

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1000/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Annaswamy Sekhar 33, Krishna Colony, Singanallur, Coimbatore-641 005.	बनम / Vs.	DCIT Non-Corporate Circle-4, Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.	AJUPS-1902-J	
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri H. Yeswanth Kumar (CA)-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT)- Ld. DR

सुनवाईकी तारीख/ Date of final Hearing	:	06-02-2024
घोषणाकी तारीख / Date of Pronouncement	:	20-02-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 28-08-2023 in the matter of a rectification intimation issued by CPC Bangalore u/s 154 on 06-06-2020. The grounds taken by the assessee are as under: -

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the intimation u/s.143(1) is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) erred in denying the deduction claimed u/s.80IA amounting to Rs.57,98,680/- for the reason that Form 10CCB was not filed electronically along with return of income filed u/s.139(1).
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that Form 10CCB was filed as an attachment along with the return filed u/s.139(1) of the Income Tax Act and that the same was only an inadvertent error on the part of the appellant.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that on receipt of show cause notice u/s.143(1)(a) proposing disallowance of deduction claimed u/s.80IA for non-filing of Form 10CCB electronically, the appellant rectified the inadvertent error by filing the Form 10CCB electronically along with the return filed u/s.139(5) on 26.05.2018.
6. For that the Commissioner of Income Tax (Appeals) erred in not considering the electronically filed Form 10CCB which was available with the CPC before passing of intimation u/s.143(1) on 15.04.2019.
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had filed the revised return of income within the due date specified u/s.139(5) of Income Tax Act, which substituted the original return of income.
8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the electronic filing of Form 10CCB along with return of income is only discretionary and not mandatory in nature for claiming the deduction u/s.80IA for the assessment year 2017-18.
9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the CPC erred in making an adjustment in respect of disallowance of deduction claimed u/s.80IA of the Income Tax Act despite non-satisfaction of conditions specified u/s.143(1)(a)(ii).
10. For that the Commissioner of Income Tax (Appeals) erred in not adjudicating on the disallowance of a sum of Rs.33,898/- being belated remittance of employee's contribution to provident fund u/s.36(1)(va).
11. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appellant had already disallowed the belated remittance of employee's contribution to provident fund amounting to Rs.33,898/- while computing the income under the head Profits and Gains from Business or Profession.
12. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the said disallowance of Rs.33,898/- in the intimation passed u/s.143(1) would amount to double disallowance of the same amount as the same had already been disallowed while computing the income under the head Profits and Gains from Business or Profession for the impugned assessment year.

As is evident, two issues fall for our consideration i.e., i) Assessee's claim of deduction u/s 80IA; ii) Disallowance u/s 36(i)(va) for late payment of PF dues.

2. On the issue of deduction u/s. 80IA, Ld. AR filed date-wise chart of proceedings along with paper book as under: -

DATE CHART

S.No.	Particulars		Attachment	Page No.
1	Date of filing ROI	04.10.2017	1. Acknowledgement for filing of Income Tax Return taken from Income Tax E- filing portal. 2. Screenshot from E-filing portal showing the status of ROI filed	1-2
2	Total Income declared in ROI	1,04,54,560	Total Income Statement	3-6
3.	Deduction claimed u/s.80IA	57,98,580	Form 10CCB	7-22
4	Date of filing Form 10CCB to claim deduction u/s.80IA Scanned copy	04.10.2017	Screenshot from Income Tax E filing portal	23
5	Date of receipt of proposal u/s./143(1)(a) against ROI filed on 01.40.2017	14.05.2018	Communication from CPC in reference number CPC/1718/G21/180943003 6 dated 14.05.2018	24
6	Date of filing voluntary revised return of income	26.05.2018	1. Acknowledgement for filing of Income Tax Return taken from Income Tax E-filing portal 2. Screenshot from E-filing portal showing the status of ROI filed	25
7	Date of filing form 10CCB electronically	26.05.2018	1.Screenshot from Income Tax E-filing portal 2. Form 10CCB filed electronically.	26-34
8	Date of receipt of intimation u/s.143(1)	15.04.2019	Copy of intimation u/s.143(1)	35-40
9	Date of filing of Rectification u/s.154	29.05.2020	1.Screenshot from Income Tax E filing portal 2. Form 10CCB filed electronically.	41

In support of claim, Ld. AR relied on the decision of Hon'ble Supreme Court in **CIT Vs. G.M. Knitting Industries P. Ltd. (71 Taxmann.com 35)**; the decision of Hon'ble Madras High Court in **CIT Vs. AKS Alloys P. Ltd (18 Taxmann.com 25)** as followed by Chennai Tribunal in **Madudhamalai Sri Dhandapani Spinning Mills Vs. DCIT (2023) 4 TMI 287 – ITAT, Chennai; Roopa Steam Calendering Works Vs. DCIT**

(ITA No.284/Chny/2022) and Anugraha Fashion Mill Vs. DCIT (ITA Nos.883 & 865/Chny/2020). The copies of decisions have been placed on record. On the issue of disallowance u/s 36(1)(va), Ld. AR submitted that the same is double disallowance since it had already been disallowed by the assessee in the computation of income. The Ld. Sr. DR relied on the decision of Hon'ble Supreme Court in the case of **PCIT Vs M/s. Wipro Limited (Civil Appeal No.1449 of 2022 arising out of SLP (Civil) No.7620/2021 dated 11-07-2022).** Having heard rival submissions and upon perusal of case records, the appeal is disposed of as under.

Proceedings before lower authorities

3. From the above tabulation, it could be seen that assessee filed original return of income on 04-10-2017 as against due date of 07-11-2017. Thus, this return was filed within due date as prescribed u/s 139(1). In this return, the assessee claimed deduction u/s 80IA for Rs.57.98 Lacs and filed scanned copy of Form 10CCB as an attachment. However, CPC moved proposal on 14-05-2018 for denying impugned deduction u/s 80IA on the ground that the copy of Form 10CCB was not e-filed separately within due date. Against the same, the assessee filed revised return of income on 26-05-2018. On the same day, the assessee filed copy of Form 10CCB electronically. Still, the claim was denied by CPC vide intimation dated 15-04-2019. The assessee preferred rectification against which separate intimation was issued on 08-06-2020 wherein this deduction was again denied. This order was under challenge before Ld. CIT(A) who confirmed the action of CPC primarily by relying on the decision of Hon'ble Supreme Court in the

case of **PCIT Vs M/s. Wipro Limited (supra)**. Aggrieved, the assessee is in further appeal before us.

4. We find that this issue is squarely covered in assessee's favor by the decision of Hon'ble Supreme Court in the case of **CIT Vs. G.M. Knitting Industries P. Ltd. (71 Taxmann.com 35)**. The Hon'ble Court affirmed the decision of Hon'ble Madras High Court in the case of **CIT Vs. AKS Alloys P. Ltd (18 Taxmann.com 25)**. In the decision of **AKS Alloys P. Ltd.**, it was held by jurisdictional High Court as under: -

5. In so far as it relates to the substantial question of law (1) is concerned, namely, whether the filing of audit report in Form 10CCB is mandatory, it is well settled by a number of judicial precedents that before the assessment is completed, the declaration could be filed. In fact, the said issue came to be decided by the Karnataka High Court in the case in CIT v. ACE Multitaxes Systems (P.) LTD. [2009] 317 ITR 207(Kar.), wherein it was held that when a relief is sought for under Section 80IB of the Act, there is no obligation on the part of the assessee to file return accompanied by the audit report, thereby, holding that the same is not mandatory. Therefore, it is clear that before the assessment is completed if such report is filed, no fault could be found against the assessee. That was also the view of the Delhi High Court in the case in CIT v. Contimeters Electricals (P.) Ltd. [2009] 317 ITR 249/178 Taxman 422 (Delhi), wherein the Delhi High Court, by following the judgements of the Madras High Court in CIT v. A.N. Arunachalam [1994] 208 ITR 481/75 Taxman 529 and in CIT v. Jayant Patel [2001] 248 ITR 199/ 117 Taxman 707 (Mad.) held that the filing of audit report along with the return was not mandatory but directory and that if the audit report was filed at any time before the framing of the assessment, the requirement of the provisions of the Act should be held to have been met.

6. That is also the consistent view of the other High Courts, including the High Court of Bombay in CIT v. Shivanand Electronics [1994] 209 ITR 63/75 Taxman 93 (Bom.), apart from Gujarat High Court in Zenith Processing Mills v. CIT [1996] 219 ITR 721 (Guj.) and Punjab and Haryana High Court in CIT v. Mahalaxmi Rice Factory [2007] 294 ITR 631/163 Taxman 565 (Punj. & Har).

7. The Calcutta High Court in the case in the CIT v. Berger Paints (India) Ltd. [2002] 254 ITR 503/[2003] 126 Taxman 435 (Cal.) has also concurred with the said view which was followed by the Tribunal in this case.

8. Mr. T. Ravikumar, the learned counsel for the appellant is not able to produce any other judgement contrary to the above said views consistently taken.

Similar favorable view has been taken by Tribunal in other decisions as referred to by Ld. AR which has already been mentioned in preceding para-2. The decision of Hon'ble Supreme Court in the case of **PCIT Vs M/s. Wipro Limited (supra)** has already been considered by Tribunal in the case of **Roopa Steam Calendering Works Vs. DCIT (ITA No.284/Chny/2022 dated 18-08-2022)**. The bench observed that a distinction was made by Hon'ble Supreme Court in the case of exemption clause and deduction clause. It was held by Hon'ble Court that Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III which deals with 'Income which do not form part of total income' cannot be equated with mechanism provided for deduction in Chapter VIA which deals with deductions to be made in computing total income. Therefore, the decisions relied on by the assessee on interpretation of Chapter VIA shall not be applicable. Finally, it was held by the bench that once Audit Report was filed before processing of return of income, the assessee would be entitled to claim deduction u/s 80IA.

5. Considering the ratio of binding judicial precedents as above, we direct Ld. AO to allow the impugned deduction u/s 80IA. The corresponding grounds stand allowed.

6. On the issue of late payment of PF / ESI, the same seem to be double disallowance since this disallowance has already been offered by the assessee suo-moto in the computation of income. The Ld. AO is directed to verify the same and delete this disallowance, if the submissions of Ld. AR are found to be correct. The corresponding grounds stand allowed for statistical purpose.

7. The appeal stands partly allowed in terms of our above order.

Order pronounced on 20th February, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 20-02-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF