

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 326/CHD/2019

निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT, Circle, Yamuna Nagar.	बनाम VS	M/s Symbiosis Pharmaceuticals P.Ltd., 37/1, Kamboj Colony, Near Ravi Metal, Jagadhri, Yamuna Nagar.
स्थायी लेखा सं./PAN /TAN No: AAJCS7595N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Dhruv Goyal, CA

राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT-DR

तारीख/Date of Hearing : 19.10.2023

उद्घोषणा की तारीख/Date of Pronouncement : 04.01.2024

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

This is an appeal filed by the Revenue against the order of the Ld. CIT(A) Panchkula dated 15.01.2019 pertaining to assessment year 2014-15.

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

“1. Whether on the facts and in the circumstances of the case, the CIT(A) is right in deleting the addition made by the AO on account of disallowance of deduction u/s 80IC of the I.T. Act, 1961.

2. *Whether on the facts and in the circumstances of the case, the CIT(A) is right in not appreciating the provisions of section 80AC of the I.T. Act, 1961 which provides that in order to claim deduction u/s 80IC of the I.T. Act, 1961, the assessee was required to file its return of income on or before the due date as prescribed in section 139(1) of the I.T. Act, 1961 whereas the assessee has filed its return of income after the due date.*

3. *Whether on the facts and in the circumstances of the case, the CIT(A) is right in holding that even without fulfilling the statutory conditions for claiming deduction u/s 80IC r.w.s. 80AC of the I.T. Act, 1961, the assessee is entitled to deduction.*

4. *Whether on the facts and in the circumstances of the case, the CIT(A) is right in deleting the addition made by the AO on account of low gross profit declared by the assessee.”*

3. Ground Nos. 1 to 3 relate to a single issue i.e. the challenge of the Department against the action of the Id. CIT(A) in deleting the disallowance of Rs.1,43,23,507/- made by the AO u/s 80IC of the Income Tax Act, 1961. In the assessment proceedings, the AO, referring to the provisions of Section 80AC of the Act, show caused the assessee to justify the claim made u/s 80IC, where the return of income for the year under consideration had not been filed on or before the due date, i.e. 30.09.2013. The assessee submitted that the Income Tax Return alongwith submission of income had been filed on 31.03.2014; that the Audit Report, through which, deduction u/s 80IC could

be availed, was filed on 28.10.2013; that the book profit report in Form 29B had been submitted on 29.09.2013 and the Tax Audit Report in form 3CA/3CD had been filed on 29.09.2013; and that moreover, the end of the year i.e. 31st March of the relevant assessment year was also the due date u/s 139 without penalty and the Income Tax Return have been submitted on 31.03.2014.

4. The Assessing Officer observed that the assessee had itself admitted that the return of income for the year under consideration had been filed beyond the due date of filing of return; that moreover, the Audit Report in Form No. 10CCB had been filed on 29.11.2014 and was also belated; that the contention of the assessee that the Audit Report in Form 3CA and 3CD had been filed in time, was not being accepted because the date of filing of Audit Report had nothing to do with the date of filing of return of income. The AO observed that the provisions of Section 80AC clearly indicate that the return of income for claim of deduction u/s 80IC must be furnished on or before the due date specified u/s 139(1) of the Act; and that since the assessee could not justify its claim, the deduction claimed

u/s 80IC was being disallowed and added to the income of the assessee.

5. The ld. CIT(A), by virtue of the impugned order, deleted the disallowance, bringing the Department in appeal before us by way of Ground Nos. 1 to 3.

6. Challenging the impugned order, the ld. DR has contended that on the facts and in the circumstances of the case, the CIT(A) is right in deleting the addition made by the AO on account of disallowance of deduction u/s 80IC of the I.T. Act, 1961; that on the facts and in the circumstances of the case, the CIT(A) is right in not appreciating the provisions of section 80AC of the I.T. Act, 1961 which provides that in order to claim deduction u/s 80IC of the I.T. Act, 1961, the assessee was required to file its return of income on or before the due date as prescribed in section 139(1) of the I.T. Act, 1961 whereas the assessee has filed its return of income after the due date; and that on the facts and in the circumstances of the case, the CIT(A) is right in holding that even without fulfilling the statutory conditions for

claiming deduction u/s 80IC r.w.s. 80AC of the I.T. Act, 1961, the assessee is entitled to deduction.

7. On the other hand ld. Counsel for the assessee has placed strong reliance on the impugned order.

8. We have heard the parties and have perused the material on record regarding this issue. We find that while deleting the disallowance made by the AO u/s 80IC of the Act, the ld. CIT(A) has noted that the ld. CIT(A) has observed for the immediately preceding assessment year, i.e. assessment year 2013-14, in the assessee's own case, vide order dated 28.10.2016. In the said order, for assessment year 2013-14, the ld. CIT(A) had observed as follows :

5.2 I have gone through the facts of the case and written submission filed by the appellant. This issue is decided by my predecessor in the appellant's own case for the A.Y. 2013-14 in Appeal No. 259/YN/15-16 dated 28.10.2016. The finding is reproduced as under:-

"5.2 I have gone through the facts of the case and -written submission filed by the appellant. It is noted that the appellant filed a return of income on 31.03.2014 with claim of deduction u/s 80IC. The return was filed beyond the due date, i.e. 30.09.2013, prescribed under sub section (1) of section 139 of the Act. The audit report for claim of deduction in Form No. 10CCB was also filed belated, i.e. on 28.10.2013. Although, the appellant has claimed filing of audit report in Form 3CA/3CD and

book profit result in Form 29B on 29.09.2013, however, no evidence regarding e-filing of such audit reports were submitted either before the AO or during the appellate proceedings. Moreover, filing of audit report is independent and the claim of deduction is allowable only on the basis of furnishing of return of income. The AO has disallowed the claim of deduction u/s 80IC by invoking the provisions u/s 80AC of the Act. On the other hand, the appellant, though, admitted that return of income was filed belated, but claims for deduction on the ground that the due date of filing of return be allowed as per section 139(4) in place of date as per section 139(1).

5.3 After considering the facts and submission, I find that the provisions of section 80AC stipulates that any deduction is admissible u/s 80IA or 80IAB or 80IB or 80IC or 80ID or 80IE if the return of income for such assessment year has been furnished on or before the due date specified under sub section (1) of section 139. The appellant's reliance on the judgment of Hon'ble Supreme Court in Kullu Valley Transport Company (supra) and on judgments of Hon'ble Punjab & Haryana High Court in Jagriti Aggarwal (supra) and Jagtar Singh Chawla (supra) are not applicable on the facts on the instant case as the judgments are on consideration of return filed under sub section (4) of section 139 accepted as return filed u/s 139 of the Act. Whereas, the provisions of section 80AC clearly mandates for allowing the deduction unless the return of income has been filed as per due date prescribed under sub section (1) of section 139 of the Act.

5.4 In this regard, a reference is made to the decision of Hon'ble Supreme Court in the case of Prakash Nath Khanna Vs. CIT 266ITR 1 on the interpretation of 'due date' as per provisions contained in section 139(1) and 139(4) of the Act. The Hon'ble Supreme Court observed as under :-

"Interpretation sought to be put by the appellants on section 276CC to the effect that, if a return is filed under sub section (4) of section 139, it would mean that the requirements of sub section (1) of section 139 are fulfilled, cannot be accepted.

One of the significant terms used in section 276CC is 'in due time'. The time within which the return is to be furnished is indicated only in sub section (1) of section 139 and not in sub section (4) of section 139. That being so, even if a return is filed in terms of sub section (4) of section 139, that would not dilute the infraction in not furnishing the return in due time as prescribed under sub section (1) of section 139. Otherwise, the use of the expression 'in due time' would lose its relevance and it cannot be said that the said expression was used without any purpose. Before substitution of the expression 'clause (i) of sub section (1) of section 142' by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989, the expression used was 'sub section (2) of section 139' at the relevant point of time. The Assessing Officer was empowered to issue a notice requiring furnishing of a return within the time indicated therein. That means the infractions which are covered by section 276CC relate to no furnishing of return within the time in terms of sub section (1) or indicated in the notice given under sub section (2) of section 139. There is no condonation of the said infraction, even if a return is filed in terms of sub section (4), Accepting such a plea would mean that a person who had not filed a return within the due time as prescribed under sub section (1) or (2) of section 139 would not get benefit by filing the return under section 139(4) much later. This cannot certainly be the legislative intent.

If the plea of the appellants was accepted, it would mean that in a given case where there is infraction and where a return has not been furnished in terms of sub section (1) of section 139 or even in response to a notice issued in terms of sub section (2), the consequences flowing from non-furnishing of return would get obliterated. At the relevant point of time, section 139(4)(a) permitted filing of return where return had not been filed under sub section (1) and sub section (2). The time limit was provided in clause (b). Section 276CC refers to 'due time' in relation to sub sections (1) and (2) of section 139 and not to sub section (4). Had the legislature intended to cover sub section (4) also, use of expression 'section 139' alone would have sufficed. It could not be said that the legislature without any purpose or intent specified only the sub sections (1) and

(2) and the conspicuous omission of sub section (4) has no meaning or purpose behind it. Sub section (4) of section 139 cannot by any stretch of imagination control operation of sub section (1) wherein a fixed period for furnishing the return is stipulated. The mere fact that for purposes of assessment and carrying forward and to set off losses it is treated as one filed under sub section (1) or (2) cannot be pressed into service to claim it to be actually one such, though it is factually and really not extending it beyond its legitimate purpose. "

5.5 Further, I place reliance on decisions of Hon'ble ITAT, where similar claim u/s 80IB/80IC were not allowed in case of return filed beyond the prescribed due date u/s 139(1) of the Act. The Hon'ble ITAT Chennai Bench in *P Bhavani Vs. ACIT [2015] 61 taxmann.com 251* held that since assessee filed

return belatedly, the assessee was not entitled for deduction u/s 80IB of the Act. The Hon'ble ITAT, Chennai Bench in DCIT Vs. Sucram Pharmaceuticals [2015] 58 taxmann.pom 138 held that for non filing of return before due date without a plausible reasons, the assessee would be disentitled for claiming deduction u/s 80IC of the Act. Further, The Hon'ble ITAT, Mumbai Bench in Dwarkasdas G Panchmatiya Vs. ACIT [2015] 57 taxmann.com 2 held that assessee would be deemed to have furnish valid return of income if duly verified Form ITR-V is filed within 15 days; after e-filing of return, if ITR-V is filed thereafter, no deduction for section 80IB etc. would be allowed. Since, the physical return was submitted after expiry of date specified u/s 139(1), the assessee's claim for deduction u/s 80IB(10) was rightly rejected by Revenue Authorities. Further, the jurisdictional Hon'ble TTAT, Chandigarh in Lakshmi Energy & Foods Ltd. Vs. ACIT [2014] 44 taxmann.com 248 held that the assessee as per provisions of section 80AC is not entitled to avail deduction u/s 80 IB unless and until he files return with such claim within due date as provided u/s 139(1) of the Act.

5.6 Therefore, in view of the facts of the case and the decisions of Hon'ble Tribunal, the appellant is not entitled for claim of deduction u/s 80IC as the return of income was not filed on or before the due date as prescribed under sub section (1) of section 139 of the Act. Thus, this ground of appeal is dismissed. "

8.1 The ld. CIT(A), in the impugned order, has further observed that in the appeal filed by the assessee against the aforesaid order of the ld. CIT(A) for assessment year 2013-14, the Tribunal had, in principle allowed the claim of the assessee u/s 80IC of the Act, in the return filed u/s 139(4). In the said order, the Tribunal observed as under :

"The legal position that the relevant provision is a machinery provision, applying the principles are that being directed in nature enables authorities to consider the reasons, consistently on record for late filing of the return. A perusal of the record shows that the affidavit of Shri Jagbir Singh S/o Shri Om Pal, Managing Director of the assessee company is on record. Perusal of the same shows that it has been explained that on account of collusion of the tax consultant i.e. chartered accountant Shri A.S. Malhotra in regard to allotment of shares in another company i. e. Saitec Medical Pvt. Ltd. we are in the assessee company had a major shareholding resulting in filing a suite before the Company Law Board etc. and in connivance of the tax consultant with Mr. Bhalotia and his son who were having minor shareholding in M/s Saitech, the routine exercise normal? done by the tax consultant without any follow up for supervision of digital signatures had been interested to the tax consultant for uploading of documents etc. in the income Tax portal, the mischief was occurred.

.....

6.5 Accordingly, in the peculiar facts and circumstances of the case, as we have discussed at length and seen from the record, we are of the view that the delay in filing of the return in the facts of the present case was for reasons beyond the control of the assessee and in fact, there was reasonable cause in the late filing of the return within the extended period statutorily available under sub-section (4) of section 139 of the Act.

.....

6.7 Accordingly, considering the peculiar facts and circumstances of the case and position of law as canvassed by the parties before the Bench, we hold that the claim of the assessee could not be ousted on the fact that the return was filed within the extended period of sub section (4) of section 139. Accordingly, we hold that the assessee deserves to succeed in principle. The matter is remanded to the AO for the purposes of verification. Needless to say that the assessee shall be given a reasonable opportunity of being heard. "

8.2 The ld. CIT(A) has further noted in the impugned order that in pursuance of the aforesaid Tribunal order dated 04.10.2017, for assessment year 2013-14, the AO vide order dated 18.10.2018, withdrew the addition made

on account of disallowance of deduction claimed u/s 80IC, for assessment year 2013-14.

8.3 Finding that the facts for the year under consideration on this issue are exactly in pari materia with those having a reason for assessment year 2013-14, the ld. CIT(A) followed the aforesaid Tribunal order dated 04.10.2017, passed in ITA 501/CHD/2017, in the assessee's own case, for assessment year 2013-14.

9. Before us, the Department has not been able to show that the facts for the year under consideration are any different from those present for assessment year 2013-14. As also taken note of by the ld. CIT(A) in the impugned order and not disputed by the department, in year under consideration, the assessee got its books audited on 22.08.2014 and furnished the Audit Report in Form No. 3CA and 3CD and report of specified domestic and international transactions u/s 92E in form 3CEB on 30.11.2014, and claim for deduction u/s 80IC in Form No. 10CCB on 29.11.2014; and that the same was within the due date of filing of the returns and various reports, as the due u/s 139(1), for filing the same stood extended to 30.11.2014,

during that year, which fact was not disputed by the AO. The ld. CIT(A) has further observed and, again, the department has not been able to dispute the same, even during the year under consideration, the assessee did not have the possibility to interpolate fudge up the claim u/s 80IC, as the balance sheet and the Audit Report were filed within time, as in the earlier year and that similar reasons for delay in the filing of the return of income had been submitted before the AO, the delay being for reasons not attributable to the assessee.

10. Besides the fact that the department has remained unsuccessful in rebutting or unhinging the above observations and findings of the ld. CIT(A), it has also remained unable to show that the aforesaid Tribunal order in the assessee's case for assessment year 2013-14 has either been upset on appeal or otherwise, or has even been stayed. Rather, as contended by the ld. Counsel for the assessee and once again not disputed on behalf of the department, the department's appeal against the aforesaid Tribunal order for assessment year 2013-14 before the Hon'ble High Court was withdrawn.

10.1 Further, it also remains undisputed that as contended on behalf of the assessee, the Auditor of the assessee company, who was looking after the filing of their had filed Balance Sheet alongwith annexures, Tax Audit Report and Audit Report u/s 80IC of the Act before the due date for filing of return of income, but it uploaded the return of income after the due date, this despite the fact that digital signatures of the assessee were handed over to him much before the due date of the filing of the return. In this regard, the assessee has placed on record an affidavit of Shri Jagbir Singh S/o Shri Om Pal, Managing Director of the assessee company, offering the reasons for delay in the filing of the Income Tax Return of the assessee company for assessment year 2014-15, which facts, as stated, had also been submitted before and considered by the ld. CIT(A). In the said affidavit, it has been stated that the deponent, i.e. Shri Jagbir Singh is the Managing Director of the assessee company; that the Balance Sheet alongwith annexures of the assessee company for the year ending 31.03.2014 had been signed by the authorized Directors and Auditors on 22.08.2014 and the said Balance Sheet was adopted by the Board of the Company; that on this very date, i.e., on

22.08.2014, they handed over the digital signatures of the deponent to their Auditor and Tax Consultant for filing the Income Tax Return and other Reports on the Income Tax Portal, as Reports and all Audit Reports had to be compulsorily e-filed; that they came to know about the fact that the Tax Audit Report and the Balance Sheet with annexures were filed on 30.11.2014 and report u/s 80IC in Form 10CCB was filed on 29.11.2014 and the return of income was uploaded only on 31.03.2015; that the filing of Income Tax Return and Audit Report etc., on the Income Tax Portal, as a matter of routine is handled by the Tax Consultant and as a normal practice, digital signatures were also handed over to him alongwith the Board Resolution authorizing him to use and affix their digital signatures on the documents to be submitted to the Income Tax Department; that their company is having 77.30% shares in another company, namely, Saitech Medicare Pvt. Ltd. and their Auditor was also the Auditor of that company; that besides the assessee, namely, Symbiosis Pharmaceuticals (P) Ltd., 2017 (11) TMI 1361 (ITAT, Lucknow) and a few other shareholders, this company is also having two shareholders, namely, Shri Rajat Bhalotia

and his father Shri P.D.Bhalotia, with 12.66% and 3.8% shares, respectively; that these shareholders have filed a suite with the Company Law Board, Delhi, against the major shareholder, i.e. Symbiosis Pharmaceuticals (P) Ltd. and other shareholders, including the deponent; that they (the deponent) suspected collusion of their Auditors with these two dissenting shareholders as their Auditor was also Auditor and Tax Consultant of Wonder Products, Kala Amb, Distt. Nahan, a firm of these two persons/their family members; that the suspicion was on account of the fact that the return of income in the year under consideration was filed late when the Balance Sheet and Audit Report was filed in time and also, he had guided the other Directors for filing a suit against the company; that when they received the order of the DCIT in their case for assessment year 2013-14, on 16.01.2016, they consulted another C.A., who told them the intricacies of the order and thereafter, they confronted the same to their Tax Consultant, who did not give any satisfactory reply for delay in filing of the Income Tax Return and they asked for his resignation and changed their consultants as well as auditors for both the companies; that his replies confirmed their suspicions that

he was hand in glove with Mr. Bhalotia and the mischief, i.e., the non filing of the Income Tax Return in time was played on them at the behest of Mr. Bhalotia; that the Bhalotias had filed the case only in July,2015, after then (the deponent) had issued 7 lakh shares of Saitech Medicare P.Ltd. to the assessee company, Symbiosis Pharmaceuticals (P) Ltd.; that he was showing his grievance against the allotment, on some technical grounds, which only a professional like a Chartered Accountant would be in a position to guide about; that due to the case filed with the Company Law Board, which has since been transferred to the National Company Law Tribunal, Chandigarh Bench, in February, 2017, they had not been able to hold the AGM of Saitech Medicare P. Ltd. since 2015; that whenever they tried to hold the AGM, Mr. Bhalotia invoked CLB, which restrained them from holding AGM and ultimately, they had to give an undertaking to the CLB, of not holding any AGM without its permission; that they are not conversant with the Income Tax Act and hence, they had to rely on their consultants' that as is a normal practice, the Income Tax Consultant prepares and files Income Tax Returns on behalf of the assessee and that they were also following the

instructions of their Tax Consultants and the late filing of the Income Tax Return was not due to any fault of any of the officers of the assessee company, but due to their Tax Consultants.

11. As stated, the above facts have been taken into consideration by the ld. CIT(A) also and the same have not been refuted by the Department before us too. The delay concerned, therefore, was entirely beyond the control of the assessee company and due to said delay, the assessee company has also stated to have changed its Auditor and Tax Consultant.

11.1 It is further not under challenge that all the conditions contained in Section 80IC of the Act were duly complied with by the assessee. These conditions are that the claimant of deduction u/s 80IC should not manufacture any article other than those enumerated in the 13th Schedule if it situated in the industrial zone of the relevant State. In other remaining areas, it can manufacture any article, as enumerated in the 14th Schedule. Then, deduction is available in the case of a new Industrial Undertaking or in the case of completion of substantial

expansion of an existing undertaking, by the dates as prescribed. Further, the Industrial Undertaking should not have been formed by the splitting up or re-construction of a business already in existence. It should also not have been formed by the transfer to a new business of machinery or plant previously used for any purpose. The total period of deduction inclusive of deduction u/s 80IC or under the 2nd proviso to Section 80IB(4), or u/s 10C, exceeds ten years. Lastly, the Industrial Undertaking should be set up in Sikkim, Himachal Pradesh, Uttarakhand or in North Eastern States.

11.2 The condition inserted in Section 80AC, by the Finance Act, 2006, w.e.f. assessment year 2006-07 is that no such deduction u/s 80IC shall be allowed unless the claimant furnishes a return of his income for such assessment year on or before the due date specified u/s 139(1). It has been contended on behalf of the Department that this condition contained in Section 80AC is maintained and violation thereof disentitles the assessee to allowances of claim u/s 80IC, which was correctly ordered by the AO and has wrongly been overturned by the ld. CIT(A). The assessee, on the other hand, maintains that such condition

is merely directory and not mandatory, since, it is only technical in nature and not a substantive condition.

11.3 In this regard, as contended by the ld. Counsel for the assessee, it is settled law that conditions whose requirements/provisions relate to the essence of the thing to be performed, or to matters of substance, are mandatory and those which do not so relate to the essence and whose compliance is merely a matter of convenience rather than that of substance, are directory. It is seen that so far as regards the case at hand, the mandatory conditions as laid down in Section 80IC of the Act are all duly met by the assessee. The condition prescribed by Section 80AC, however, is merely directory in nature and not mandatory. It was introduced with a view to ensure the compliance of the filing of the return of income. The Explanatory Notes on the provisions relating to direct taxes as contained in the Finance Act, 2006, which Explanatory Notes have been given by the CBDT in Circular No.14/2006, dated 28.12.2006, a copy whereof has been filed on behalf of the assessee at pages 47 to 50 of the assessee's case law Paper Book (ACL PB -II0, are eloquent in this regard. Para 10.1 of the said Circular clearly states, inter-alia that it is with a

view to enforce the compliance for furnishing the return of income by the due date that no deduction u/s 80IC shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified in Section 139(1).

12. In this regard, the Chandigarh Bench of the Tribunal in assessee's own case (supra), for assessment year 2013-14, vide order dated 04.10.2017 (copy at ACL PB -1, pages 1 to 19), in M/s Symbiosis Pharmaceuticals (P) Ltd. Vs the DCIT, Circle, Yamuna Nagar” in ITA No.501/CHD/2017, concurring with the argument of the assessee, held that liberal interpretation is to be given to the procedural requirement in as much as provisions of Section 80AC being machinery provisions, and, thus, being directory, they do not stand as a bar in the facts of a case wherein it can be demonstrated that there was a justifiable and reasonable cause for delay in filing of the return; that the return, which was well within the extended period, as considered u/s 139(4) as was submitted, stands on a higher footing than the return which is filed even beyond this period; that the argument of the Revenue that a return filed late can be considered if the delay is attributable to the Revenue, could

not be concurred with; that in the face of decisions which hold that the said provision is a machinery provision, this interpretation cannot apply only to cases where delay is attributable only to the Revenue; that once it has been held that Section 80AC is a machinery provision, applying the principle that being directory in nature enables the authorities to consider the reasons on record for late filing of the returns.

13. In the present case, as considered above, the reason for the late filing of the return was indubitably beyond the control of the assessee for the reasons contained in the affidavit furnished by the Managing Director of the assessee company, as discussed in extensor herein above, that being so, in the light of the findings of the Tribunal in the assessee's own case for the immediately preceding assessment year, we find no hesitation in reiterating that the provisions of Section 80AC of the Act are machinery provisions which are directory in nature and not mandatory, due to which, the delay in filing the return of income as a condition contained in the provisions of Section 80IC of the Act can be considered for being condoned, we have done above.

14. In 'PCIT Vs Ambey Developers Pvt. Ltd., 2017 (12) TMI 1008 (P&H) (copy at ACL PB -II pages 54 to 59), while dealing with deduction u/s 80IB, wherein, as per Section 80IB(10(a) Explanation (2), wherein, deduction is to be allowed from the date of Completion Certificate issued by the Competent Authority for the year ending on 31.03.2010 and the certificate was issued on 31.12.2011, the Hon'ble jurisdictional High Court upheld the Tribunal order confirming the grant of deduction by the CIT(A), such deduction having been claimed u/s 80IB of the Act, relying on "CIT Vs Tarnetar Corporation", 362 ITR 174 (Gujrat), held that every condition of the Statute cannot be seen as mandatory; that if substantial compliance thereof is established on record in a given case, the Court may take the view that minor deviation thereof would not vitiate the very purpose for which the deduction was being made available; and that the approval in that case had been granted to the assessee on a later date, but without raising any objection that the meaning and the intent of the legislature would be gathered not on the basis of the phraseology of the provision but taking into consideration its nature, its design and the consequences which would

follow from interpreting it in a particular way alone; that the purport of Explanation (2) to Section 80IB(10(a) is to safeguard the interests of the Revenue wherever the construction has not been completed within the stipulated period; that thus, it cannot mean that the requirement is mandatory in nature and would disentitle an assessee to the benefit of Section 80IB(10(a) even in respect of those cases where the assessee had completed the construction within the stipulated period and had made an application to the local authority within the prescribed time; and that the issuance of the requisite certificate was within the domain of the competent authority, over which, the assessee had no control. “Ambey Developers” (supra), we find is squarely applicable hereto. As discussed, the digital signatures of the competent authority had been duly handed over to the auditor within time and it was the auditor who did not file the return within the stipulated time. Such violation of the provision was therefore, beyond the control of the assessee. The provisions of Section 80AB, as already discussed, are directory and not mandatory.

14.1 In “CIT Vs Punjab Financial Corporation”, 254 ITR 6 (P&H) (copy at ACL PB -II, pages 64 to 73, the Hon'ble

jurisdictional High Court has observed, inter-alia, as follows :

"Order Before proceeding further, we may notice some of the principles of interpretation of the statutes. These are:

(1) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The, meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other-Crawford on Statutory Construction (Edition 1940, art. 261).

(2) The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid-State-of U. P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912.

(3) All the parts of a statute or sections must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd and anomalous results which could not have been intended by the Legislature.

(4) The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions-CIT v. National Taj Traders [1980] 121 ITR 535 (SC).

In our opinion, the conditions embodied in sub-section (1), the fulfilment of which entitles the assessee to claim deductions are mandatory because the substratum of the claim of deductions is the deposit of the amount in the account maintained by the assessee with the Development Bank or utilisation thereof for the purchase of new ship, new aircraft, new machinery or plant and, therefore, unless the conditions embodied in this sub-section are satisfied, the assessee cannot claim deductions. However, this is not true of subsection (5) which only provides for filing of the report of audit prepared by the accountant as defined in the Explanation below sub-section (2) of section 288 along with the return of income. The assessee's claim for deduction under clause (a) of sub-section (1) of section 32AB does not depend on the submission of the audit report along with the return of income, but on deposit of the amount in the account maintained by him with the Development Bank before the expiry of six months from the end of

the previous year or before furnishing the return of his income, whichever is earlier. In this context, it is important to bear in mind that section 139 of the Act which provides for filing of return in the prescribed form within the stipulated time also provides for filing of revised return and rectification of defect in the return. Therefore, the requirement of filing the duly audited report along with the return cannot be treated as mandatory and the assessee cannot be deprived of the benefit of deduction if the same is filed before the finalisation of the assessment.”

14.2 In “CIT Vs Jagriti Aggarwal”, 339 ITR 160 (P&H) has held that, the due date for furnishing the return of income as per Section 139(1) of the Act is subject to the extended period provided under sub-section (4) of Section 139 of the Act.

14.3 In”CIT-V Vs Sri S.Venkataiah Prop M/s Noel Pharma, Hyderabad” 2013 (6) TMI 715 (copy at ACL PB-II, pages 78 to 83, it was held that if the delay in the filing of the return is due to a reasonable cause, the assessee is eligible to claim deduction u/s 80IC. In the present case, as observed, the delay in filing the return of income is due to a reasonable cause and it was such cause that prevented the return to be filed within time.

14.4 Again in “Fiberfill Engineers Vs DCIT” 2017 (8) TMI 730 (Delhi High Court) (copy filed at ACL PB pages 88 to 97) delay of 46 days in filing return of income was condoned and deduction u/s 80IC was allowed for assessment year

2010-11. While doing so, their Lordships held that since in that case, the entitlement of the assessee to the deduction u/s 80IC of the Act even for assessment year 2010-11 had not been questioned by the Department on merits, there was no justification for not viewing the delay of 46 days in filing the return to be bonafide; and that it was not one of those cases where the delay was so extra ordinary so as to not to be condoned. Likewise in the present case, it has never through-out been the case of the department that the assessee is not entitled to the deduction claimed u/s 80IC of the Act. Too, the delay is not so extra ordinary that it is not entitled to be condoned. Further still, even such delay as occurred was beyond the control of the assessee, as discussed herein before.

14.5 In “Fiberfill Engineers” (supra), it was also observed that CBDT Circular No. 9/2015 dated 09.06.2015 would apply to the belated filing of the return where deduction is claimed u/s 80IC of the Act; that the said circular does not expressly say so; that as explained by the Bombay High Court in “Sitaldas K. Motwani Vs Director General of Income Tax (International Taxation) New Delhi” 323 ITR 223 (Bom.), the phrase “genuine hardships” in Section 119(2)(b) of the

Act ought to be construed liberally; that as observed by the said High Court, when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay. Since in the present case, the entitlement of the assessee to claim deduction under the provisions of Section 80IC of the Act has never been in question, the department cannot claim a vested right in injustice being caused to the assessee by the denial of the claim of deduction u/s 80IC because of a non deliberate delay on the part of the assessee.

14.6 In “Colonel Ashwani Kumar Ram Singh (Retd) Vs PCIT” 2019 (9) TMI 316 (M.P. High Court) (ACL PB -II, pages 100 to 105), it has been held that there is a power with the CBDT to condone the delay; that there appears to be no justification in enforcing the assessee to file an application before the CBDT; that once the power is there and it was not the assessee who was at fault in the matter, in the facts and circumstances of the case, the delay can be condoned by the High Court also. Holding thus, the delay was condoned. The facts and circumstances of the case at

hand, as discussed, warrant the delay in question to be condoned.

14.7 In “Hansa Dalakoti Vs ACIT”, 2012 (4) TMI 264 (ITAT Delhi) : 50 SOT 511 (Delhi) (copy at ACL PB –II pages 106-110), as in the present case, whereas the return of income was delayed, the Audit Report had been filed before the due date. The Tribunal held that since the assessee had filed all the necessary documents supporting the claim for deduction u/s 80IC before the due date of filing the return, the mere fact that the assessee could not file the return in time, on a hyper technique, incorrect appreciation of law could not be the basis for denying relief, despite the availability of the supporting documents.

14.8 In “Poddar Pigments Ltd. Vs CIT”, 2008 (8) TMI 902 (Delhi High Court): 222 CTR 309 (Del), claim u/s 80IB had not been made in the original return and the time period for filing of the revised return had also elapsed. The assessee preferred an application u/s 264 for condoning the delay. The Hon'ble High Court held that the delay occurred due to bonafide reasons and there was no malafide intent of the

assessee in delaying the filing of the revised return. The claim of the assessee u/s 80IB was allowed.

14.9 In “ACIT, Circle 10(1), New Delhi Vs Dhir Global Industries (P) Ltd.” 2010 (7) TMI 619 (ITAT Delhi) : 43 SOT 640 (Delhi), where there was a delay in filing the return of income, and proviso had been inserted in Section 10(B)(i), which specifically provided that no deduction u/s 10B of the Act, shall be allowed to the assessee who has not furnished any return of income on or before the due date, it was held that the Act envisages that relief regarding exemption should be considered and granted when application is made after the specified period in cases of genuine hardship; and that thus clearly indicates that the provision in this regard is directory and not mandatory.

14.10 In “M/s Heera Moti Agro Industries Vs DCIT, Central Circle-I, Chandigarh “ vide order dated 23.02.2017 (ACL PB -II, pages 121-139), passed in ITA Nos. 740 and 741/CHD/2013 and other cases, it was held that filing of return of income on or before the due date prescribed u/s 139(1) is directory and not mandatory. Delay has also been condoned in similar cases, some of which are as follows :

- a. 2019 (10) TMI 235 - ITAT Chandigarh M/S East Bourne Hotels Pvt. Ltd. Versus Asstt. CIT, Circle Shimla ITA No. 301/Chd/2015 Dated August 9, 2019
- b. 2019 (6) TMI 1045 – ITAT Chandigarh M/S Shree Ganesh Concast Group of Industries Vs The DCIT , Circle- Palampur, (H.P.) No.- ITA No. 829/Chd/2018 Dated.- June 6, 2019.
- c. 2019 (5) TMI 1122 - ITAT Indore M/s. Laxmi Mangal Warehouse Vs Deputy Commissioner of Income Tax, Ratlam ITA No.612/Ind/2017Dated.- May 16, 2019
- d. 2019 (5) TMI 845 - ITAT Chandigarh HIMUDA Nigam Vihar Shimla Vs The ACIT Circle, Shimla ITA Nos.480, 481 And 972/Chd/2012 Dated.- May 10, 2019

15. The above apart, the ld. Counsel for the assessee has also laid emphasis on the doctrine of substantial compliance and intended use. It has been submitted that there has been substantial compliance of the provisions of Section 80IB, rather full compliance thereof, and that the intent for which the Statute was enacted needs must be carried out.

15.1 In agreement with the contention of the assessee in this regard, we observe that the doctrine of substantial compliance has been designed judicially to mitigate hardship in cases where a party does all that can reasonably be expected of it. The failure of such party is

failure in some inconsequential aspects and if it is so, it cannot be defined as the essence or the substance of the legal requirements. In other words, what is required of the Court is to determine as to whether the Statute has been followed sufficiently so as to carry out the intent for which the Statute was enacted. The Court is not expected to ensure or enforce a mirror image type of strict compliance. Substantial compliance, in effect, means actual compliance in respect to the substance essential to every reasonable objective of the Statute. It is the job of the Court to determine as to whether the reasonable objective for which the Statute was enacted have been accomplished and the intent of the Statute has been carried out. In the case of a fiscal Statute, like the Income Tax Act, substantial compliance with an enactment is insisted upon, where mandatory and directory in requirements are lumped together. This is so, because if mandatory requirements are complied with, the enactment can be said to have been substantially complied with, the non compliance of directory requirements notwithstanding. In such cases, substantial compliance having been found, there is actual compliance with the Statute, though procedurally faulty. It

is to observe the need of complying strictly with the conditions important to invoke a tax exemption, and to forgive non compliance for either unimportant and tangential, or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted, and the doctrine of substantial compliance becomes operative. Thus, since it is the substance or essence of the Statute, compliance whereof, with strict adherence, is to be examined, to give effect to the doctrine. On the contrary, if the requirements are procedural or directory, in that they are not of the essence of the thing to be done (here, fulfilling of the conditions of Section 80IB of the Act) but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict, compliance. In the present case, as dwelt upon at length, the compliance made by the assessee in fulfilling of the conditions prescribed by the provisions of Section 80IB, is substantial compliance. Besides, even the non compliance was beyond the control of the assessee, as discussed.

16. None of the decisions cited on behalf of the Department, in view of the above discussion, are applicable to the facts of the present case. These decisions are;

- i) Padma Sundara Vs State of Tamilnadu 255 ITR 147 (S.C);
- ii) Umesh Chandra Dalakoti Vs ACIT, order dated 27.08.2012, passed in ITA No.7 of 2012 (U.K.)
- iii) Suolificio Linea Italia (India) (P.) Ltd. Vs Joint Commissioner of Income-tax, Circle-8, Kolkata” 93 taxmann.com, order dated 04.05.2018 (Calcutta High Court);
- iv) CIT Vs Shelcon Properties (P.) Ltd. 44 taxmann.com 170, dated 16.01.2014 (Calcutta High Court);
- v) Saffire Garments Vs ITO, Ward-2, Gandhidham, 28 taxmann.com 27 (Rajkot), order dated 30.11.2012.

16.1 In particular, the facts in Shelcon Properties (supra) were entirely different and it was a case where the return was filed late due to the fact that on-line filing of the return was being done by a Junior Advocate in the office who left the job in the second week of October, when the time to file the return had already expired. Juxtaposed with these

facts, as discussed, in the present case, the delay in question was incurred for reasons beyond the control of the assessee. Otherwise too, we are covered by “Ambey Developers” (supra) which has been rendered by the jurisdictional High Court qua the assessee and it is, therefore, binding, which holds that if substantial compliance is established, a minor deviation would not vitiate the very purpose for which the deduction was being made available.

16.2 Still further, as noted hereinabove, the CBDT Circular No.37 of 2016, dated 02.11.2016, a copy whereof has been filed with us, states that the Board has clarified that no appeal shall be filed by the Revenue in cases where disallowance relating to business activity was made by the AO, but deduction under Chapter VI-A is allowable to the assessee. In the present case, the real deduction under Section 80IC of the Act has been held to be allowable to the assessee and has been so allowed by the Tribunal. The Department’s appeal against the said Tribunal order for assessment year 2013-14 has attained finality. There is no change whatsoever in the facts and circumstances for the year under consideration. Therefore, the said CBDT

Circular is squarely applicable to the facts of the case and it is binding on the taxing authorities. On this count also, the addition is liable to be deleted.

17. Considering the above elaborate discussion and finding force in ground Nos. 1 to 3, these grounds are rejected. The order under appeal is found to be well versed, requiring no interference whatsoever at our hands on this score. Accordingly, the deletion of disallowance is confirmed.

18. The only other issue is the challenge of the Department against the action of the ld. CIT(A) in deleting the addition made on account of low gross profit declared by the assessee. There was a fall in gross profit from 16.61% in assessment year 2013-14 to 14.11% during the year under consideration. It is specified that the explanations offered by the AO for such fall in GP, the AO made addition of 2% as against the fall of 2.5%, without pointing out any mistake in the books of account and vouchers and without rejecting the books of account. The addition so made amounted to Rs.1,81,48,854/-. The ld. CIT(A) deleted the addition.

18.1 The grievance of the Department is that the ld. CIT(A) failed to appreciate that the explanation offered by the assessee was not sustainable and it was, therefore, rightly rejected by the AO. The ld. Counsel for the assessee has, again placed heavy reliance on the impugned order.

18.2 Here, it is seen that as rightly contended on behalf of the assessee and also as rightly taken note of by the ld. CIT(A), the AO did not point out any specific defect or discrepancy in the books of the assessee or its vouchers, rather, then rejecting the books of account before making the addition in question. The AO accepted the sales figures declared in such books. Firstly, addition in GP without rejection of books of account has not been held to be good addition by the Courts. In “S.V.Auto Industries, Phagwara Vs CIT, Jalandhar & another”, vide order dated 21.02.2014, passed in ITA No. 194 of 1999 (copy at ACL PB -1, pages 27 to 33), the Hon'ble jurisdictional High Court of Punjab & Haryana has held that, “when the books of account including Stock Register etc. have neither been rejected nor are doubted, accounts could not be bye-passed merely on the whims and fancies of the parties”. Almost, the same view was taken in “Madnani Construction Corporation P.

Ltd. Vs CIT” (2008) 296 ITR 45 (Gauhati) and “Pyare Lal Mittal Vs ACIT” (2007) 291 ITR 214 (Gauhati).

18.3 In “M/s Amar Nath & Sons, Kurukshetra Vs the ITO, Ward-2, Kurukshetra”, vide order dated 18.04.2012 (copy assessment ACL Paper Book -1, at pages 21-26), passed in ITA 227/CHD/2012, for assessment year 2008-09, the Chandigarh Bench of the Tribunal has held that there must be something more than a mere suspicion to support the estimation; that low profit in a particular year in itself cannot be a ground for making the addition; that it is well settled that merely low profit may provoke enquiry, but that by itself, cannot justify an addition to the profits shown; and that there was no justification in making addition merely on the ground of low profit and that too without rejecting the books of account regularly maintained by the assessee.

18.4 On the issue that no addition in GP can be made without observing errors in audited books of account, the following decisions are eloquent :

- i) *Pandit Bros vs. CIT* 26 ITR 159 (P&H)
- ii) *CIT vs Maharaja Shree Umed Mills Ltd* 192 ITR 563 (Raj)
- iii) *CIT vs. K.S.Bhatia* 125 Taxman 454 (P&H)

iv) *CIT Vs Poonam Rani 326 ITR 223*

18.5 On merits also, the stand taken by the assessee for the fall in GP during the year is not a totally unpalatable stand. The assessee has maintained, as noted by both the authorities below, that the major reason for fall in GP was a substantial increase in turnover by almost 50% from Rs. 60.71 Cr during the earlier year to Rs.90.74 Cr during the year under consideration; that to achieve such an increase in turnover, a business has to decrease its margins to obtain much higher sales; that the primary reason for the decrease in gross profit rate was the increase in the cost of material consumed; that there was a increase of 4.28% in the consumption of raw material as a percentage of sales compared to the earlier year and that on the other hand, other manufacturing expenses were comparable; that the cost of the raw material is beyond the control of the assessee as most of the raw material used is to be imported from other countries; that has resulted, the NP rate during the year under consideration fall by only 1.07%, even though the GP rate had decreased by 2.50%; that this

shows that there was better management of resources and no trading expenses decreased as a percentage of sales.

19. As rightly observed by the ld. CIT(A), the AO had not controverted, in the assessment order, any of these submissions of the assessee. Neither had these submissions been shown to be false, nor was any reason for disbelieving the explanation offered by the assessee given by the AO in the assessment order. Before us also, the position remains the same. The Department has brought nothing on record to controvert the specifics laid bare by the assessee before the AO and maintained through out. Again, as correctly observed by the ld. CIT(A), in the light of the case laws discussed, mere decrease in gross profit as compared to the earlier year is not a ground sufficient for making an addition and that too, without finding any specific defect in the books of account regularly maintained by the assessee. In this regard, the ld. CIT(A) has correctly placed reliance on "CIT-12 Vs Smt. Poonam Rani" 326 ITR 223 (Del) : 192 taxman 167 (Del) and Ms. Nirmal Rani Vs ACIT, Ambala 66 taxmann.com 40 (CHD-Tribunal).

20. In view of the above, we do not find any merit in ground No. 4 raised by the Department and the same is rejected. The action of the ld. CIT(A) in deleting the addition of Rs. 1,81,48,854/- made on account of low gross profit by the AO is confirmed.

21. In the result, appeal is dismissed.

Order pronounced on 04th January, 2024.

Sd/-

**(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER**

Sd/-

**(A.D.JAIN)
VICE PRESIDENT**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar