IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: C: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1985/Del/2022
Assessment Year: 2019-20

Jaquar and Company P. Ltd., C-20 SMA, Co-Op, Indl. Estate, G T Karnal Road, Delhi 110033 **PAN AAACJ 2324 F**	vs.	The DCIT, Central Circle 19, Delhi 110027
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, Adv. Shri Somil Agarwal, Adv. Shri Daleep Bhatia, CA
For Revenue:	Shri Vivek Vardhan, Sr. DR

Date of Final Hearing :	07.08.2023
Date of Pronouncement :	31.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-27 New Delhi dated 27.06.2022 for AY 2019-20.

2. The ground of assessee is as follows:-

1. That the Ld. CIT(A) has erred in law and on facts in not allowing further deduction of Rs. 76,28,552/- u/s. 80JJAA as claimed by the assessee for the first time before CIT(A) and it is prayed that the further deduction of Rs. 76,28,552/- be allowed as claimed by the assessee.

3. The ld. counsel submitted that the ld. CIT(A) has erred in not allowing further deduction of Rs. 76,28,552/- u/s. 80JJAA of the I.T Act 1961 (for short 'the Act') on the grounds that this deduction does not fall under the prima facie adjustment. The ld. counsel submitted that additional ground was moved before ld. CIT(A) which has not been rejected. The ld. CIT(A) was not correct and justified in holding that deduction

u/s. 80JJAA of the Act, requires examination of fulfillment of various conditions as stipulated in that section and therefore, it cannot be allowed u/s. 143(1). The ld. counsel vehemently pointed out that the Ld. CIT(A) has erred in law and on facts in not allowing further deduction of Rs. 76,28,552/- u/s. 80JJAA as claimed by the assessee for the first time before CIT(A) and it is prayed that the further deduction of Rs. 76,28,552/- be allowed as claimed by the assessee. Therefore, the ld. counsel submitted that the remaining part of deduction u/s. 80JJAA of the Act may kindly be directed to be allowed to the assessee.

4. Replying to the above, the ld. Senior DR submitted that the amount claimed by the assessee u/s. 80JJAA of the Act, in the return of income has been allowed to the assessee and the assessee is seeking to allow additional deduction of Rs. 76,28,552/- without claiming the same in the return of income which is not permissible. Therefore the ld. CIT(A) was right in dismissing the claim of assessee by holding that the deduction u/s. 80JJAA of the Act requires examination of fulfillment of various conditions as stipulated in the section and the same cannot be allowed u/s. 143(1) of the Act.

5. Placing rejoinder to the above, the ld. counsel submitted that once additional ground has been admitted and has not been rejected and the first appeal is in continuation of assessment proceedings and when the power of ld. CIT(A) being co-terminus with the Assessing Officer then the ld. first appellate authority cannot be held as justified in denying the claim of assessee to allow further deduction of Rs. 76,28,552/- u/s. 80JJAA of the Act. Further placing reliance on the order of ITAT Delhi Bench dated 07.02.2023 in ITA no. 5701/Del/2016 for AY 2012-13 in the appeals of *DCIT vs. Synergy Waste Management P. Ltd.* wherein referring to the order of ITAT Nagpur Bench in the case of *Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha [2023] 147 taxmann.com 449 (Nagpur-Trib.).* The ld. counsel submitted that if any part of deduction u/s. 80JJAA of the Act could not be claimed in the return of income then also the assessee is entitlement to claim the same even after filing return of income

without claiming the same in the return. Therefore the additional claim of deduction u/s. 80JJAA of the Act may kindly be allowed to the assessee.

6. On careful consideration of above submission, first of all, from the orders of the authorities below we note that the assessee before the ld. CIT(A) raised additional ground no. 5 seeking allowability of further deduction of Rs. 76,28,552/- u/s. 80JJAA of the Act being 30% of the additional employee cost for second year, being the emoluments paid to the employees who got employed in FY 2016-17 but completed their 240 days of employment in FY 2017-18. Placing reliance on the judgment of Hon'ble Karnataka High Court in the case of *CIT vs. Texas Instruments India P Ltd. reported as [2021] 127 taxmann.com 59 (Kar.)* the assessee claimed deduction of said amount u/s. 80JJAA of the Act. Undisputedly rather admittedly the assessee did not claimed the said additional amount neither in its return of income nor in the form 35 while filing appeal before ld. CIT(A). In fact the said claim was first time made before ld. CIT(A) by way of raising addition ground n. 5 through vide application dated 17.06.2021 which was filed on 21.06.2021 with the office of CIT(A)-27, New Delhi after pronouncement of judgement on 21.04.2021 by Hon'ble Karnataka High Court in the case of *CIT vs. Texas Instruments India P Ltd. (supra).*

7. From relevant part of first appellate order we note that the ld. CIT(A) though admitted the additional ground no. 5 of assessee but has dismissed the same only by observing that u/s. 143(1) only those adjustments should be made where there are no two opinions. He also noted that any fresh claim of allowability of additional deduction u/s. 80JJAA of the Act requires examination of fulfillment of various conditions as stipulated in the said section and thus the same cannot be allowed u/s. 143(1) of the Act. In our considered opinion when the appellant itself in its application for admission of additional ground as well as in the written submission vide dated 05.05.2022 in para 1.2 to 1.2.2 clearly stated that the said claim was neither included in the return of income nor while filing first appeal before the ld. CIT(A) and the assessee found itself eligible for claiming additional deduction u/s. 80JJAA of the Act after pronouncement of judgment of Hon'ble Karnataka High Court in the case of *CIT vs. Texas Instruments*

India P Ltd. (supra) then obviously such claim was not a subject matter of intimation order u/s. 143(1) of the Act and the ld. CIT(A) enjoying the co-terminus powers with the Assessing Officer should have entertain and examine the additional claim of assessee seeking additional deduction u/s. 80JJAA of the Act.

8. At this juncture, we also find it necessary and appropriate to consider the order of the ITAT, Nagpur Bench (AT e-Court, Pune) in the case of *Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO (supra)* wherein the coordinate Bench of the Tribunal, after considering the provisions of section 80AC of the Act and considering the judgements of the Hon'ble Supreme Court in the case of *CIT vs. GM Knitting Industries Pvt. Ltd., (supra) and PCIT vs. Wipro Ltd., 446 ITR 1 (SC)* held as follows: 15 16

> *15. Now, we proceed to consider the order of the ITAT, Nagpur Bench (AT e-Court, Pune) in the case of Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO (supra) wherein the coordinate Bench of the Tribunal, after considering the provisions of section 80AC of the Act and considering the judgements of the Hon'ble Supreme Court in the case of CIT vs. GM Knitting Industries Pvt. Ltd., (supra) and PCIT vs. Wipro Ltd., 446 ITR 1 (SC) held as follows:*
>
> > *"5. I have heard both the sides and scanned through the relevant material on record. It is an undisputed fact that the assessee did not file return of income for the year under consideration either originally or pursuant to notice u/s 148. Computation of income was filed during the course of assessment proceedings in which the deduction u/s 80P was claimed. Whereas, the authorities below have canvassed a view that the assessee violated section 80A(5) and hence the deduction was not available; the assessee has made out a case that section 80A(5) does not apply where no return is furnished and rather it is section 80AC which would govern the case and because of omission of section 80P in the list of sections given in section 80AC, the deduction should be granted. In order to appreciate the contention of the ld. AR, it would be apposite to reproduce section 80AC, before its substitution by the Finance Act, 2018 w.e.f 1.4.2018, which reads as under:*
> > *" Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80- IAB or section 80-IB or section 80- IC or section 80-ID or section 80-IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."*
> >
> > *6. On going through the above provision, it is crystallized that the requirement of filing return before the time u/s 139(1) is sine qua non for claiming deduction under the six sections (80-IA or 80- IAB or 80-IB or 80-IC or 80-ID or 80-IE). In*

other words, if a return is filed belatedly u/s 139(4) or under any other section, claiming deduction under any of the six sections, the writ of the section 80AC will operate to prevent its granting. This section does not deal with granting or non-granting of deduction under any other sections of Part C of Chapter VI-A, including section 80P. Thus, to infer that since section 80AC does not cover section 80P, the latter section is immune from any other statutory requirement, is wholly incorrect. In fact, section 80AC is alien to deduction under any section except the specified six sections.

7. Now, I turn to section 80A(5), which has been pressed into service by the AO for denying the benefit of deduction u/s 80P of the Act, which runs as under:
`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.-- Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder.'

8. This section provides that where an assessee fails to make a claim in his return of income for any deduction, amongst others, the sections enshrined in Part C to Chapter VI-A (including section 80P and six sections as given in section 80AC), then the deduction shall not be allowed. A perusal of the mandate of section 80A(5) divulges that the claiming of deduction under various sections of part C of Chapter VI-A in the return of income is essential. The reference in this provision is only to return of income, without any further qualification. The return may be u/s 139(1) or 139(4) or any other relevant section.

9. On a conjoint reading of sections 80A(5) and 80AC, it gets manifest that claiming of deduction under various sections of Part C of Chapter VIA in the return of income is essential. However, an additional requirement for claiming deduction under sections 80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE is that such deduction must be claimed in a return filed u/s 139(1) of the Act. In one sense, section 80AC is an exception to section 80A(5), making the mandate of the latter section more stringent in the prescribed cases. Whereas other deductions of Part C of Chapter VI-A, including section 80P, can be claimed in the return filed under any section, including section 139(4); the six deductions as referred to in section 80AC must necessarily be claimed in the return filed u/s 139(1) only. Ex consequenti, the contention that since section 80P is not covered under section 80AC, the deduction under this section becomes automatically allowable without adhering to the requirement of section 80A(5), is bereft of force and hence dismissed.

10. Now I advert to the requirements of section 80A(5), which stipulates that no deduction under other sections including 80P shall be allowed if the assessee fails to make such a claim in the return of income. Thus, there are twin conditions, viz., first, claiming deduction u/s 80P and second, claiming such deduction in the return of income. There is no dispute on the first condition, which has been satisfied in this case as the assessee did claim the deduction albeit during the course of assessment proceedings. The whole controversy revolves around the second condition, which says that the claim should be made in the return of income. The assessee in the extant case did not file any return of income, but

made a claim of the deduction in computation of income filed during the course of the assessment proceedings. The moot question is whether the requirement of making a claim in the return of income is a mandatory or a directory requirement. If it is held as mandatory, then the claim must be made in the return of income, failing which the benefit of deduction would be lost. Au contraire, if it is held as directory, then the claim made either in the return of income or in any manner before the conclusion of assessment proceedings, as is the case under consideration, would validate the entitlement.

11. The Hon'ble Supreme Court in CIT vs. G.M. Knitting Industries (P.) Ltd. (2015) 376 ITR 456 (SC) came across a situation in which the assessee claimed additional depreciation in Form 3AA but the Form was not furnished along with the return of income. Such Form was submitted during the course of assessment proceedings. The AO denied the claim on the ground that the Form 3AA was required to be statutorily filed along with the return of income. The view of the AO was reversed by the Tribunal as well as the Hon'ble High Court by holding that even if the Form was filed during the course of assessment proceedings, it amounted to sufficient compliance. The Hon'ble Supreme Court, taking note of the judgment in CIT Vs. Shivanand Electronics (1994) 209 ITR 63 (Bom), approved the view of the Hon'ble High Court having the effect that the requirement of filing Form 3AA was a necessary ingredient for claiming additional depreciation, but the timing of filing the Form was a directory requirement, which was fulfilled on filing it even during the course of assessment proceedings. The Hon'ble Bombay High Court in Shivanand Electronics (supra) dealt with the requirement of filing audit report for the purpose of claiming deduction u/s 80J, which required that the report should be filed "along with return of income" under s. 80J(6A). It held that such requirement of filing the audit report along with the return of income was not mandatory, but directory in the sense that if assessee complied with the same before completion of assessment, deduction under s. 80J, on the basis of such report, was allowable.

12. Recently, the Hon'ble Supreme Court was confronted with the claim of benefit u/s 10B in Pr.CIT vs. Wipro Limited (2022) 446 ITR 1 (SC). The assessee furnished original return taking the benefit of section 10B and did not carry forward the loss. Thereafter, a revised return was filed foregoing the claim of deduction u/s 10B. The AO rejected the withdrawal of exemption under Section 10B by holding that assessee did not furnish the necessary declaration in writing before due date of filing return of income, which was an essential requirement for not claiming the benefit of section 10B. The Hon'ble High Court decided the issue in favour of the assessee by holding that the requirement of filing the declaration was mandatory but filing it along with the return of income u/s 139(1) was a directory requirement. The matter was brought by the Revenue before the Hon'ble Supreme Court. The assessee, inter alia, relied on the judgment of the Apex Court in G.M. Knitting Industries (supra). Their Lordships held that the requirement of filing the report in support of deduction u/s 10B was not a directory but a mandatory requirement. It further held that both the conditions of - filing the declaration and filing it before the time limit u/s 139(1) - were mandatory and had to be cumulatively satisfied. Rejecting the reliance on G.M. Knitting Industries (supra), the Hon'ble Supreme Court held that that

decision was relevant in the context of deduction provisions and not the exemption provisions as given under Chapter III of the Act. As the Hon'ble Summit Court in Wipro Limited (supra) was dealing with section 10B, falling under Chapter III of the Act, it held qua G.M. Knitting Industries (supra) that: `Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VI-A of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VI-A, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VI-A shall be applicable while considering the claim under Section 10B (8) of the IT Act.'

13. On going through the judgments in G.M. Knitting Industries (supra) in juxtaposition to Wipro Limited (supra), the principle which emerges is that the fulfillment of requirement of making a claim for exemption under the relevant sections of Chapter III in the return of income is mandatory, but when it comes to the claim of a deduction, inter alia, under the relevant sections of Chapter VI-A, such requirement becomes directory. In the latter case, the making of a claim even after the filing of return but before completing the assessment, meets the directory requirement of making a claim in the return of income. The instant case involves deduction u/s 80P and hence, would be governed by the principle laid down in G.M. Knitting Industries (supra), as per which the making of a claim of deduction is mandatory but the timing is directory. Even if the claim is made during the course of assessment proceedings, such a claim has to be allowed. In view of the foregoing discussion, I am satisfied that the authorities below were not justified in rejecting the assessee's claim of deduction u/s 80P only on the ground that such a claim was not made in the return but during the course of assessment proceedings. The impugned order is ergo set aside and the matter is remitted to the file of the AO for examining the claim of deduction u/s 80P on merits.

16. In view of the foregoing, first of all, from the proposition rendered by ITAT, Pune Bench in the case Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO (supra), we respectfully note that the coordinate Bench of the Tribunal, after considering the proposition rendered by the Hon'ble Supreme Court in the cases of G.M. Knitting Industries (supra) and Wipro Ltd. (supra) held that the Chapter III and Chapter VI-A of the Act operate in different realms and principles of chapter III, which deals with 'incomes which did not form part of total income' cannot be equated with mechanism provided for deductions in Chapter VI-A which deals with 'deductions to be made in computing the total income.' Therefore, it was held that the fulfillment of requirement for making a claim of exemption under the relevant sections of Chapter III in the return of income is mandatory, but, when it comes to the claim of a deduction, inter alia, under the relevant section of Chapter VI-A, such requirement become directory. In a case where the assessee claims deduction under Chapter VI-A of the Act, the making of a claim even after filing of return, but, before completion of the assessment proceedings and passing of assessment order meets the directory requirement of making a claim in the return of income.

9. In view of the foregoing, first of all, from the proposition rendered by ITAT, Pune Bench in the case Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO (supra), we respectfully note that the coordinate Bench of the Tribunal, after considering the proposition rendered by the Hon'ble Supreme Court in the cases of G.M. Knitting Industries (supra) and Wipro Ltd. (supra) held that the Chapter III and Chapter VI-A of the Act operate in different realms and principles of chapter III, which deals with 'incomes which did not form part of total income' cannot be equated with mechanism provided for deductions in Chapter VI-A which deals with 'deductions to be made in computing the total income.' Therefore, it was held that the fulfillment of requirement for making a claim of exemption under the relevant sections of Chapter III in the return of income is mandatory, but, when it comes to the claim of a deduction, inter alia, under the relevant section of Chapter VI-A, such requirement become directory.

10. In the present case, undisputedly the assessee did not included the additional claim u/s. 80JJAA of the Act amounting to Rs. 76,28,552/- neither in the return of income nor in the form 35 while filing first appeal before the ld. CIT(A) and the same was made before the ld. CIT(A) by raising additional ground no. 5 on 21.06.2021 after pronouncement of judgment by Hon'ble Karnataka High Court in the case of *CIT vs. Texas Instruments India P Ltd. (supra)* rendering preposition in favour of the assessee. From first appellate order we further note that the same was dismissed by the ld. CIT(A) by passing a cryptic order and on the strength of irreverent and perverse findings as discussed above.

11. In a case where the assessee claims deduction under Chapter VI-A of the Act, the making of a additional claim u/s. 80JJAA of the Act, on the strength of subsequent order of Hon'ble High Court, after filing of return of income then the same can be considered and adjudicated despite the same is not forming part of claim of assessee u/s. 80JJAA of the Act. In the present case also though the assessee did not make part of claim of deduction u/s. 80JJAA of the Act but after noticing judgment of Hon'ble Karnataka High Court (supra) the assessee came to know about its entitlement

regarding additional claim of deduction under the said provision then the same can be claimed even the same was not forming part of claim u/s. 80JJAA of the Act in the return of income. Our conclusion gets support from the order of ITAT Pune Bench in the case of *CIT vs. Texas Instruments India P Ltd. (supra).* Accordingly we have no hesitation to hold that the assessee is entitled to make additional claim of deduction u/s. 80JJAA of the Act on the strength of judgment of Hon'ble High Court of Karnataka (supra) even though the same was not included while filing return of income. Our conclusion gets strong support from the order of ITAT Delhi Bench in the case of Synergy Waste Management Pvt. Ltd. (supra).

12. However, we are in agreement with the observations with the ld. CIT(A) in para 6.4 of the first appellate order that any fresh claim of allowability of additional deduction u/s. 80JJAA requires examination of quantum as well as fulfillment of various condition as stipulated in the said beneficiary provision therefore the issue is restored to the file of Assessing Officer for limited purpose that is examination of quantum as well as fulfillment of conditions regarding allowability of the additional claim prescribed in the said provision as the Assessing Officer had no opportunity to examine the same during assessment proceedings. Needles to say that the Assessing Officer will allow due opportunity of hearing to the assessee during the proceedings and adjudicate the issue without being influenced with the first appellate order.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.08.2023.

Sd/-	Sd/-
(DR. B.R.R. KUMAR)	(CHANDRA MOHAN GARG)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 31st August, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi