आयकर अपीलीय अधिकरण, **'सी' न्यायपीठ, चेन्नई।** **IN THE INCOME TAX APPELLATE TRIBUNAL** **'C' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.46/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2017-18**		
M/s.Roots Industries India Pvt. Ltd., R.K.G. Industrial Estate, Ganapathy, Coimbatore-641 006.	**v.**	The Dy. Commissioner – of Income Tax, Corporate Circle-(1), Coimbatore.
[**PAN: AABCR 0314 E**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Shri Suraj Nahar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	20.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	29.05.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)/JCIT-5, Mumbai, (hereinafter "the Ld.CIT(A)") dated 08.11.2023 for Assessment Year (hereinafter "AY") 2017-18.

2. The main grievance of the assessee is against action of the First Appellate Authority in denying claim of the assessee for deduction u/s.80IA of the Income Tax Act, 1961 (hereinafter 'the Act'). Brief facts

are that the assessee company is engaged in the business of manufacture of Automobile Electric Horns, generation of Electricity through Wind mill division. The assessee had filed its return of income admitting total income of Rs.15,27,81,490/- on 28.11.2017 as per the provisions of the Act. The return was processed by CPC on 16.03.2019 u/s.143(1) of the Act, wherein, the claim of deduction of Rs.20,47,195/- u/s.80IA of the Act was denied on the ground that the assessee belatedly filed/uploaded the Audit Report in Form No.10CCB electronically on 04.09.2018 (i.e. but before the return of income was processed).

3. Aggrieved the assessee preferred an appeal before the Ld.CIT(A) who dismissed the appeal stating that assessee ought to have filed the Audit Report/Form No.10CCB claiming deduction u/s.80IA of the Act along with the return of income and cited the decision of the Hon'ble Supreme Court in the case of PCIT v. M/s.Wipro Ltd., order dated 11.07.2022 in Civil Appeal No.1449 of 2022 (arising out of SLP (Civil) No.7620/2021). The assessee pleaded that this was the 8th year of claiming of deduction u/s.80IA of the Act and in all previous years, the deduction has been allowed. The Ld.AR submitted that since the Audit Report/Form No.10CCB has been filed before the return was processed, the deduction should be allowed and for such a proposition relied on several decisions of the Tribunal, including that of Annaswamy Sekhar v. DCIT in ITA

No.1000/Chny/2023 dated 20.02.2024, wherein, this Tribunal after considering the decision in M/s.Wipro Ltd. (supra), held that filing of Audit Report/Form No.10CCB is directory and not mandatory; and the Ld.AR also brought to our notice the decision of the Hon'ble Madras High Court in the case of CIT v. AKS Alloys (P) Ltd., reported in [2012] 18 taxmann.com 25 (Mad) wherein the Hon'ble High Court had an occasion to deal with identical issues and the question of law raised by the Revenue was as under:

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to claim deduction u/s.80IB in respect of the unit at Pondicherrys even though the assessee had not complied with the mandatory provision for filing the Audit Report in Form 10CCB in support of the claim as stipulated in Section 80IB(13) r/w.Sec.80IA(7) of the Act, by observing that it was enough if the Audit Report was filed before the assessment was completed?"

4. And the Hon'ble High Court answered the same by upholding the action of the Tribunal and dismissed the Revenue appeal by holding as under:

> 2.The assessee company is engaged in the business of manufacture of steel ingots. In respect of the assessment year 2005-06, assessment order dated 26.12.2007 was passed under Sec.143(3) of the Act, in which, the assessing officer has disallowed the claim of the assesee made under Section 80IB of the Act and has also made addition of Rs.1,20,00,000/- as unexplained credit, under Section 68 of the Act, on the ground that for the purpose of claiming deduction, the assessee did not file necessary certificate in Form 10CCB of the Act along with the return of income, which was filed on 18.7.2005 declaring the income as Rs.1,02,11,036/-.
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> 3. As against the disallowance of the claim, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The appellate authority has allowed the appeal, thereby granting the claim of the assessee made under Section 80IB of the Act. It was against the said order, the Revenue has preferred appeal before the Appellate Tribunal, which came to be dismissed under the impugned order.

4. Being aggrieved by the said order, the present appeal has been filed on the above substantial questions of law.

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 THE COMMISSIONER OF INCOME TAX AND ANOTHER vs. ACE MULTITAXES SYSTEMS (P) LTD. (2009) 317 ITR 207(Karnataka), 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 COMMISSIONER OF INCOME TAX v. CONTIMETERS ELECTRICALS (P) LTD -(2009) 317 ITR 249(Delhi), wherein the Delhi High Court, by following the judgements of the Madras High Court in COMMISSIONER OF INCOME TAX V. ARUNACHALAM (A.N.)-(1994) 208 ITR 481 and in CIT v. JAYANT PATEL (2001) 248 ITR 199 (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 Commissioner of Income Tax v. Sivanand Electronics-(1994)209 ITR 63(Bom), apart from Gujarat High Court in zenith Processing Mills v. CIT-(1996) 219 ITR 721 and Panjab and Haryana High Court in CIT V. Mahalaxmi Rice Factory (2007) 294 ITR 631.

7. The Culcutta High Court in the case in THE COMMISSIONER OF INCOME TAX V. BERGER PAINTS (INDIA) LTD (NO.2) 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.

9. In the light of the above, by virtue of hierarchy of judgements which are against the Revenue, the substantial question of law (1) would not arise at all for consideration.

5. According to the Ld.AR, the Hon'ble Supreme Court had affirmed the aforesaid action of Madras High Court which was challenged by the Revenue before the Apex Court in Civil Appeal No.4048 of 2014 and the Hon'ble Apex Court was pleased to dismissed it by order dated 24th July, 2015 and pointed out that the order of the Hon'ble Madras High Court in

AKS Alloys (supra) has now merged with the order of the Hon'ble Supreme Court, therefore, is binding; therefore, he pleaded that deduction be allowed. Per contra, Ld.DR opposes such claim of the assessee and filed written submissions as under:

> During the course of hearing, the counsel for the appellant submitted that, it is well settled law that filing of the audit report in form-10CCB, for claim of deduction u/s 801A, is mandatory but the date by which it need to be filed is only directory. In support of his submission, the counsel relayed mainly on the Honourable Supreme Court's decision dated 24 July, 2015 in the case of CTT vs. G.M.Knitting Industries (P) Ltd (page-1 & 2 of the case law paper book) and on the jurisdictional High Court decision dated 14th December, 2011 in the case of CIT vs. AKS Alloys (P) Ltd (page-3 to 5 of the case law paper book). Also, relied on various others jurisdictional Tribunals' decisions which were passed following either of the two judgments referred.
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> The cases laws relied on by the counsel are no more applicable to the appellant's case on account of two folds.
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> a. On Interpretation of statues:
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> The Honourable Supreme Court in its detailed speaking order dated 11 July, 2022, while deciding a claim of deduction u/s.10B of the Act, in the case of Wipro Ltd, after detailed consideration of various rulings including CIT vs. G.M.Knitting Industries (P) Ltd, and held at Para 14 of its order as follows:
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> 14. 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 108(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 108(8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

In another latest decision, while passing a detailed order dated 12th October, 2022, the Honourable Supreme Court in the case of Checkmate Services (P.) Ltd vs. CIT (as reported in 143 taxmann.com 178) held at Para 48 as follows:

> "48. One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to be strictly complied with Eagle Flask Industries Ltd. v. CCE 2004 taxmann.com 350 (SC)/2004 Supp. (4) SCR 35, This rule is in line with the general principle that taxing statutes are to be construed strictly, and that there is no room for equitable considerations."

Similarly, while passing a detailed order dated 5th October, 2005, the Honourable Supreme Court in the case of Britannia Industries Ltd. vs. Commissioner of Income-tax held at Para 17 as follows:

> "When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute".

b. Change in Law:

Both the case laws relied upon by the appellant counsel pertains to a case where assessment was for AY-2005-06 that is before introduction of a specific provision 80AC in the Income Tax Act. With effect from 01/04/2006, section 80 AC was introduced into the Act with a specific purpose of timely enforcement of procedural various requirements as contemplated under various other provisions of the Act. The section reads as under:

> "[Deduction not to be allowed unless return furnished.
>
> 80AC. Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80-LAB or section 80- IB or section 80-IC, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.]

This additional condition introduced is over and above the already existing conditions by way of 801A(7). As per this section, deduction shall be allowed only if i. separate books of accounts of the eligible undertaking are maintained ii. Such books are got audited iii. The audit report in the prescribed form obtained and iv. Such audit report in the prescribed form is furnished along with the return of Income.

Rule 12(2) of the Income tax Rules 1962 governs furnishing of return of income and the proviso to this rule mandates furnishing of audit reports along with the return of income.

In the present case, the return of income in Form-6 was filed on 28/11/2017 but the audit report in Form-10CCB had been only on 04/09/2018 filed on

04/09/2018 i.e. after a delay of more than 10 months. Thus, not meeting the critical conditions of claim as laid out under section 801A(7) of the Act.

It may be submitted that law is continuously evolving. The government is in the process of giving sun-set to various deductions and exemptions sections of the Act and even encouraging existing taxpayers to migrate to simplified tax payment structure, by giving-up its various otherwise entitled claims under the Act. This is the intent behind incorporating various stringent conditions, if a taxpayer intent to claim any deduction or exemption under the Act. Keeping this change in intent, the Honourable Supreme Court has been directing through its various case decisions, as mentioned above, to interpret the language of the law as it is in a literal sense, without attributing any additional meaning or liberty, which the law never indented to extend.

6. We have heard both the parties and perused the material available on record. We find that this was the 8th year of claiming deduction u/s.80IA of the Act and in earlier year assessee was granted such deduction; and in the relevant AY, the CPC denied the deduction only on the ground that Audit Report/ Form No.10CCB was belatedly e-filed i.e, not along with the return of income. On appeal, the Ld.CIT(A) has confirmed the action of the CPC by holding that the assessee ought to have filed Form No.10CCB on the due date, which requirement of law, we note came w.e.f. 01.04.2020 and is not applicable for AY 2017-18. Having said so, we note that the assessee had e-filed Form No.10CCB before the CPC had processed the return of income u/s 143(1) of the Act; and therefore, the deduction claimed ought to have been allowed as held by the Hon'ble Supreme Court in the case of GM Knitting Industries (P.) Ltd., (supra), wherein the Apex Court had an occasion to examine the action of Bombay High Court holding that if Form 3AA is filed before the assessment proceedings culminated, then additional depreciation shall be

allowed and such a claim should not be denied only because assessee did not furnish Form 3AA along with return of income. And the Hon'ble Apex Court, affirmed the action of the Hon'ble High Court of Bombay as well as tagged along matter wherein Revenue challenged the action of the Hon'ble Madras High Court in AKS Alloys Pvt. Ltd (supra) and the Civil Appeal of department was dismissed, which means the decision of the Hon'ble Madras High Court has been affirmed by Hon'ble Supreme Court, and is binding precedent that if assessee had filed the Form 10CCB before the assessment proceedings culminate, then the deduction claimed u/s.80IB ought not to be denied on the reason that assessee did not file Form 10CCB along with Return of Income (RoI). We also note the Hon'ble Supreme Court's decision in M/s.Wipro Ltd. (supra) was in the context of that assessee's [Wipro] claim of exemption under Chapter III, in contra-distinction to the claim raised by the present assessee under Chapter VI-A. And it would be gainful to reproduce the Hon'ble Supreme Court's observation in M/s.Wipro Ltd., wherein in the distinction in the claim made for exemption under Chapter-III and deduction claimed under Chapter VI was noted as under:

> "11. Now so far as the reliance placed upon the decision of this Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, Section 10B (8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1) (ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even

> otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B (8) of the IT Act.[emphasis given by us]"

7. In the light of the discussion, and taking note that assessee had e-filed the audit report in Form 10CCB on 04.09.2018 and processing by CPC u/s.143(1) took place only on 16.03.2019, which is an event much after the assessee had e-filed the Form 10CCB, therefore, the claim of deduction ought to have been granted especially when assessee was granted such a deduction for the earlier 7 years. Therefore, we set-aside the impugned order of Ld CIT(A)/JCIT(A) and direct the AO to allow the claim of deduction u/s.80IA of the Act.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 29th day of May, 2024, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 29th 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, Chennai / Madurai / Salem / Coimbatore.

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF