

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1431/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2022-23

M/s.K N M Mills Pvt. Ltd., 584A, D.B.Road, R.S.Puram, Coimbatore-641 002.	<b>v.</b>	The Income Tax Officer, Corporate Ward, Coimbatore.
[PAN: AAACK 8972 G]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri G.Tarun, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri D. Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	08.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	29.05.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Learned Joint Commissioner of the Income Tax (Appeals)-12, Mumbai, (hereinafter 'Ld.JCIT(A)') dated 10.10.2023 for AY 2022-23, confirming the action of the CPC.

**2.** The main grievance of the assessee is against the action of the First Appellate Authority having confirmed the denial of deduction claimed u/s.80JJAA of the Income Tax Act 1961(hereinafter 'the Act').



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**3.** Brief facts are that the assessee is a private limited company engaged in the business of manufacture of cotton yarn for AY 2022-23, and it filed return of income returning taxable income of Rs.1,34,56,120/- under normal provisions and claimed deduction u/s.80JJAA of the Act,*[for employing new employees for encouraging generation of employment since 01.04.1991]*. However, while processing return of income u/s.143(1) of the Act, the CPC disallowed the claim of deduction stating that *"deduction u/s.80JJAA of the Act, is not allowable, if Form No.10DA is not filed within due date specified in the Act"*.

**4.** Aggrieved by the aforesaid action of the CPC, the assessee filed an appeal before the JCIT(A) and asserted that it had complied with the condition prescribed in this regard by obtaining the necessary report of accountant as prescribed by Act/Rules. The Ld.AR explained that as required by law, the accountant of assessee, Shri G Shankar [Chartered Accountant, Membership No. 024042] duly uploaded the report through his login in the Income Tax Portal, duly generating 'UDIN' as prescribed by Institute of Chartered Accountants of India. In terms of Sec 80JJAA(2)(c) read with Explanation (ii) to Section 44AB, report need to be furnished one month prior to due date of filing the return of income. And since, the assessee's due date for filing of return of income was 07.11.2022. [the due date prescribed u/s.139 was extended to



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07.11.2022 vide notification No.20/202 dated 26.10.2022] accordingly, the audit report was furnished to Income Tax Department online on 01.10.2022 vide ack. No.607810550011022. The income tax returns were uploaded using digital signature of the assessee on 01.10.2022 vide ack. no 607811251011022. However, the assessee by oversight omitted to approve the audit report u/s.80JJAA while duly approving tax audit report u/s.44AB. The CPC vide intimation dated 14.12.2022 proposed adjustment u/s.143(1) of the Act and that adjustment pertained to disallowing the claim of wages paid to new workmen u/s.80JJAA amounting to Rs.3,13,921/-, with the stated reason of non-filing of audit report u/s.80JJAA. The observation made by CPC was as under:

Incorrect claim (1) Disallowance of Incorrect claim in the return - 143(1)(a)(ii) Varian.

Particulars: In schedule VI-A, SI. No. 21 "Deduction u/s 80JJAA" is not allowable if Form 10DA is not filed within the due date specified in the Act.

**5.** Thus, assessee coming to know about the omission, realized the mistake and promptly responded and cured the defect by approving the audit report. And the assessee furnished a detailed reply dated 19.12.2022 and submitted that Form 10DA has been filed within stipulated due date on 01.10.2022 with Ack.No.851626930191222 and the same was approved by assessee on 19.12.2022. Hence, CPC was



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requested to process the return allowing the claim of deduction u/s.80JJAA as necessary compliance has been complied in accordance with procedure prescribed for making such a claim. However, the CPC vide its intimation u/s.143(1) dated 03.04.2023, disallowed the deduction claimed of Rs.3,13,921/-, without considering the action of assessee curing the defect.

**6.** On appeal, the First Appellate Authority/Ld.JCIT(A) dismissed the appeal of the assessee. Before us, Ld.AR contended that the assessee had filed return of income on 01.10.2022 along with Form No.10DA i.e. well before the due date. According to the Ld.AR, in order to successfully upload Form No.10DA, there were '7' steps stipulated to be carried out online for successfully uploading the same before the tax authorities (portal of the Income Tax Department). According to the assessee, it successfully reached step '6', which fact is proved since the assessee's Accountant has digitally affixed his signature on 01.10.2022 [i.e. within the prescribed time limit] and in order to complete step '6' was the audit-report, which was electronically transmitted had to be approved by the assessee, which assessee due to oversight did not comply, for which CPC gave notice and assessee had duly cured the defect albeit on 19.12.2012. Still the CPC did not allow the claim; and the First Appellate Authority also



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did not allow the claim on technical reasons as noted (supra). As noted, pursuant to CPC show cause notice, assessee approved the Audit Report u/s.44AB of the Act. And due to oversight/technical glitches omitted to approve the Audit Report u/s.80JJAA of the Act as noted supra. Further, according to the Ld.AR, it is digitally visible that the assessee has uploaded Report/Form No.10DA, on 01.10.2022, well within the prescribed time limit and due to the procedural complexities as stated supra; and since uploading are in on-line portal is going through transitional period, the assessee should not be penalized when assessee has complied with the conditions prescribed for claiming deduction u/s.80JJAA of the Act and due to technical complexities, it should not be denied. In order to prove that the assessee has digitally uploaded Form No.10DA on 01.10.2022 at 18:26:46 and generated Unique Documentation Number (UDIN), we note that a copy of which has been placed at Page No.6 of the Paper Book which reveals that Form No.10DA has been signed on 29.09.2022 for AY 2022-23 claiming deduction for additional employee cost of Rs.3,13,921/- and has generated UDIN. In such a scenario, we find that assessee in fact had uploaded Form No.10DA on 01.10.2022 and has generated UDIN number well before the due date for filing Form No.10DA, for claiming deduction u/s.80JJAA of the Act and since substantial compliance has been made by assessee, merely on technical reason, the same should not be denied, since as



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noted when CPC gave notice to assessee, assessee promptly cured the defect, so CPC/JCIT(A) ought to have allowed the claim, because, assessee has substantially complied with the requirement of statute; and according to us the omission is not fatal and curable in nature and assessee has cured it; and therefore, benefit cannot be denied citing non-observance of technical requirement. Therefore, we set aside the impugned order of the Ld.JCIT(A) and restore the matter back to the file of the jurisdictional AO with a direction to verify the facts as claimed by the assessee and if it is found that the assessee had uploaded Form No.10DA well before the due date as prescribed by the statute and only for omitting step '6' out of steps '7' as discussed supra, assessee's legitimate claim if found to be correct should not be denied. In this context, we take note of the Hon'ble Supreme Court decision in the case of United Bank of India v. Naresh Kumar AIR 1997 SC 3, wherein, it was observed by their Lordships "*as far as possible, a substantive right should not be defeated on account of a procedural irregularity which is curable*" and in the case of Associated Journals Ltd. v. Mysore Paper Mills Ltd., reported in [2006] 69 SCL 311 (SC), it was observed by the Hon'ble Supreme Court –



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*"... Rules of procedure cannot be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy justice ... Technical defects in petition are curable.....".*

**7.** In Owners & Parties interested in MV Vali Perov. Fernando Lopez AIR 1989 SC 2206, it was observed - Rules of procedure are not by themselves an end but means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of permissible construction, must be preferred to that which is rigid and negatives the cause of justice. Procedure is meant to subserve and not rule the cause of justice

**8.** In the light of the discussion (supra) and judicial precedents we restore the matter back to the file of the jurisdictional AO for a limited purpose, with a direction to verify the facts as claimed by the assessee and if it is found that the assessee had uploaded Form No.10DA well before the due date as prescribed by the statute and only for omitting step '6' out of steps '7' as discussed supra, assessee's legitimate claim if found to be correct should not be denied. Needless to say, assessee be heard, before passing order.



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9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 29<sup>th</sup> day of May, 2024, in Chennai.

**Sd/-**

(एस. आर. रघुनाथा)

**(S.R.RAGHUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29<sup>th</sup> May, 2024.

**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF