03/2014 filed belatedly. Further, it has been observed that the*

deduction u/s 10AA claimed, being sixth year of the claim should have been exactly 50% of the profits and gains for further five subsequent assessment years. Whereas the deduction claimed was Rs.1,09,55,99,171 which is less than 50%. When the AR was questioned he could not give any satisfactory explanation but for filing the copy of Form 56F. However, it is seen from the calculation of deduction sheet furnished before me the difference was due to depreciation as per the Companies Act and as per the IT Act claimed. In view of the above discussion, I am of the opinion that the action of the Assessing Officer in not allowing the deduction u/s 10AA for the reason that the return of income was not filed within the due date as per Sec.139(1) of the Income Tax Act 1961 is justified. Therefore, the Assessing Officer's action in not allowing the deduction u/s 10AA is hereby upheld. The appeal on this ground is dismissed."

5. Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The assessee has filed a paper book enclosing therein the written submissions filed, audited financials for the relevant assessment year, extracts of the relevant sections, the case laws relied on, etc. The learned AR reiterated the submissions made before the Income Tax Authorities. The learned AR contended that there is no mandatory condition prescribed in section 10AA of the I.T.Act (unlike section 10A and 10B of the I.T.Act.) that the return ought to be filed within the time limited prescribed u/s 139(1) of the I.T.Act.

6. The learned Departmental Representative supported the orders of the AO and the CIT(A).

7. We have heard rival submissions and perused the material on record. The A.O. has disallowed the claim of deduction u/s 10AA of the I.T.Act for the solitary reason that

the return of income was not filed within the specified due date u/s 139(1) of the I.T.Act. The disallowance of exemption u/s 10AA of the I.T.Act was sustained by the CIT(A) as per the discussion in paras 6 & 6.1 of the impugned order. The CIT(A) merely affirmed the view of the AO. Under Chapter III of the Income-tax Act, 1961, special provision have been enacted to provide profit linked deductions, viz., sections 10A, 10AA, 10B, 10BA and 10C of the I.T.Act. Such special provisions have also been provided under Chapter VIA of the Income-tax Act, viz., sections 80IA, 80IAB, 80IB, 80IC of the I.T.Act. The Legislature, wherever it deemed necessary, has expressly laid down the pre-condition of filing the return of income within the specified due date u/s 139(1) of the I.T.Act either in the original enactment, or by amending the law and inserting appropriate clauses. For instance, sections 10A and 10B of the I.T.Act have been amended by inserting appropriate clauses and providing that the exemption shall not be allowed unless the return of income is filed within the specified due date u/s 139(1) of the I.T.Act. The restrictive clauses provided u/s 10A and 10B of the I.T.Act are tabulated as under:-

Sl. No.	Section	Restrictive clause
(i)	10A	Proviso to sub section (1A) of section 10A reads as under: "(1A)..... (i) (ii) Provided that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub section (1) of

		section 139." (Note : There was no restriction originally and the said proviso u/s 10(1A) was inserted by the Finance Act, 2005 w.e.f. 01.04.2006; applicable to the AY 2006-07 onwards)
(ii)	10B	Fourth proviso to sub-section (1) of section 10B read as under: "10B. (1) ..... Provided also that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section139." (Note : There was no restriction originally and the said Fourth Proviso u/s 10B(1) was inserted by the Finance Act, 2006 w.e.f. 01.04.2006)

8. On perusal of the CIT(A)'s finding extracted (supra), it is not forthcoming precisely why the denial of the deduction u/s 10AA of the I.T.Act is upheld. The CIT(A) has upheld the disallowance referring to sub-sections (5) & (6) of section 10A / 10B of the I.T.Act, which are applicable to the deduction u/s 10AA of the I.T.Act also. The provisions of sub-sections (5) & (6) of section 10A of the I.T.Act shall apply to the exemption u/s 10AA of the I.T.Act also by virtue of sub-section (8) of section 10AA of the I.T.Act. However, these sub-sections of 10A do not prescribe the precondition of filing of return within the specified due date u/s 139(1) of the I.T.Act to be eligible for the benefit of section 10AA of the I.T.Act. Sub-section (8) of section 10AA of the I.T.Act reads as follows:-

"(8) The provisions of sub-sections (5)[62] and (6) of section 10A shall apply to the articles or things or services referred to in sub-section (1) as if—

(a) for the figures, letters and word "1st April, 2001", the figures, letters and word "1st April, 2006" had been substituted;

(b) for the word "undertaking", the words "undertaking, being the Unit" had been substituted."

9. Sub-sections (5) & (6) of section10A of the I.T.Act applicable to the exemption u/s 10AA of the I.T.Act reads as follows:-

"(5) The deduction under this section shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, [59][***] the report of an accountant, as defined in the Explanation below sub-section (2) of section 288 [60][before the specified date referred to in section 44AB], certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years ending before the 1st day of April, 2001, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section

(1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years ending before the 1st day of April, 2001;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year."

10. Reading the above sub-sections, we are of the view that the CIT(A) has misread the provisions of sub-sections (5) & (6) of section 10A / 10B of the I.T.Act and confirmed the disallowance without noticing these sub-sections do not mandate that the return of income should be filed within the specified due date u/s 139(1) of the I.T.Act in order to be entitled to the said deduction u/s 10AA of the I.T.Act.

11. From the aforesaid analysis, we hold that section 10AA of the I.T.Act has not mandated filing of return of income within the specified due date u/s 139(1) of the I.T.Act as one of the conditions precedent for claiming the deduction. The conditions to be fulfilled in order to claim the exemption are stipulated in sub-section (2) of section 10AA of the I.T.Act. Further, sub-section (4) has stipulated the conditions which ought not to be violated in order that an undertaking is not

disentitled from claiming the exemption under the section. It is not the case of the Revenue for disallowing the claim u/s 10AA of the I.T.Act that the assessee has not fulfilled or violated any of the conditions mentioned in sub-sections (2) and (4) of section 10AA of the I.T.Act.

12. The precondition of filing the return before the specified due date u/s 139(1) of the I.T.Act was introduced in the following sections, namely, 10A, 10B, 80IA, 80IAB, 80IB, 80IC, etc., by amending the Law and making / inserting appropriate restrictive clauses in the relevant sections. These amendments are made effective from particular date and in some cases, retrospective effect has been given. That is to say that a conditionality of filing a return within the specified due date u/s 139(1) of the I.T.Act in order to be entitled to a particular deduction / exemption ought to be made in the section itself and cannot be superimposed. In other words, it is not for the AO or the CIT(A) to rewrite the Law and Rule that exemption is not to be allowed since the return of income was not filed within the specified due date u/s 139(1) of the I.T.Act.

13. Section 80AC of the I.T.Act was amended by the Finance Act, 2007 by inserting section 80ID / 80IE of the I.T.Act in order to extend the restrictive clause to the said sections, and it has application only for the post-amendment assessment years. In other words, in the absence of restrictive clause prior to the amendment, it is not permissible to impose the

restriction in sections 80ID/80IE of the I.T.Act for the pre-amendment assessment years. It is settled law that express mention of one or more things in a particular context excludes all other found not mentioned. The maxims of statutory interpretation is the expression –*unius est exclusion alterius* applies in the present context – *to express one thing is to exclude another*. In this context, we rely on the judgment of the Hon'ble Apex Court in the following cases:-

(i) Dr.Venkatachalam v. Dy.Transport Commissioner – SAIR 1977 SC 842.
(ii) Md.Alauddin Khan v. Karam Thamarjit Singh (2010) 7 SCC 530.

14. The Hon'ble High Court of Delhi has applied this doctrine of interpretation of Scott R.Bayman v. Commissioner of Income-tax, Delhi (2012) 24 taxmann.com 214(Delhi) and referred to the above mentioned judgment of the Hon'ble Apex Court. When the Legislature has omitted such a restriction in section 10AA of the I.T.Act in its wisdom, it is not for the A.O. nor the CIT(A) to prescribe such a conditionality and impose it on an assessee. Therefore, the denial of the exemption on the ground of not filing the return of income within the specified due date u/s 139(1) of the I.T.Act is not legally correct. Since the A.O. had disallowed the claim of deduction u/s 10AA of the I.T.Act, at threshold for reason that the assessee has not filed the return of income u/s 139(1) of the I.T.Act, we are of the view that the matter needs to be examined whether the assessee has complied with any other conditions mandated

u/s 10AA of the I.T.Act. Further, the A.O. shall also examine whether the assessee has correctly computed the claim [CIT(A) in the impugned order has stated that the assessee has claimed excess deduction u/s 10AA of the I.T.Act].

15. In the result, ground 1 is allowed for statistical purposes.

Deduction u/s 35(1)(i) of the i.T.Act amounting to Rs.6,29,81,289

16. In the assessment completed u/s 143(3) of the I.T.Act, the A.O. had disallowed the claim of deduction u/s 35(1)(i) of the I.T.Act amounting to Rs.6,29,81,289 by observing as under:-

> *"The assessee has claimed deduction u/s 35(1)(i) amounting to Rs.6,29,81,289/-. The assessee was asked to furnish the details of the claim. As the details have not been submitted till date, the deduction claimed u/s 35(1)(i) is hereby disallowed and added back to the income of the assessee company."*

17. Aggrieved, the assessee raised this issue before the first appellate authority. Before the CIT(A) it was contended that the A.O. is not justified in presuming that the assessee had not incurred expenditure on scientific research u/s 35(1)(i) of the I.T.Act. It was contended that the nature of business carried on by the assessee being manufacturing and trading of medical equipments, the assessee was continuously required to develop low cost medical equipments, hence, the expenditure was incurred on scientific research. It was further contended that in the event the expenditure is not entitled to deduction u/s 35(1)(i) of the I.T.Act, the same is to

be allowed as deduction under the general provisions of section 37 of the I.T.Act as business expenditure on R & D Product Development etc. The CIT(A) rejected the contentions of the assessee. The CIT(A) after analyzing section 35(1)(i) of the I.T.Act, held that the said deduction does not qualify for deduction u/s 35(1)(i) of the I.T.Act. The CIT(A) did not specifically adjudicated on the issue whether the assessee was entitled to deduction u/s 37 of the I.T.Act.

18. Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities.

19. The learned DR, on the other hand, supported the orders of the AO and the CIT(A).

20. We have heard rival submissions and perused the material on record. The details with regard to expenditure claimed u/s 35(1)(i) of the I.T.Act amounting to Rs.6,29,81,289 was disallowed by the A.O. for the reason that the assessee has failed to furnish the details of the claim. The assessee had debited to Profit and Loss account under the `other expenses'. The details of the `other expenses' are placed on record at page 93 of the paper book filed by the assessee. However, the bifurcation/schedule of the `product development expenses' has not been provided. The assessee is now claiming the benefit of deduction u/s 37 of the I.T.Act and the details of the said claim is not before the Tribunal.

Therefore, in the interest of justice and equity, we are of the view that the matter needs to be examined afresh by the A.O. The assessee shall provide the necessary details of bifurcation and explain the nature of expenditure amounting to Rs.6,29,81,289. It is ordered accordingly. Hence, gound 2 is allowed for statistical purposes.

21. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 30th day of September, 2022.

Sd/-	**Sd/-**
(Chandra Poojari)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 30th September, 2022.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-5, Bangalore.
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore