

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Girish Agrawal (AM)

I.T.A. No. 626/Mum/2024 (A.Y. 2017-18)

DA Toll Road Pvt. Ltd. 19 th Floor, Tower B Unit No. 1901, World Trade Tower, Plot No. C-1, Sector 16, Gautam Budha Nagar Uttar Pradesh-201301. PAN : AADCD4600M (Appellant)	Vs.	DCIT 15(1)(2) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Jitendra Sanghvi
Department by	Smt. Mahita Nair
Date of Hearing	03.07.2024
Date of Pronouncement	10.07.2024

ORDER

Per Satbeer Singh Godara (JM) :-

This assessee's appeal for A.Y. 2018-19, arises against the National Faceless Appeal Centre "NFAC", Delhi's Din and order No. ITBA/NFAC/S/250/2023-24/1058882923(1) dated 19.12.2023 in proceedings under section 143(1) of the Income Tax Act 1961 in short (the "Act").

Heard both the parties at length. Case file perused.

2. Coming to the assessee's sole substantive grievance herein challenging both learned lower authorities action disallowing its section 80IA deduction we note that the lower appellate discussion to this effect reads as under :-

"4.1 The Appellant had filed the original ITR on 26/10/2017 declaring a loss of Rs.30,31,69,846/- under the normal provisions of the Act and Rs.1,30,46,397/- under the MAT provisions u/s.115JB of the Act. Though

the Appellant is a infrastructure undertaking eligible for deduction u/s.80IA(4), for reason of having disclosed losses in the original return of income, the audit report in form no.1OCCB was not filed alongwith the return of income. This return was revised subsequently on 19/09/2018 admitting a positive income of Rs.56,81,630/- claiming deduction u/s.80IA(4) of Rs.8,17,82,789/- and book profit without alteration at Rs.1,30,46,397/-. The revised return of income was processed u/s. 143(1)(a)(n) and the claim of deduction u/s.80IA(4) was denied thereby making an adjustment of Rs.8,17,82,789/-. While doing so and casting the liability under the normal provisions of the Act, the MAT credit available u/s.115JAA of the preceding years of Rs.2,62,58,351/- was omitted to be granted. Hence the Appellant is on appeal against denial of deduction u/s.80IA(4) and MAT credit.

4.2 In order to ascertain the correctness of the grounds made in this appeal, a notice u/s.250 was issued to the Appellant on 23/11/2023 which was responded on 08/12/2023. According to the explanation provided by the Appellant, there is no reason to deny the claim of deduction u/s.80IA(4) while the Audit Report in form no.1OCCB was filed along with the revised return of income.

4.3 The Appellant further stated that there are various judicial pronouncements wherein the Apex Court, High Courts and Income Tax Appellant Tribunals have laid down their views and held that even though the Form 10CCB was not filed along with the original Income Tax Return by the appellant and if it is submitted later on at time of assessment proceedings and no defect has defect pointed out by AO in the form 10CCB then same shall be taken on record and no deduction shall be disallowed solely on basis of technicality of not filing the Form 10CCB along with the original Income Tat R6turn. It was further stated that the question of seeking condonation of delay u/s. 119(2)(b) does not arise, since the audit report in form no.1OCCB was filed along with the revised return of income which is a valid return.

4.4 The facts of the case in the light of the arguments made by the Appellant are carefully considered. It is an admitted fact that the audit report in form no.1OCCB has not been filed before the specified date referred to in S.44AB of the Act. The claim of deduction has been denied only on technical grounds and not on the merits of the claim.

4.5 The case laws relied upon by the Appellant have no enforceability when the relevant provisions of the Act u/s.80IA(1) and 80IA(7) mandate that the Audit report has to be filed on or before the specified date u/s.44AB. For easier comprehension, the contents of the relevant provisions of the Act i.r.o 80IA(1) & 80IA(7) are captured and provided below:

80-IA. (1) *Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be*

allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

80-IA. (7) *The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the] , previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant.*

4.6 Therefore, in order to claim exemption u/s.80IA(4) r.w.s.80IA(1), the conditions specified u/s.80IA(7) has to be necessarily complied. It remains an undisputed fact that the audit report in form no.10CCB was filed beyond the time limit specified u/s.44AB for the AY 2017-18. Therefore, the inconsistency in the claim is apparent from the return of income which was unaccompanied by an Audit Report duly submitted before the specified date referred to in S.44AB. Hence, in the facts and circumstances of the case and in law, the Ld' Asst. Director of Income tax, CPC was correct in undertaking the adjustment and hence the corresponding addition to total income of Rs.8,17,82,7897- is **upheld**.

4.7 With regard to the claim of credit available u/s. 115JAA that relates to the yesteryears, since for the year under consideration, the taxation has devolved under the normal provisions of the Act, as a natural consequence, the credit available u/s.115JAA has to be necessarily set off. The issue is factual in nature and backed by documents which are already in the possession of the department, hence the jurisdictional Assessing Officer is directed to examine the relevant records and address the claim of credit available u/s.115JAA. The corresponding ground of appeal is therefore **allowed**.

4.8 The ground relating to the levy of interest is consequential in nature and will get adjusted when the other ground of appeal is addressed and therefore not adjudicated separately.”

3. Suffice to say, the sole issue between the parties is that of assessee's eligibility to claim the impugned section 80IA deduction claim in its “revised” return. Learned CPC herein appears to have rejected the same in its section 143(1)(a)(ii) “processing” for the sole reason that the assessee's foregoing original return was not accompanied by its audit report in form 10CCB filed before specified date under section 44AB of the Act.

4. Learned DR also referred to section 80IA(7) extracted in foregoing lower appellate discussion that such a failure indeed bars the impugned deduction relief.

5. We have given thoughtful consideration to the foregoing vehement rival submission and see no substance in Revenue's contentions supporting the impugned disallowance. We note from a perusal of section 80IA(7); as applicable to impugned assessment year 2017-18 that the legislature had stipulated such compliance as "and the assessee furnishes, alongwith his return of income" whereas the Revenue's stand seeking to evoke 44AB herein, came by way of substitution vide Finance Act, 2020 w.e.f. 1.4.2020 only. This clinching statutory backdrop has gone unrebutted from the departmental side during the course of hearing. All this sufficiently indicates that assessee's revised return dated 19.9.2018 raising 80IA deduction claim of Rs. 8,17,82,789/- had been filed alongwith Form 10CCB, and it was indeed entitled for the impugned relief in the light of CIT Vs. G.M. Knitting Industries Pvt. Ltd. (2015) 376 ITR 456 (SC), dealing with section 80IB deduction claims. We make it clear that section 80IB(13) also imports section 80IA(7) "so far as may be". We accordingly conclude that both the learned lower authorities have erred in law and on facts in disallowing the assessee's impugned section 80IA deduction of Rs. 8,17,82,789/-in section 143(1)(a)(ii) processing. The same stands reversed. The assessee succeeds in its sole substantive ground.

6. This assessee's appeal is allowed.

Order pronounced in the open court on 10th July, 2024.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Mumbai : 10.07.2024

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai