

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **36/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2016-17

M/s. TVS Srichakra Limited,
7-b, TVS Building,
West Veli Street,
Madurai – 625 001.

[PAN: AACT-5557-G]

Deputy Commissioner of
v. Income Tax,
Corporate Circle,
Madurai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. N.V. Lakshmi, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 29.11.2023

घोषणा की तारीख/Date of Pronouncement

: 29.11.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 18.11.2021 and pertains to assessment year 2016-17.

2. The assessee has raised the following grounds of appeal:

"1. The order of the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi['CIT(A)'] is against

the facts and circumstances of the case, law and the principles of equity and nature justice.

2. The CIT(A) erred in holding that the appellant had lost eligibility to claim benefits of section 80IC of the Act by rejecting the appeals for an amount of Rs.35,46,93,234. The CIT(A) failed to appreciate that the requirement to e-file Form 10CCB along with the return of income is only directory and not mandatory. The CIT (A) erred in dismissing the appeal of the appellant on the ground that Form 10CCB is note-filed.

3. The CIT(A) ought to have appreciated that the appellant had duly obtained Form 10CCB before filing the return of income and therefore is eligible for deduction under section 80IC.

4. The CIT(A) ought to have considered the Form 10CCB submitted by the appellant during the course of appellate proceeding and allowed the appeal of the appellant.

5. The CIT(A) erred in disallowing deduction under section 80IC of the Act claimed by the appellant in its return of income on the ground that the appellant had failed to claim the same in its return of income.

6. The CIT (A) erred in disallowing deduction under section 80IC of the Act applying provision of section 80A / 80AC. The CIT (A) failed to appreciate that the appellant had filed return of income within time i.e on or before 30.11.2016. The CIT(A) erred in rejecting the claim of the appellant on the ground that the appellant had filed a belated return.

7. The CIT(A) erred in not following the judgement of various Courts, particularly the binding judgement of the Jurisdictional High Court in the case of CIT vs Jayant Patel [2001] 248 ITR 199.

8. The appellant craves the leave of the Hon'ble Tribunal to adduce additional grounds in support its contentions before and during the course of hearing of this appeal."

3. The brief facts of the case are that, the assessee has filed its return of income for the assessment year 2016-17 on

29.11.2016, admitting a total income of Rs. 2,17,65,64,610/-. The return of income filed by the assessee has been processed and intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was issued on 11.02.2018 and determined total income of Rs. 2,47,55,23,880/-. The Deputy Commissioner of Income-tax (CPC), has not allowed deduction of Rs. 35,46,93,234/- claimed u/s. 80IC of the Act, for not filing audit report in Form no. 10CCB along with return of income. The assessee carried the matter in appeal before the first appellate authority and argued that, it has obtained audit report in Form no. 10CCB on 29.11.2016, but not filed said audit report along with return of income. Since, the assessee has obtained audit report on or before filing return of income, just because for not filing said report, deduction claimed u/s. 80IC of the Act cannot be denied. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of provisions of section 80A(5) r.w.s. 80AC of the Act, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards disallowance of deduction claimed u/s. 80IC of the Act, on the ground that as per provisions of section 80A of the Act, the assessee should file audit report in Form no.

10CCB along with return of income filed on or before due date prescribed u/s. 139(1) of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, Ms. N.V. Lakshmi, Advocate, referring to petition filed by the assessee dated 07.11.2023 before the Chairman, Central Board of Direct Taxes (CBDT), for condonation of delay in filing Form no. 10CCB, submitted that the assessee has filed a petition for condonation of delay and thus, till such time the appeal filed by the assessee may be kept in abeyance. She further submitted that, alternatively the appeal may be set aside to the file of the Id. CIT(A) with a direction to pass order on merit, after the application filed by the assessee before the CBDT is disposed off.

5. The Id. DR, Shri. Nilay Baran Som, CIT, supporting the order of the Id. CIT(A) submitted that, as per provisions of section 80A r.w.s. 80AC, unless the appellant claims deduction in the return of income filed for the assessment year and also filed relevant audit report in prescribed form, deduction claimed u/s. 80IC of the Act, cannot be allowed. The

Assessing Officer and the Id. CIT(A), after considering relevant facts has rightly denied the benefit of deduction u/s. 80IC of the Act and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that the assessee did not file Form no. 10CCB along with return of income on or before due date for filing return for the assessment year 2016-17. As per provisions of section 80A(5) r.w.s. 80AC of the Act, it is undoubtedly clear that unless deduction is claimed under the head "Deductions in respect of certain incomes" while filing return of income and also necessary forms certifying eligibility for claiming such deduction is filed along with return of income, the assessee cannot claim any deduction. In this case, the assessee has claimed deduction u/s. 80IC of the Act, but did not file Form no. 10CCB along with return of income on or before the due date for filing the return of income. Therefore, we are of the considered view that, the assessee is not entitled for claiming deduction u/s. 80IC of the Act and thus, in our considered view there is no error in the reasons

given by the Assessing Officer and the Id. CIT(A) to reject the claim of the assessee.

7. In so far the arguments of the assessee for keeping the appeal in abeyance and alternatively to set aside the appeal to the file of the Assessing Officer, on the ground that the appellant has filed a petition before the CBDT for condoning the delay in filing Form no. 10CCB of the Act, we find that the assessee neither filed required Form 10CCB before the Assessing Officer on or before he completes the assessment u/s. 143(3) of the Act, nor filed said Form before the CIT(A) during appellate proceedings. Further, the appellant has filed petition before the CBDT on 07.11.2023 i.e., after a gap of seven years without there being any explanation as to why it could not file the petition for condonation of delay before the CBDT within reasonable time. In our considered view, the assessee failed to prove its bonafideness in filing relevant condonation petition. Therefore, we are of the considered view that the alternative plea made by the Ld. Counsel for the assessee cannot be accepted and thus, rejected.

8. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the Id. CIT(A) to sustain additions made by the Assessing Officer towards disallowance of deduction claimed u/s. 80IC and thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the assessee.

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 29th November, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य /**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 29th November, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF