

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES "A" :: PUNE**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY,**  
**JUDICIAL MEMBER AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.35/PUN/2018**  
**निर्धारणवर्ष / Assessment Year : 2014-15**

The Income Tax Officer, Ward-8(2), Pune.	Vs	Jagtap Patil Promoters & Builders, S.No.152, Pimple Gurav, Pune – 411061.  PAN: AAGFJ 0403 N
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Suniol Ganoo – AR
Revenue by	Shri M.M.Chate – DR
Date of hearing	29/08/2022
Date of pronouncement	24/11/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Revenue i.e. Income Tax Officer, Ward-8(2), Pune for the A.Y. 2014-15 against the order of the Id.CIT(A)-6, Pune dated 04.10.2017 emanating from the assessment order dated 30/12/2016 passed by the ITO Ward 8(2) Pune u/s 143(3) of the Income tax Act. The grounds of appeal are as under:

*“1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was justified in not appreciating that it was only after scrutiny proceedings started that the assessee paid the MAT. Thus by filing Nil return and not claiming deduction u/s 80IB(10) the assessee was trying to evade payment of taxes. The claim of the assessee that filing of NIL return was clerical error does not hold ground?*

*2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in not appreciating the ratio laid*

*down by the Honble Supreme Court decision in CIT Vs. Goetze India Ltd. reported in 284 ITR 323 wherein it has been held that A.O. cannot entertain a claim for deduction otherwise than by filing a revised return. In the present case the assessee has neither claimed deduction u/s 80IB while filing the return of income nor has it revised its return to claim the deduction?*

3. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in relying upon the various judicial pronouncements when the facts and circumstances of the relied upon cases are quite different from the facts and circumstances of the present case?*

4. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in not appreciating the ration laid down by the Hon'ble Calcutta High Court in the case of Shelcon Properties Pvt. Ltd. reported in 370 ITR 305, wherein it has been clearly held that benefit can only be availed by the assessee if he has filed return of income on time. If the return has not been filed on time the benefits cannot be claimed. The decision has been rendered specifically with reference to Sec. 80AC?"*

2. Brief facts of the case are that the assessee filed return of Income electronically on 30/11/2014 for AY 2014-15 declaring total income at Nil. The case was selected for limited scrutiny. However, subsequently the AO converted the case into complete scrutiny after obtaining necessary approval from the Pr.CIT. The AO has specifically mentioned in the assessment order that the assessee has not complied to the notices issued, even the AO levied the Penalty u/s 271(1)(b) of the Act for non-compliance. However, the assessee's Authorised representative attended on 19/12/2016, just 14 days before the time barring date for the assessment order. It was noted by the AO that assessee had shown NIL Income, Nil tax payable in the return. However, the AR vide written submission dated 19/12/2016,

claimed that assessee had claimed deduction u/s.80IB(10) of the Act. The AR claimed that the assessee had filed Form No.10CCB in time, thus the claim for deduction u/s 80IB (10) was validly made . The AO observed in the Assessment order that the Assessee had not made any claim for deduction u/s 80IB(10) in the return of Income. It is mandatory for assessee to claim the deduction u/s 80IB(10) in the return of Income. It is an admitted fact by the assessee that no claim for deduction u/s 80IB(10) was made in the return of Income. The AO also observed that the assessee had not made the claim in the Audit Report also. Therefore the AO denied the assessee deduction u/s 80IB(10) of the Act.

2.1 The AO in the assessment order, has disallowed the claim of the assessee for deduction u/s 80IB(10) without prejudice on the ground that the Project was not complete within the date mentioned in the Act. The AO had also made a reference to the Government Registered Valuer. The Government Registered Valuer inspected the impugned project in the presence of the assessee's project Manager and other workers. The Valuer gave the report. Copy of the report was given by the AO to the assessee. The assessee filed submission in response to the same. The AO finally held, without prejudice, that the basement parking for building C and D were not complete as certified by the Registered Valuer, the Club House was not complete,

therefore, the Project was not complete. The local authority had approved the project on 29/03/2007, there for to be eligible for deduction u/s 80IB(10) the project should have been completed before 31/03/2012. The AO observed that the project was not complete on or before 31/03/2012. Hence, the AO disallowed the claim of the assessee on this ground also.

2.3 Aggrieved by the order of the Assessing Officer, the Assessee filed appeal before the Commissioner of Income Tax (appeal). The Ld.CIT(A) vide his order dated 04/10/2017 allowed the appeal of the assessee. The relevant part of the order of the Ld.CIT(A) is as under :

*5.2. The various submissions of the appellant and the facts on record have been gone through. It is a fact that the return filed by the appellant electronically on 30/11/2014 mentions Nil against all the columns. No particulars of income, sales, expenses, depreciation, taxes paid, TD5 deducted are mentioned in the return. In the columns pertaining to the deductions also, there is no mention of any figures. The appellant has also not indicated any amount under the 115JC. It is also seen that the information which is required in part A - 01 i.e. information as contained in the audit report is also mentioned Nil. Only the information pertaining to part-A general of the ITR-5 are filled. In this, the audit information as to the name of the auditor, the date of audit report and the date of furnishing of the audit report along with the membership of the auditor are mentioned. It is submitted that the audit report and the Form 10CCB have been uploaded by the auditor. It is only during the course of assessment proceedings, that the appellant had filed the revised corrected income tax return and the alternative minimum taxes payable u/s 115JC where worked out at Rs.6,62,84,026/- and this amount was paid only in the month of January 2017 (Rs.6,61,71,120/- paid on 18/1/2017*

and Rs.38,28,880/- paid on 24/1/2017). The taxes due on the income are paid before filing this appeal.

5.2.1 It is a fact that the appellant had claimed 80IB on the same project in the earlier years and the deductions were allowed by the AOs in the scrutiny proceedings as mentioned in para -2.1. It is claimed by the appellant that the audit report and the Form no.10CCB regarding the deduction have been uploaded by the auditor and this is not questioned by the AO. As per section 890AC, no deduction is allowable unless the assessee furnishes the return of income before the due date mentioned in 139(1). As the appellant has filed the return, the deduction cannot be denied under this section. The sec.80A(5) specifies that no deduction shall be allowed where the assessee fails to make a claim in the return of income. It is a fact that there is no claim made in the return of income and therefore the appellant is hit by the provisions of this section. It has to be now examined that whether the appellant is still entitled to deduction based on the peculiar facts of the case. In this context, the decisions-cited above, come to the rescue of the appellant. It is also seen that the appellant has been allowed the deduction on the same project in the earlier years which proves that the appellant is otherwise entitled for deduction. It is also a fact that the auditor has certified the deduction and issued the necessary Form No.10CCB approving the deduction. This information was uploaded on time and is within the knowledge of the department. The return filed by the appellant was filled wrongly and whether such mistakes in filling the return should work against the appellant. It is true that the department would have been alerted about the nonpayment of MAT tax had the appellant filled the return properly. Is it a bona fide action on the part of the appellant in filing such return? At this stage of the proceedings, no loss is caused to the department as the appellant had subsequently paid the taxes along with interest. Having paid the taxes on the deemed income, 80IB deduction should not be held against the firm. In this connection, the various High Courts and Tribunals decisions cited above are in favour of the appellant. Taking into consideration these decisions and the fact that the return was filed on time and the audit report was uploaded on the department web site certifying

*the deduction, the claim of the appellant cannot be denied only on the ground of it not being mentioned in the return filed. In result, the AO is directed to allow the deduction of 80IB(10) to the appellant.*

2.4 Aggrieved by the order of the Ld.CIT(A), the Revenue has filed appeal before this Tribunal.

3. The Ld.AR filed paper book and written submission. The written submission is reproduced here as under :

*Case filed up on 21/10/2014*

**BEFORE THE HON. INCOME TAX APPELLATE TRIBUNAL A BENCH PUNE**  
**I.T. Appeal No.35/PUN/2018 for A.Y.2014-15**  
**In the case of Jagtap Patil Promoters and Builders**  
**Notes of arguments submitted by Respondent assessee**

1. During the relevant previous year, the Respondent assessee was a partnership firm consisting of five partners from Jagtap family who were close relatives. The said firm was carrying on the business of Promoters and Builders. For its business activities the respondent assessee maintained proper books of accounts which were duly audited by Chartered Accountant u/s 44AB of the I.T. Act 1961. Since inception, the profits of the respondent assessee were exempt u/s 80IB[10] of the I. T. Act 1961

2. The Respondent assessee filed its return of income for A.Y.2014-15, electronically on 30/11/2014 along with copy of tax audit report and Form No.10CCB [Please refer Page Nos.1 to 68 of Paper Book No.1] The Respondent assessee is sorry to state that the ITR was filed without any figures due to technical error and mistake of clerk of auditor who in amount column put NIL instead of figures. During assessment proceedings it was revealed that ITR was mistakenly filed without any figures. The appellant assessee respectfully submits that it had no malafide intentions of concealing its income and /or evading the taxes since the tax audit report along with copies of Profit and Loss Account Balance Sheet and Form No.10CC B duly filled in was filed on 30/11/2014 The tax audit report was filed on 30/11/2014 which included all the accounting figures and made proper and full disclosure of accounts. Even it is not suggested by the learned assessing officer that it was not the mistake committed simpliciter and the appellant assessee had malafide intentions of tax evasion in the matter.

3. Vide letter dt.16/12/2016, which was filed on 19/12/2016 in the office of ITO Ward 8[2] Pune, the appellant assessee filed corrected return of income duly filled in and signed by partner of the appellant assessee [Please refer Page Nos.71 to 104 of Paper Book No.1] Since the time for filing revised return of income has expired, the appellant assessee had no other option but to file a corrected return of income manually and no fault can be attributed to the appellant assessee for the same in view of the well settled legal principles. In support of the said the appellant assessee wishes to place reliance on following case laws and the copies of the same are enclosed in Paper Book No.2 of Case laws:

- i. Dhampur Sugar Mills Ltd v/s CIT Delhi Central reported in 90 ITR 236 [All] [Refer Page Nos.1,4, of Paper Book No.2
- ii. CIT Jalandhar v/s Ramco International reported in 180 Taxman 584 [Punjab & Haryana][Refer Page No.7 of Paper Book No.2]

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*[Signature]*

- iii. CIT v/s Rajasthan Fasteners P Ltd reported in 363 ITR 271 [Rajasthan] [Refer Page Nos.8, 9,10, 11,12,14]  
iv. CIT v/s Pruthvi Brokers and Shareholders Pvt Ltd 349 ITR Page 336 [BOM] [Refer Page Nos.15,16]  
v. Atul Projects India [PVT] LTD v/s Union of India and another 422 ITR Page 478 [Bombay] [Refer Page No.25 & 29]  
vi. Kunal Structure [India] Pvt Ltd v/s Dy CIT 422 ITR 482 [Guj] [Refer Page No.30,31,34,41,42, 43, 45]

4. For the relevant assessment year, the respondent assessee earned Profit of Rs.31,56,33,242.00 from its business of Promoters and Builders [Refer Page No.31 of Paper Book No1 which was exempt u/s 80IB[10] of the I.T. Act 1961. Since the net taxable income of the respondent assessee worked out to NIL, the respondent assessee was required to pay alternate minimum tax u/s 115J @ 18.5 % of its income and the same was disclosed by auditors of the appellant assessee in Form No.29C vide Page No.67 of Paper Book No.1 and its Annexure A vide Page No.68 of Paper Book No.1 The liability of AMT was worked out as under:

Net Profit as per Page No.31 of Paper Book No.1	Rs. 31,56,33,242.00
Add Income Tax Paid as per Page No.43	Rs. 6, 89,680.00
Less Brought Forward Loss Page No.84	Rs. [-] 89,883.00
Net income liable for AMT Page No.84	Rs. 31,62,33,039.00
AMT Payable @ 18.50% on 31,62,33,039.00	Rs. 5,85,03,112.00
As per Page No.84	
Add Surcharge @ 10% on AMT Page No.84	Rs. 58,50,311.00
Add Education Cess on AMT + Surcharge	Rs. 19,30,603.00
As per Page No.84	
Total Tax Payable including AMT Page No.84	Rs. 6,62,84,026.00
Less TDS	Rs. 1,12,903.00
AMT Payable	Rs. 6,61,71,120.00

The above referred liability was disclosed by the auditors of the appellant assessee in tax audit report which was filed dt.30/11/2014 This shows that the appellant assessee never wanted to commit tax evasion and the erroneous reporting was an outcome of mistake simpliciter committed by clerk of auditor. The appellant assessee most respectfully submits that the appellate order passed by the learned CIT [A] is legally correct and valid order which does not need/deserve any interference.

It is therefore requested that the appeal filed by the department has no merit and hence the same deserves to be dismissed.

Thanking you,

Pune  
27.10/10/2021

Yours faithfully,  
[Sunil Ganoo]  
[Chartered Accountant]

### Departmental Representative's Submission:

4. The Ld.DR filed a paper book containing case laws. The Ld.DR took us through the copy of the Return of Income to demonstrate that the assessee had not claimed deduction u/s 80IB(10) in the return of Income. The DR submitted that this fact is an admitted fact. Ld.DR further submitted that the assessee's claim that it was mistake of the clerk is baseless because in the Audit Report

also the assessee has not claimed the deduction u/s 80IB(10) of the Act. The Ld.DR took us through the copy of Audit Report (page 47 to 54 of assessee's paper book), column number 33 of the said Audit Report was regarding deduction Chapter VIA, in the said column the auditor has mentioned "NIL". The Ld.DR submitted that the Auditor has also certified that there is no claim of deduction under Section 80IB(10) of the Act as the auditor has mentioned "NIL " in the relevant coloumn. The said Audit report was signed on 29/11/2014. The Ld.DR relied on the Hon'ble SC decision in the case of Wipro Ltd and Hon'ble SC decision in the case of Dilip Kumar & Co.[2018] 95 taxmann.com 327 (SC) in addition to the case laws mentioned in the paper book. The Ld.DR relied on the following case laws:

- EBR Enterprises v/s Union of India (2019) 107 taxmann.com220(Bom)
- Nath Brothers Exim International Ltd vs union of India (2017) 80taxmann.com327(Delhi)

## **5. Our Analysis and Findings :**

5.1 We have heard both the parties and perused the records. As per section 80A(5) of the Act,no deduction under Chapter VIA shall be allowed if not claimed in the Return of Income. As per section 80AC No deduction shall be allowed unless the return is filed on or before the due date mentioned in the section 139(1) of the Act for the

Assessment year. Thus conjoint reading of section 80A and Section 80AC lays down the primary conditions as under :

- (1) no deduction under Section 80IB shall be allowed if the deduction is not claimed in the return of Income.
- (2) the return of Income shall be filed on or before the due date mentioned in the Section 139(1) of the Act.

5.2 Both these conditions need to be satisfied as these are primary conditions. If an assessee satisfies these primary conditions, then the AO shall verify eligibility of the assessee from the perspective of conditions mentioned in the respective subsections of Section 80IB.

5.3 It is an admitted fact that the Assessee had not claimed any deduction u/s 80IB(10) of the Act in the Return of Income. The said return has been digitally signed by Shankar Pandurang Jagtap, Partner of the assessee firm on 30/11/2014. It is also observed that the Auditor in the audit report in form 3CD (page 47 to 60 of the paper book) has not claimed any deduction u/s 80IB(10) of the Act. The Auditor has merely mentioned "Nil" in the relevant column. The actual relevant part of Audit Report in the paper book scanned as under:

33	Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).	NIL
Section under which deduction is claimed	Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc, issued in this behalf.	JAGTAP PATIL PROMOTERS & BUILDERS PARTNER

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K. D. BARGOTE & ASSOCIATES  
FRN-114143W  
PUNE-411005  
CHARTERED ACCOUNTANTS

JAGTAP PATIL PROMOTERS & BUILDERS  
PARTNER

5.4 It is also observed that the Auditor has duly filled in all the applicable columns of the audit report and it is also enclosed with the notes . Nowhere the auditor has mentioned about the deduction u/s 80IB(10) of the Act. The assessee has merely claimed that there was a mistake in filling return of income by the clerk. However, the assessee has not established the oral submission by filling any affidavit from the clerk. The Ld.AR could not rebut the fact that the Auditor has not claimed deduction in the Audit report relevant column. In the form 10CCB which is at Page 62 of the paper book, the date column is blank, hence we cannot be sure about date of issuance of the form 10CCB. However, merely filling the form 10CCB is not sufficient compliance .Form 10CCB does not mean return of Income. As per section 80A(5), no deduction under Chapter VIA shall be allowed if not claimed in the Return of Income. The filling of form 10CCB is as per Income Tax Rule 18BBB. The provisions of the Income Tax rules cannot override provisions of the Income tax Act. Therefore compliance of Income tax Rules 18BBB cannot be interpreted as compliance of Section 80A(5) of the Income Tax Act. The assessee claimed that it filed another corrected return of Income during the assessment proceedings claiming deduction u/s 80IB in physical format, however, the said return is not a valid return. The return should have been filed on or before the due date

mentioned in the section 139(1). The said corrected return was filed many years after the due date. Also, it was not filed electronically.

5.5 The Hon'ble Jurisdictional High Court in the case of EBR Enterprises v/s Union of India (supra) has held as under :

*Quote, "4. As is well-known, under Section 80-IB (10) of the Act, the Legislature has granted deductions in relation to income arising out of development of housing projects to the assesseees the fulfilling conditions contained therein. This provision is contained in Chapter - VI - A of the Act. Section 80A of the Act which is also contained in the same Chapter, pertains to deductions to be made in computing total income. Sub Section (5) was inserted in Section 80A of the Act by Finance (No.2) Act, 2009 with retrospective effect from 1st April, 2003. Sub Section (5) of Section 80A of the Act, reads under :*

*'80A(5) - Where the assessee fails to make a claim in his return of income for any deduction under Section 10A or Section 10AA or Section 10B or Section 10BA or under any provision of this Chapter under the heading "C.-Deduction in respect of certain incomes", no deduction shall be allowed to him thereunder'.*

*5. As per this provision, where the assessee fails to make a claim in his return of income for any deduction under Section 10A or Section 10AA or Section 10B or Section 10BA or under any provision of the said Chapter - VI A under the heading "C.-Deduction in respect of certain incomes", no deduction would be allowed to him under the said provision. In plain terms, this Sub Section (5) of Section 80A of the Act imposes an additional condition for claim of deduction in relation to income under any of the provisions mentioned therein. Apart from the requirement of fulfillment of individual set of respective conditions for the purpose of claiming the concerned deduction, this plenary condition requires that the claim ought to have made in the return of income by the assessee and if the assessee fails to make such claim in the return of*

income, such deduction shall not allowed to him under the relevant provision. Admittedly, in the present case, the Petitioners had not raised any such claim in the return of income. In plain terms, the claim of the Petitioners under Section 80-IB (10) of the Act would be hit by Sub Section (5) of Section 80A of the act.

6. We are conscious that in absence of the provision contained in Section 80A (5) of the Act, the Petitioners could have maintained the claim of deduction even before the CIT for the first time in Revision Application, though no such claim was made before the Assessing Officer, if from the facts on record, the Petitioners could sustain the said claim in law. This is very clear from the series of Judgments of various High Courts. Reference can be made to the decision of High Court of Gujarat in case of C. Parikh & Co. v. CIT [1980] 4 Taxman 224/122 ITR 610 In the said decision, the Court held that:

'it is clear that under Section 264, the CIT is empowered to exercise revisional powers in favour of the assessee. In exercise of this power, the CIT may, either of his own motion or on an application by the assessee, call for the record of any proceeding under the Act and pass such order thereon not being an order prejudicial to the assessee, as he thinks fit. Sub - ss. (2) and (3) of Section 264 provide for limitation of one year for the exercise of this revisional power, whether suo motu, or at the instance of the assessee. Power is also conferred on the CIT to condone delay in case he is satisfied that the assessee was prevented by sufficient cause from making the application within the prescribed period. Sub-s. (4) provides that the CIT has no power to revise any order under S. 264 (1) : (i) while an appeal against the order is pending before the AAC, and (ii) when the order has been subject to an appeal to the Tribunal. Subject to the above limitation, the revisional powers conferred on the CIT under S. 264 are very wide. He has the discretion to grant or refuse relief and the power to pass such order in revision as he may think fit. The discretion which the CIT has to exercise is undoubtedly to be exercised judicially and not arbitrarily according to his fancy. Therefore, subject to the limitation prescribed in S. 264, the CIT in exercise of his revisional power under the said section may pass such

*order as he thinks fit which is not prejudicial to the assessee. There is nothing in S. 264 which places any restriction on the CIT's revisional power to give relief to the assessee in a case where the assessee detects mistakes on account of which he was over assessed after the assessment was completed. We do not read any such embargo in the CIT's power as read by the CIT in the present case. It is open to the CIT to entertain even a new ground not urged before the lower authorities while exercising revisional powers. Therefore, though the Petitioner had not raised the grounds regarding under-totalling of purchases before the ITO, it was within the power of the CIT to admit such a ground in revision. The CIT was also not right in holding that the over-assessment did not arise from the order the assessment. Once the Petitioner was able to satisfy that there was a mistake in totaling purchases and that there was under- totalling of purchases to the tune of Rs.20,000, it is obvious that there was over-assessment. In other words, the assessment of the total income of the assessee is not correctly made in the assessment order and it has resulted in over-assessment The CIT would not be acting de hors the IT Act, if he gives relief to the assessee in a case where it is proved to his satisfaction that there is over-assessment, whether such over-assessment is due to a mistake detected by the assessee after completion of assessment or otherwise. In our opinion, the CIT has misconstrued the words "subject to the provisions of this Act" in S. 264 (1) and read a restriction on his revisional power which does not exist. The CIT was, therefore, not right in holding that it was not open to him to give relief to the Petitioner on account of the Petitioner 's own mistake which it detected after the assessment was completed. Once it is found that there was a mistake in making an assessment, the CIT had power to correct it under S. 264 (1). In our opinion, therefore, the CIT was wrong in not giving relief to the Petitioner in respect of over-assessment as a result of under-totalling of the purchases to the extent of Rs.20,000.'*

*7. This was reiterated in case of Ramdev Exports v. CIT [2002] 120 Taxman 315/[2001] 251 ITR 873 (Guj.) This Court also in case*

*of Danny Denzongpa v. CIT [2010] 7 taxmann.com 81/194 Taxman 415 [2012] 344 ITR 166 has taken a similar view.*

*8. However, the Petitioners are faced with the statutory provision contained in Sub Section (5) of Section 80A of the Act. The Petitioners' claim cannot therefore be accepted de hors the said statutory provision and ordinary principle of the wide powers of the CIT exercising revisional jurisdiction under Section 264 of the Act cannot be imported. What Sub Section (5) of Section 80A of the Act mandates is that, if the assessee fails to make a claim in his return of income for any deduction under the provisions specified therein, the same would not be granted to the assessee. This condition or restriction is not relatable to the Assessing Officer or the Income Tax Authority. This condition attaches to the claim of the assessee and has to be implemented by the Assessing Officer, CIT or the Appellate Tribunal as the case may be. There is no indication in Sub Section (5) of Section 80A of the Act as to why the restriction contained therein amounts to limiting the power of Assessing Officer but not that of Commissioner.*

*9. This issue can be looked from slightly different angle. In absence of the provision contained in Sub Section (5) of Section 80A of the Act has held by various decisions of the High Courts noted above, the CIT could entertain a fresh claim in Revision Application even if the claim was not made previously before the Assessing Officer. Provision contained in sub-section (5) of Section 80A is a statutory interdict which would prevent the CIT from granting any such claim in exercise of his revisional jurisdiction under Section 264 of the Act. As is often times stated, even High Court in exercise of Writ jurisdiction under Article 226 of the Constitution of India would not issue directions contrary to statutory provisions. Width of the powers of the CIT under Section 264 of the Act would not permit him to ignore the requirement of Section 80A(5) of the Act or allow the claim of an assessee in breach of the condition contained therein. We are therefore not in agreement that the expression given by the Income Tax Tribunal in case of Madhav Construction (supra) holding that the restriction contained in Sub*

*Section (5) of Section 80A of the Act is to restrict the power of Assessing Officer and not higher Income Tax Authorities.*

*10. The Petitioners having given up the challenge to the constitutionality of the retrospectivity to Section 80A (5) of the Act, cannot bring in the concept of the reading down of the provision in order to save it from unconstitutionally. In plain terms, our duty would be to enforce the provision contained in Sub Section (5) of Section 80A of the Act, as it stands in the statute book. The decision in case of Goetze (India) Ltd. (supra) was rendered in different background. The Supreme Court did not have any occasion to interpret the provision of Section 80A (5) of the Act in the context of the power of the CIT or the Appellate Tribunal*

*11. In the result, we do not find any merit in the Writ Petition, the same is therefore dismissed. ” Unquote.*

5.6 The Hon’ble SC in the case of Commissioner of Customs (Import), Mumbai vs Dilip Kumar & Company[2018] 95 taxmann.com 327 (SC) has held as under :

*Quote, “ 41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.” Unquote.*

5.7 Thus, Hon’ble Supreme Court has held that in case of exemption provisions the rule of strict interpretation shall be applied and in case of any ambiguity the benefit must go to revenue. The

Section 80IB exempts assessee from paying tax on full-filament of certain conditions mentioned in the section. Section 80A(5) puts the condition that no deduction shall be allowed if it is not claimed in the return of Income. Hon'ble Jurisdictional High court (supra) has also held that no deduction shall be allowed under section 80IB (10) if not claimed in the return of Income. In the case under consideration, it is an admitted fact that no deduction u/s 80IB(10) was claimed in the return of Income. It is also observed that the Auditor in the Audit report has mentioned deduction claimed under chapter VIA as NIL. Therefore, we are of the opinion that the Ld.CIT(A) has erred in allowing deduction u/s 80IB(10) of the act. Therefore, we hold that the assessee is not eligible for deduction u/s 80IB(10) of the Act as assessee has not claimed it in the return of Income. Accordingly, the Revenue's appeal is allowed.

5.8 Since, we have already held that the assessee is not eligible for deduction u/s 80IB(10) of the Act, we do not wish to examine the issue of date of completion of the project.

6. In the result, appeal of the Revenue is Allowed.

Order pronounced in the open Court on 24<sup>th</sup> November, 2022.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> Nov, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
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