IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

M.A.Nos.195 & 196/PUN./2023

Arising out of

I.T.A.Nos.289 & 290/PUN./2020

Assessment Years 2014-2015 & 2015-2016

T and T Infra Limited, A-1, Vishnu Vihar, BibwewadiKondhwa Road, Market Yard, Pune-411037 Maharashtra. PAN AAECT3902H	vs.	The Dy. Commissioner of Income Tax, Circle-7, Aaykar Bhavan, Bodhi Towers, Salisbury Park, Gultekdi, Pune – 411037 Maharashtra
(Applicant)		(Respondent)

For Assessee :	Shri Tarun Ghia
For Revenue :	Shri Shashank Deogadkar

Date of Hearing :	07.06.2024
Date of Pronouncement :	30.08.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's twin miscellaneous applications M.A.Nos.195 & 196/PUN./2023 in the corresponding main appeals ITA.Nos.289 & 290/PUN./ 2016, for the assessment years 2014-15 and 2015-16, filed u/s.254(2) of the Income Tax Act, 1961 (in short "the Act"); seeks to recall the tribunal's common order dated 20.02.2023 declining the said main cases as under :

"2. We straightaway make it clear at the outset that these assessees' twin case had been kept as part-heard on 06.02.2023 to examine the first and foremost preliminary issue of allowability of its sec.80IA deduction claim(s) of Rs.1,82,94,725/- and Rs.4,87,32,327/-, assessment year-wise, respectively for want of a valid return filed so as to comply with the rigor of sec.80A(5) r.w.s.80AC of the Act.

3. Learned counsel has filed not only detailed written submissions running into 32 pages but also a chart explaining the "due date" for filing return in both these assessment years. Mr. Mehrotra, inter alia, quoted a catena of case law i.e., CIT vs. Pruthvi Brokers & Shareholders [2012] 23 taxmann.com 23 (Bom.); Servo Packaging Ltd. vs. CESTAT 2016 (34) ELT 6; Rajaram Johra vs. Commissioner of Customs (Airport & Cargo) 2019 (365) ELT 424 (HC-Madras); RR Industries Ltd. vs. ITO [2013] 356 ITR 97 (HC-Madras); Dilip Kumar & Co. [2018] 9 SCC 1 (SC); Government of Kerala &Anr. vs. Mother Superior Adoration Convent [2021] 5 SCC 602; CST vs. Industrial Coal Enterprises [1999] 2 SCC 607; State of Jharkhand vs. Tata Cummins Ltd. [2006] 4 SCC 57; Pr. CIT-III, Bangalore &Anr. vs. Wipro Ltd 2022 SCC Online SC 831; Stumfifi Schuele & Somappa P. Ltd. vs. Second ITO [1976] 102 ITR 320 (Kar.) (HC); DCIT vs. Lab Instruments [2005] 93 ITD 120 (Pune); Goetze (India) Ltd. vs. CIT [2006] 204 CTR 182 (SC); National Thermal Power Company Ltd. vs. CIT [1998] 229 ITR 383 (SC); CIT vs.

Jai Parabolic Springs Ltd., [2008] 306 ITR 42 (Del.) (HC); CIT vs. Ramco International [2009] 221 CTR 491 (P & H) (HC); Chicago Pneumatic India Ltd. vs. DCIT [2007] 15 SOT 252 (Mum.) (Trib.); Modern Papers vs. ITO ITA.No.3931/Del./2018 (Delhi-Trib.); Sharp Designers and Engineers India Pvt. Ltd. vs. ACIT ITA.No.2263/PUN./2014 (Pune-Trib.); ACIT vs. Precot Meridian Ltd ITA.No.1214/Mds./2012 (Chennai-Trib.); Parameshwar Cold Storage (P) Limited vs. ASCIT [2011] 16 taxmann.com 88 (Ahd.Trib.); and DCIT vs. Mackintosh Burn Ltd. Kolkata ITA.No.790/Kol./2014 (Kolkata-Trib.).

3.1. The assessee's case in light of the above cited case law is that first of all the CIT(A) has already decided the instant issue in assessee's favour and against the department wherein the latter has neither filed a cross-appeal or cross-objection, as the case may be and, therefore, it could hardly be put in a worse position as per "no reformatio in peius". And that hon'ble apex court has already diluted the stricter interpretation principle in such a deduction provision as held in Government of Kerala vs. Mother Superior Adoration Convent (supra). Learned counsel further quoted hon'ble apex court's landmark decision in Goetze (India) Ltd. hereinabove that the pre-condition of claiming a fresh relief by filing a revised return before the Assessing Officer nowhere impinges upon this tribunal's jurisdiction to entertain an altogether new prayer u/s.254(2) of the Act as well. He cited All Cargo Global Logistics Ltd. vs. DCIT

23 taxmann.com 103 (Mum.) (SB); decided after considering the National Thermal Power Co. Ltd. vs. CIT [1998] 229 ITR 383 (SC) that we can very well allow any party in an appeal to raise a pure legal ground so as to determine correct tax liability provided all the relevant facts are already on record. Mr. Mehrotra once again reiterated that the purpose of introducing these deduction provisions by the legislature is to give an impetus to the economic development and, therefore, we ought to apply liberal construction only even if a claim is raised by way of mere filing a letter or a belated revised return, as the case may be. He lastly highlighted the "due date"of filing revised return u/s.139(5) and sec.139(4) of the Act in latter assessment year 2015-16 to plead that the assessee indeed deserves to succeed on the instant preliminary issue.

4. The Revenue has placed strong reliance on the assessment discussion, more particularly, in assessment year 2015-16 that the Assessing Officer had rightly rejected the assessee's belated claim in light of sec.80AC of the Act. Mr. Jasnani also took us to the CIT(A)'s detailed discussion i.e., page-25 para-4 in assessment year 2014-15 and page-24 para-4 in assessment year 2015-16, respectively, that since he had already rejected this sec.80IA deduction claim on merits, the assessee's belated claims herein had been held to be not maintainable without prejudice to the same. Mr. Jasnani further quoted Rule 27 of I T Rules as well that he can also raise an

altogether new argument so as to confirm the CIT(A)'s findings as per BR Bamasi vs. CIT [1972] 83 ITR 223 (Bom.) (HC). He lastly quoted this tribunal's inherent jurisdiction u/s.254(1) of the Act comprising of the clinching statutory expression "may pass any order thereupon as it thinks fit" in widest terms as held in Ahmedabad Electricity Co. Ltd. vs. CIT [1993] 199 ITR 351 (Bom.) (FB) and CIT vs. Gilbert &Barker Manufacturing [1978] 111 ITR 529 (Bom.).

5. We start with the admitted factual position first of all so far as these twin assessment years 2014-15 and 2015-16 are concerned. The assessee had filed its sec.139(1) returns on 29.11.2014 and 28.09.2015 respectively. It thereafter submitted its letter dated 07.11.2016 (with Form No.10CCA) claiming the impugned sec.80IA deduction before Assessing Officer in assessment year 2014-15 and in latter assessment year 2015-16, it chose to file the alleged revised return dated 04.02.2017 praying for the very relief to the tune of Rs.1,33,11,920/-. There is hardly any quarrel between the parties that the Assessing Officer framed his twin sec.143(3) assessments accepting the returned income in assessment year 2014-15 but rejecting sec.80IA deduction in latter assessment year 2015-16 thereby quoting sec.80AC of the Act.

5.1. The assessee preferred its twin separate appeals before the CIT(A). It is in these two lower appellate orders before

us that the learned CIT(A) has observed that "even if" the assessee's claim u/s.80IA deduction could be allowed to be maintainable belatedly as per various judicial precedents, the same does not deserve to be accepted on merits".

5.2. It is in this factual backdrop that the sole clinching question arises before us as to whether the assessee could claim sec.80IA deduction without even filing a return but by way of mere letter dated 07.11.2016 in assessment year 2014-15 and by filing a belated revised return dated 04.02.2017 in assessment year 2015-16 (supra).

5.3. We have given our thoughtful consideration to the instant issue as well as vehement rival stands and see no reason to accept the assessee's arguments. We first of all quote hon'ble jurisdictional high court's decision [2019] 107 taxmann.com 220 (Bom.) EBR Enterprises vs. Union of India that "filing of the return for claiming the impugned deduction is a mandatory condition u/s.80A(5) of the Act." The assessee's arguments in assessment year 2014-15 stands rejected on the very analogy by adopting stricter interpretation as accepting such an argument would indeed lead to frustration of the said specific statutory embargo. The legal position would hardly be any different for the latter assessment year 2015-16 as well wherein the assessee's revised return could not have been accepted u/s.139(5) of the Act in light of hon'ble apex court's

landmark decision [2022] 140 taxmann.com 223 (SC) in PCIT vs. Wipro Ltd. settling the issue in department's favour as follows :

> *"9. In such a situation, filing a revised return under section 139(5) of the IT Act claiming carrying forward of losses subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3). Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under section 139(1) and cannot transform it into a return under section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under section 80 of the IT Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set-off of any loss. Filing a revised return under section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming*

benefit under section 10B(8) and furnishing the declaration as required under section 10B(8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B(8), both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature."

5.4. Learned counsel could hardly dispute in that the assessee's original return filed u/s.139(1) had not raised any deduction claim in assessment year 2015-16, would not be entitled to do so by filing a revised return u/s.139(5) of the Act. Their lordships have made it clear that a revised return could be filed only if there is an omission or a wrong statement but a claim which was not earlier raised could not be raised at a latter stage. Learned counsel at this stage quoted sec.139(4) of the Act as applicable in the relevant assessment year which does not cover any of the specified twin eventualities i.e. the assessee having not furnished any return earlier who is allowed to do so within the time prescribed in sec.142(1) notice. We make it clear that the Assessing Officer had issued his

sec.142(1) notices on 6th and 17th October, 2017 whereas the assessee had submitted its alleged revised return very well before that on 04.02.2017. Faced with the situation, we exercise our statutory jurisdiction vested u/s.254(1) of the Act in wider terms to reject the assessee's letter claiming sec.80IA deduction dated 07.11.2016 for assessment year 2014-15 and "revised" return dated 04.02.2017 in assessment year 2015-16 as non-est in the eye of law in above terms by adopting stricter construction in light of CIT vs. Dilip Kumar (supra) as reiterated in PCIT vs. Wipro Ltd. (supra). The assessee's reliance placed on Sharp Engineers, Goetz (India) Ltd. and Pruthvi Brokers is found to be entirely misconceived since going against specific provisions in the Act.

5.5. Mr. Jasnani at this stage strongly supported both the learned lower authorities action denying the assessee's sec.80IA deduction claim(s)on merits on the ground that it had merely executed works contract. We find no reason to deal with the instant issue at this stage as we have already decided the foregoing preliminary legal issue in department's favour. Ordered accordingly."

2. Suffice to say, it is thus clear that the tribunals impugned order has dismissed the assessee's identical sole substantive ground claiming sec.80IA deduction(s) *inter alia* on the ground that it was not claimed in a return in assessment

year 2014-2015 and was sought to be allowed by way of a belated "revised" return in assessment year 2015-2016; respectively.

3. Learned counsel submits in light of Goetze (India) Ltd., vs. CIT [2006] 284 ITR 323 (SC) & CIT, Mumbai vs. M/s. Pruthvi Stock Brokers & Shareholders [2012] 23 taxmann.com 23 (Bom.) that the assessee is indeed entitled to claim such a deduction for the first time in the appellate proceedings; be it before the learned CIT(A) or in the tribunal.

4. We make it clear first of all that we are only dealing with the assessee's sec.254(2) rectification petition wherein the scope is very limited i.e., meant to correct only apparent mistakes on record than re-visiting the entire findings as held in [2008] 305 ITR 277 (SC) ACIT vs. Saurashtra Kutch Stock Exchange Ltd.; [2021] 133 taxmann.com 41 (SC) CIT vs. Reliance Telecom Ltd.; and [1993] 203 ITR 497 (Bom.) CIT vs. Ramesh Electric and Trading Co. We are of the considered view that although the assessee has quoted the foregoing case law (supra) in support of the arguments that sec.80IA deduction could indeed be claimed for the first time in appellate proceedings, we note that all the said judicial precedents nowhere touched upon the applicability of sec.80A(5) (supra) and therefore, they are distinguishable. We thus find no substance in assessee's instant twin

miscellaneous applications M.A.Nos.195 & 196/PUN./2023 so as to assume our rectification jurisdiction. Rejected accordingly.

No other ground or argument has been pressed before us.

5. These assessee's twin miscellaneous applications M.A.Nos.195 & 196/PUN./2023 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 30.08.2024.

Sd/-	Sd/-
[DR. DIPAK P. RIPOTE]	[SATBEER SINGH GODARA]
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pune, Dated 30th August, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.