

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT**

*(Conducted Through Virtual Court)*

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.85/RJT/2023  
Assessment Year :2019-20**

Shaildeep Engineering P.Ltd. C-1/38, GIDC, Aji Industrial Estate, Phase-1, Rajkot Sanosara B.O.,Jaliya Rajkot 360 003. PAN : AAECs 9245 E	Vs.	ADIT, CPC Delhi.
--	-----	---------------------

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/(Respondent)</b>
-------------------------------	--	--------------------------------

Assesseeby :	Shri Akash Goda, Ld.AR
Revenue by :	Shri B.D. Gupta, ld.Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **04/07/2023**  
घोषणा की तारीख /**Date of Pronouncement**: **07/07/2023**

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 27.12.201 pertaining to the Asst.Year 2019-20.

2. As transpires from orders of the authority below, the grievance of the assessee is vis-à-vis adjustment made to the income of the assessee in the intimation made under section 143(1) of the Act by way of disallowance of deduction claimed under section 80JJA of the Act amounting to Rs.2,02,500/- and disallowance of employees'

contribution to ESI and PF in terms of section 36(1)(va) amounting to Rs.2,81,444/-. The reasons for disallowance of deduction under section 80JJA being non-filing of necessary audit report in form No.10DA along with return of income and that for disallowance of employees' contribution to ESI & PF being late deposit of the same with the requisite funds.

3. With respect to the addition made on account of late deposits of employees' contribution to PF/ESI, the ld.counsel for the assessee conceded that the assessee had no case in view of the decision of the Hon'ble Apex Court in the case of Checkmate Services P. Ltd. v. CIT, (2022) 143 taxmann.com 178 as per which, even a single day's delay would attract disallowance as per the provisions of section 36(1)(va) of the Act. Therefore, the assessee's grievance against the order of the ld.CIT(A) upholding the adjustment made to the income of the assessee on account of addition of employees contribution to ESI/PF amounting to Rs.2,81,444/- made under section 36(1)(va) of the Act on account of delay in the deposit with the requisite funds is confirmed.

4. Vis-à-vis the aspect of disallowance of deduction claimed by the assessee under section 80JJA of the Act on account of non-filing of requisite audit report along with return of income, the ld.counsel for the assessee admitted that though the same was not filed along with return of income, it was however filed during the appellate proceedings before the ld.CIT(A). He therefore stated that filing of report along with the return of income was only a procedural requirement, the assessee's claim of deduction ought to have been allowed by the ld.CIT(A). He relied on the following case laws in support:

The ld.DR however vehemently opposed this contention of the assessee, pointing out that the assessee's claim would have been allowable only if the audit report had been filed in the assessment proceedings and not appellate proceedings.

5. We have heard both the parties, and we find merit in the contentions of the ld.counsel for the assessee on the issue. The issue relating to denial of deduction allowable under Chapter VIA of the Act, which includes section 80JJA of the Act, on account of non-filing of the requisite form, has been dealt by the Hon'ble Apex Court in the case of G M Knitting Industries (P) Ltd.(2016) 12 SCC 272, holding that it is a mere procedural requirement and if the same is filed during the assessment proceedings the assessee should not be denied the benefit of deduction. The appellate proceedings being continuation of the assessment proceedings, merely because the assessee filed the same during the appellate proceedings, it cannot be stated that ratio laid down by the Hon'ble Apex Court would not apply in such facts and circumstances. Even otherwise the Hon'ble Jurisdictional High Court in a recent decision in Association of Indian Panel Board Manufacturer vs DCIT in Tax Appeal No.655 of 2022 dated 21-03-2023 has, in case of exemption provisions contained in section 11/12 of the Act, requiring filing of Form 10B alongwith return of income for claiming exemption, held the requirement of furnishing of report to be a mandatory requirement while that of *filing* the report alongwith return of income to be a procedural requirement.

In view of the same, we hold that since the assessee did file requisite form for claiming deduction under section 80JJA to the first appellate authority, the assessee's claim of deduction ought to have been allowed by the ld.CIT(A). We, therefore, direct the AO to delete

the addition made under section 143(1) of the Act and allow the assessee's claim of deduction under section 80JJA of the Act to the tune of Rs.2,02,500/-. This ground of appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 7<sup>th</sup> July, 2023 at Ahmedabad.**

*Sd/-*

**(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

*Sd/-*

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad,dated 07/07/2023

*vk\**