IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.52/Ahd/2024
(Assessment Year: 2022-23)

Akuntha Projects Pvt. Ltd., 25, Chitrakut Twin Bunglows, Vastrapur, Ahmedabad, Gujarat-380015	Vs.	Deputy Director-CPC, Bengaluru Present Jurisdiction Income Tax Officer, Ward-1(1)(1), Ahmedabad
[PAN No.AALCA4829P]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Biren Shah, A.R.
Respondent by:	Shri Ankit Jain, Sr. DR

Date of Hearing	02.05.2024
Date of Pronouncement	20.05.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals) ADDL/JCIT(A)-5, (in short ñLd. CIT(A)ò), Mumbai vide order dated 22.12.2023 passed for Assessment Year 2022-23.

2. The Assessee has taken the following grounds of appeal:-

> *"1. In law and in the facts and circumstances of the case, the learned CIT(A) has erred in confirming addition made by CPC, Benguluru u/s 143(1) of Rs. 25,83,187/- being 80JJAA claim of Assessee Company duly claimed in return of income and certified by qualified Charted Accountant in form 10DA."*

3. The brief facts of the case are that the assessee/appellant filed its return of income on 21.10.2022 declaring total income of Rs. 1,50,72,480/-

which was processed under Section 143(1) of the Act on 16.03.2023, determining the total income at Rs. 1,76,55,670/-. In the said intimation order, the CPC, rejected the claim of deduction under Section 80JJAA of the Act of Rs. 25,83,187/- claimed by the assessee in the return of income.

4. Being aggrieved, the appellant preferred an appeal before Ld. CIT(Appeals). During the course of appellate proceedings, Ld. CIT(Appeals) observed that the claim of deduction of Rs 25,83,187/- under Section 80JJAA of the Act has been rejected by the CPC for the reason that the appellant /Assessee failed to file the Form 10DDA within the prescribed time under the Statute. In this regard, the appellant /Assessee submitted that the said Form 10DA was duly uploaded by the CA on 01.10.2022 which is well before the extended due date of filing of return of income under Section 139(1) i.e. 07.10.2022, however, due to inadvertent mistake by oversight, such uploaded Form 10DA could not be ñacceptedò by the appellant company on or before 07.10.2022 i.e. due date of filing of return of income. Such Form 10DA was accepted by the assessee company on 06.01.2023 i.e. after the due date of filing of return of income under Section 139(1). The CIT observed that that as per provisions of Section 139(4), the last date for filing the return of income was 31.12.2022 and in this case, the appellant has filed Form 10DA even beyond the period prescribed under Section 139(4) of the Act. Accordingly, CIT rejected the appeal against claim of deduction under Section 80JJA of the Act, with the following observations:

> *“ (i) As per Rule 19AB of the Income Tax Rules, 1962, it was mandatory for the appellant to file the accountant's report in Form 10DA along with the return of income u/s 139(1) of the Act, failing which deduction u/s 80JJAA will not be admissible in*

accordance with the provisions of section 80JJAA of the Act. In the instant case, though the form was uploaded by the CA on 01/10/2022 i.e. before the extended due date of filing of return of income, the same does not tantamount to filing of form 10DA as per the IT Rules, 1962. The process of filing of Form 10DA includes both uploading by CA and acceptance by the appellant together and if either of the process is not completed within the stipulated time, the same does not equate with filing of Form 10DA with in due date. Under the statute, it was mandatory to file the said Form 10DA within the prescribed time, failing which will make the appellant ineligible for claiming deduction u/s 80JJAA of the Act. Since, in the instant case, the process of filing Form 10DA was completed on 06/01/2023 i.e. after the extended due date of filing of return of income u/s 139(1), the claim of deduction u/s 80JJAA of the Act is not admissible.

(ii) The appellant has cited the reason that due to inadvertent mistake of oversight, the said form could not be accepted by the appellant company within extended due date of filing of return of income u/s 139(1) of the Act. In this regard, it is pertinent to point out that it is not first occasion when the appellant has uploaded the said Form 10DA. The Appellant filed the Form 10DA for AY 2021-22 which makes it clear that the appellant was duly aware of the entire process of filing of the said Form. The oversight was not for the lack of awareness of the procedure of filing of the said Form. Instead, it amounts to complete disregard towards statutory provisions of the Act. If such disregard is allowed, it will make the governing provisions of the statute redundant and ineffective.

(iii) Further, the Hon'ble Apex court in the case of ***Principal Commissioner of Income Tax-Ill, Bangalore and another Vs. M/s Wipro Limited (Judgment dated 11.07.2022 in the Civil Appeal No. 1449 OF 2022)*** *has applied strict construction to reverse the findings of the Hon'ble High Court ("HC") of Karnataka which had earlier allowed carry forward of such losses. The Hon'ble SC held that the requirement of filing a declaration within a timeline is "mandatory" in nature as per the language of the provision. It reiterated the age-old principle that a taxing statute should be read as it is and held that the exemption/ deduction provisions should be "strictly" and "literally" complied with and, therefore, a strict interpretation should be adopted. The Supreme Court has stated as under-*

> *"In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B(8) of the IT Act. We hold that for claiming the benefit under Section 10B(8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B (8) of the IT Act on non- compliance of the twin conditions as provided under Section 10B (8) of the IT Act, as observed hereinabove."*

It is evident that the appellant had filed the Form 10DA after due date in violation of Rule 19AB of Income Tax Rules, 1962. It is a trite law that if a thing is said to be done in a particular manner, it shall be done in that manner and its performance in any other mode or fashion shall be of no consequence. Therefore, in application of the above decisions of the apex court and also the mandated provisions of the statute, the Assessing Officer has rightly disallowed the deduction claimed and made addition of the same to the total income of the appellant as per the provisions of section 143(1)(a)(ii).

(iv): As per provisions of section 80JJAA rwr 19AB, the claim of deduction u/s 80JJAA is not admissible and under the circumstances the only remedy available, lies in the machinery provisions of the Act rather seeking legal remedy. Such provisions are found in section 119(2)(b) which enables an assessee to approach the Board for seeking relief in such cases. The provisions of section 119(2)(b) are reproduced below:

Section 119:

"Instructions to subordinate authorities.

1. The Board may from time to time...

2. Without prejudice to the generality of the foregoing power,-

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class, by general or special order, authorize (any income tax authority, not being a JCIT(A) or [***] Commissioner(Appeals) to admit an application or claim for any exemption, deduction, refund, or any other relief under this Act after expiry of the period specified by or under this Act for making such application or claim and deal with the some on merits in accordance with law."

From the above, it is clear that the first appellate authorities have not been entrusted with powers of condoning delay in such cases. The intention of legislature with respect to such cases is very clear that the remedy in such situation lies in the section 119 of the Act.

(v) Further, at this juncture, it would not be irrelevant to discuss the decision of the Hon'ble Apex Court in the case ***of CC v. Dilip Kumar & Company [2018] 95 taxmann.com 327/69 GST 239,*** *wherein the Hon'ble Court has laid down following principles:*

(a) Exemption notification/provisions should be interpreted strictly, the burden of proving applicability would be on the assessee to show that his case comes within the parameters of exemption clause or exemption notification.

(b) In case of ambiguity in a charging provision, the benefit must necessarily go in favour of subject/assessee but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favor of the revenue/state

From the principle laid down by the Hon'ble Apex Court in the above case, it is amply clear that the provisions of exemption as well as deduction provided in the Statute are to be interpreted strictly and onus always lies with the claimer to substantiate that there is no violation of governing provisions while claiming exemption/deduction as per the law. By following the ratio laid down by the Hon'ble Apex Court in the case of Dilip Kumar, it is clear that the onus was on the appellant to substantiate that the claim of deduction was admissible in accordance with the governing provisions of the Act. However, it is clear that in the instant case, there is clear violation of provisions of section 80JJAArwr 19AB therefore, the claim of deduction is also not admissible in the light of the provision of section 80JJAAand in view of the decision of Apex Court in the case of Dilip Kumar (Supra).

In view of the above, I am of the considered opinion that the AO CPC has rightly disallowed the claim of deduction u/s 80JJAA as the Form 10DA was not filed within prescribed time. Accordingly, this ground of appeal is ***dismissed.****"*

5. The assessee is in appeal before us against the aforesaid order passed by CIT confirming the disallowance of claim of deduction under section 80JJA of the Act. The counsel for the assessee submitted before us that in this case Form No. 10DA (Accountantôs report) was uploaded on 01.10.2022, which was before the due date of filing of return of income, which had been extended till 07.10.2022. Accordingly, the Chartered Accountant of the assessee had uploaded Form No. 10DA for claiming deduction under Section 80JJA before the due date of filing of return of income, but admittedly, there was a procedural lapse on the part of the assessee, in not accepting the Form No. 10DA, filed by the chartered accountant of the assessee, before the due date of filing of return of income. The Counsel for the assessee submitted that this was a purely procedural and inadvertent mistake on the part of the appellant/assessee, wherein though the accountants report in Form 10DA was filed by the chartered accountant of the assessee, before the due date of filing of return of income, but due to a procedural mistake/lapse on the part of the assessee, he could not accept the aforesaid Form 10DA before the due date of filing of return of income. The Counsel for the assessee placed reliance on decision of

Gujarat High Court in the case of Association of Indian Panel Board Manufacturer in which on similar facts, the Gujarat High Court held that once the appropriate form in the form of Accountant report is available with the tax officer at the time of when assessment was completed, then the benefit of exemption/deduction cannot be denied to the assessee.

6. In response, the Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case, we observe that this is not the first year of claim of deduction under Section 80JJA of the Act and similar claim was also made by the assessee/appellant in the previous assessment year as well. From the facts placed on record, it is observed that the chartered accountant of the assessee filed Accountantôs report in Form 10DA before the due date of filing of return of income. This position has not been disputed by the Department. Admittedly, the above report was not accepted by the assessee before the due date of filing of return of income. However, the Report in Form 10DA filed by the accountant of the assessee was accepted by the assessee on 06.01.2023, whereas in this case the order under Section 143 (1) of the Act was passed on 16.03.2023, denying the claim of deduction under Section 80JJA of the Act which means that at the time when the order under Section 143(1) of the Act was passed by the CPC, the assessee had accepted the Report filed by the accountant of the assessee in Form 10DA. It would be useful to reproduce the relevant extracts of the decision of Gujarat High Court in the case of **Association of Indian Panel Board Manufacturer versus The CIT in Revenue Tax**

Appeal Number 655 of 2022, in which the Gujarat High Court, while dealing with similar issue held that although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Once, it is seen that the audit report, in Form 10B was available with the assessing officer at the time of framing of assessment, even though the same may not have been filed along with the return of income, the assessee is entitled to claim of exemption under Section 11(1) and 11(2) of the Act. The Gujarat High Court made the following observations, while deciding the issue in favour of the assessee/Appellant:

> *"5.3 Learned advocate for the respondent was not in position to dispute the law emanating from the decision of Xaviers Kelavani Mandal (supra) and the other decisions on the issue.*
>
> *5.4 Recollecting the relevant dates, the income was filed on 31.8.2018. On 15.3.2019 Form 10B was filed electronically. On 7.12.2019 intimation under Section 143(1) of the Act was given to the appellant that the exemptions were denied, while processing the return of income on the ground that alongwith the return of income Form 10B was not filed.*
>
> *5.5 It is to be observed in the present case that the Form D-the audit report, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under Section 143(1) of the Act. The conditions for claiming exemption under Section 11 was satisfied. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under Sections 11(1) and 11(2) on the ground that the audit report was not filed.*
>
> *5.6 The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy.*
>
> *5.7 The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the*

Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.

6. ***The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural.*** *Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.*

6.1 The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report alongwith return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.

6.2 Accordingly the substantial questions of law have to be decided in favor of the appellant.

7. They are accordingly decided. The appeal is allowed."

8. Further, we observe that these Hon'ble Supreme Court in the cases of **CIT v. GM Knitting industries 71 taxman.com 35 ((SC)** held that, even though it is necessary to file certificate in Form 10CCB along with the return of income, but even if the same has not been filed with the return of income, but the same was filed before the final order of assessment was made, the assessee was entitled to claim deduction under Section 80-IB of the Act.

9. Accordingly, looking into the instant facts, and the decisions of the Hon'ble Supreme Court and jurisdictional Gujarat High Court referred to above, we are of the considered view that the claim of the assessee/appellant for deduction under Section 80JJA of the Act cannot be denied for the reason that firstly, the chartered accountant of the assessee had uploaded Form 10DDA before the due date of filing of return of income, and it was only because of procedural lapse/mistake on the part of the

appellant/assessee that the aforesaid form could not be accepted before the due date of filing of return of income, secondly, the assessee/appellant had duly accepted the Form 10DDA before the return of income was processed by the CPC on 16.03.2023, thirdly, the Gujarat High Court, has on similar facts observed that although the furnishing of report for claiming the deduction/exemption is mandatory requirement, the mode and stage of filing thereof is a procedural aspect and if the requisite audit report is available with the assessing officer before the assessment order is framed, then the claim of deduction cannot be denied to the assessee/appellant, even if the audit report may not have been filed along with the return of income.

10. Accordingly, the appeal of the assessee is allowed

11. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	**20/05/2024**

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 20/05/2024

TANMAY, Sr. PS ***TRUE COPY***

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1. अपीलाथ□ / The Appellant
2. □□यथ□ / The Respondent.
3. संब□धत आयकर आयु□त / Concerned CIT
4. आयकर आयु□त(अपील) / The CIT(A)-
5. □वभागीय □□त□नध, आयकर अपील□य अ□धकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गाड□फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपील□य अ□धकरण, अहमदाबाद / ITAT, Ahmedabad