

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no. 2527/Mum./2024
(Assessment Year : 2022-2023)

Sindhu Resettlement Corporation Ltd.

1, PNB House, Sir P. M. Road,
Fort, Mumbai-400001
PAN - AAACS6525P

..... Appellant

v/s

DCIT, Circle-2(3)(1),

Aayakar Bhavan, Mumbai-400001

..... Respondent

Assessee by : Shri. D. M. Rindani

Revenue by : Shri. Ashok Kumar Ambastha Sr. DR

Date of Hearing – 24/07/2024

Date of Order – 27/09/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 26/03/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Addl./Joint Commissioner of Income Tax (Appeals)-1, Bangaluru, [*"learned Addl./Joint CIT(A)"*], which in turn arose from the intimation issued under section 143(1) of the Act, for the assessment year 2022-23.

2. In this appeal, the assessee has raised the following grounds: –

"1. The learned Commissioner (Appeals), erred in confirming action of CPC Bangalore in disallowing claim of deduction of Rs. 48,06,281/- u/s 801A(4) of the Act made by the Appellant in the return of income filed for the year and thereby treating the same as incorrect claim u/s 143(1)(a)(ii) of the Act.

2. The learned Commissioner (Appeals), erred in confirming action of the CPC Bangalore in making adjustment to the returned income of the Appellant by way of an intimation u/s 143(1) and in denying the benefit of Sec. 80-1A(4) of the Act of Rs. 48,06,281/- to the Appellant by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(1)(a) of the Act."

3. The sole grievance of the assessee is against the denial of deduction claimed under section 80-IA(4)(iv) of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of development of the Gandhidham township on leasehold land and generation of power. For the year under consideration, the assessee filed its return of income on 04/11/2022 declaring a total income of ₹ 2,11,32,540, after claiming a deduction of ₹ 48,06,281 under section 80-IA(4)(iv) of the Act. The return filed by the assessee was processed vide intimation dated 16/03/2023 issued under section 143(1) of the Act by the Centralised Processing Centre, Bengaluru, ("CPC"), inter-alia, disallowing the deduction claimed under section 80-IA(4)(iv) of the Act on the basis that the assessee has failed to file Form no.10CCB within the due date. In an appeal by the assessee against the intimation issued under section 143(1) of the Act, the learned Addl./Joint CIT(A) upheld the disallowance of deduction claimed under section 80-IA of the Act on the basis that the assessee failed to

furnish the audit report in Form no.10CCB within the stipulated date mentioned in the Act. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the report in Form no.3CA-3CD for the year under consideration was filed on 19/09/2022, i.e. before the due date of 07/10/2022. The learned AR submitted that the previous auditors used to file Form no.3CD and Form no.10CCB together for many years and the same was continued up to the assessment year 2021-22. However, in the year under consideration, the tax auditors of the company were changed. It was further submitted that Form no.3CD, filed within the due date, also mentions that the assessee is eligible for the claim of deduction under section 80-IA of the Act. By referring to the affidavit of the Chartered Accountant, the learned AR submitted that the financials of the Wind Mill division of the company were audited on 24/08/2022 which were required to be filed electronically in Form no.10CCB for claiming deduction under section 80-IA(4)(iv) of the Act. Thus, it was submitted that only due to initial technical error and inadvertence thereafter Form no.10CCB could not be filed before the specified due date.

6. On the other hand, the learned Departmental Representative vehemently relied upon the impugned order and submitted that filing of Form no.10CCB by the due date prescribed under section 80-IA(7) read

with section 44AB of the Act is a mandatory requirement, which the assessee in the present case did not fulfil.

7. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it owns Wind Mills in the State of Tamil Nadu since 2010 and is claiming deduction under section 80-IA(4)(iv) of the Act since the assessment year 2014-15 for generation, transmission and distribution of power. Thus, as per the assessee, it is eligible to claim the deduction until the assessment year 2023-24. In the present case, there is no dispute regarding the fact that the due date for filing the audit report in Form no.10CCB was 07/10/2022, however, the same was filed by the assessee on 17/10/2022. Since the audit report in Form no.10CCB could not be filed by the assessee before the specified date, the lower authorities denied the deduction claimed by the assessee under section 80-IA(4)(iv) of the Act.

8. As per the assessee, the audit report in Form no.3CA-3CD was obtained by the assessee on 24/08/2022 and the same was uploaded by the Chartered Accountant on 19/09/2022. As per the assessee, the audit report also mentioned that the assessee is entitled to claim deduction under section 80-IA of the Act. It is the plea of the assessee that even though the financials that are required to be filed electronically in Form no.10CCB for claiming deduction under section 80-IA(4)(iv) of the Act were audited on 24/08/2022, Form no.10CCB could not be filed before 07/10/2022, i.e. the

due date for filing the audit report in Form no.3CA-3CD and Form no.10CCB. In the affidavit of the Partner of the Chartered Accountant firm, forming part of the paper book on pages 113-115, it is claimed that the Qualified Chartered Accountant filed all the forms required to be filed electronically on the Income Tax Portal in September 2022 except the Form no. 10CCB, which was required to be filed to claim deduction under section 80-IA(4)(iv) of the Act. In the aforesaid affidavit, it is further submitted that Form no.10CCB could not be filed in September 2022 due to some technical error on the portal and subsequently, when the aforesaid lapse was noted, Form no.10CCB was filed after a delay of 10 days, i.e. on 17/10/2022. In the affidavit, it is thus submitted that the delay of 10 days in filing Form no.10CCB was wholly due to inadvertence on the part of the Chartered Accountant firm.

9. At this stage, it is pertinent to analyse the provisions of section 80-IA(7) of the Act, which lays down the requirement for filing the audit report in Form no.10CCB. Section 80-IA(7) of the Act, as applicable during the year under consideration, is reproduced as follows: –

"(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, as 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."

10. Further, Rule 18BBB of the Income Tax Rules, 1962 provides that the audit report, as required under section 80-IA(7) of the Act, shall be in Form no.10CCB. Thus, from the plain reading of the provisions of section 80-IA(7) of the Act, as it stood during the relevant year, read with Rule 18BBB, it is evident that for claiming deduction under section 80-IA of the Act, the assessee is required to furnish the audit report in Form no.10CCB before the specified date as referred to in section 44AB of the Act. Further, as per the provisions of section 44AB of the Act, specified date means a date one month prior to the due date for furnishing the return of income under section 139(1) of the Act. In the present case, it is undisputed that the due date for filing the return of income was extended to 07/11/2022, thus the specified date for furnishing the audit report in Form no.10CCB was 07/10/2022.

11. We find that the provisions of section 44AB and section 80-IA(7) of the Act were amended vide Finance Act, 2020, w.e.f. 01/04/2020. Prior to the aforesaid amendment in section 80-IA(7) of the Act, the assessee was required to furnish the audit report in Form no.10CCB along with the return of income. Further, prior to the amendment by Finance Act, 2020 w.e.f. 01/04/2020, the specified date in section 44AB of the Act meant the due date for furnishing the return of income under sub-section (1) of section 139 of the Act. Thus, if the law prior to the amendment by the Finance Act, 2020 is applied to the current factual position, the assessee is entitled to claim a deduction under section 80-IA of the Act since the audit report in

Form no.10CCB was filed on 17/10/2022, i.e. prior to the due date for furnishing the return of income under sub-section (1) of section 139 of the Act. Therefore, now the issue arises whether the aforementioned amendment by the Finance Act, 2020 lays down any mandatory requirement for claiming deduction under section 80-IA of the Act or whether the same is just directory in nature. In order to answer the aforesaid issue, it is relevant to note the rationale behind the aforesaid amendment from the Memorandum explaining the provisions of the Finance Bill, 2020, which reads as follows: –

"Rationalisation of provisions relating to tax audit in certain cases.

Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, fifty lakh rupees in any previous year. In order to reduce compliance burden on small and medium enterprises, it is proposed to increase the threshold limit for a person carrying on business from one crore rupees to five crore rupees in cases where,-

- (i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and*
- (ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.*

Further, to enable pre-filing of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assesseees at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section 44DA, section 50B, **section 80-IA**, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115W of the Act are proposed to be amended accordingly.

Further, the due date for filing return of income under sub-section (1) of section 139 is proposed to be amended by:-

- (A) providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;*
- (B) removing the distinction between a working and a non-working partner of a firm with respect to the due date as mentioned in sub-clause (iii) of clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act.*

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years."

(Emphasis Supplied)

12. Therefore, from the aforementioned relevant portion of the Memorandum explaining the provisions of the Finance Bill, 2020, it is evident that the amendment brought in section 44AB and section 80-IA of the Act was merely to enable pre-filing of returns in case of persons having income from business or profession. Accordingly, the tax audit report was required to be furnished at least one month prior to the due date of filing the return of income as per the amended provisions. Therefore, having considered the rationale behind the aforesaid amendment by the Finance Act, 2020, we are of the considered view that the aforesaid timeline to file the tax audit report is merely directory in nature and cannot be considered to be a mandatory requirement to claim the deduction.

13. We find that the Hon'ble Karnataka High Court in *Sutures India Private Limited v/s CIT*, reported in [2021] 431 ITR 332 (Karn.) held that the taxpayer could file the audit report in Form no.10CCB even at the

appellate stage so as to be eligible for deduction under section 80-IA of the Act.

14. We further find that the coordinate bench of the Tribunal in Sanjay Kukreja v/s ACIT, in ITA No. 652/Del./2023, vide order dated 30/01/2024, while considering the provisions prior to the amendment by Finance Act, 2020, held that the requirement of filing the audit report in Form no.10CCB along with the return of income is not mandatory but a directory for claiming deduction under section 80-IA of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: –

"5. Heard rival submissions. The only issue is to be decided is as to whether the Form 10CCB is mandatorily to be filed along with the return or the due date specified u/s 139(1) of the Act for claiming deduction u/s 801A of the Act. We observe that the Hon'ble Delhi High Court in the case of CIT Vs. Contimeters Electricals Pvt. Ltd. (supra) held that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before framing of assessment the requirement of section 801A(7) would be met observing as under:

"According to the Commissioner of Income Tax since no audit report, duly verified and signed in the prescribed Form no. 10CCB under Rule 18BBB had been furnished along with the return, the condition for claiming deduction had not been satisfied and, therefore, the action of the Assessing Officer in allowing rebate u/s 80-1A was erroneous and prejudicial to the interest of the Revenue. After issuance of the notice the Commissioner of Income Tax passed the order dated 29.03.2007 whereby he held that he was fully satisfied that the assessment which had been completed by the Assessing Officer was prejudicial to the interest of the Revenue and that it was erroneous in as much as the assessee had not satisfied the conditions laid down u/s 80-1A and consequently the deduction under that section for the sum of Rs. 14,27,351/- had been wrongly allowed. The CIT(A), therefore, cancelled the assessment which had been earlier framed and directed the AO to complete the assessment as per law, in terms of the directions given in the said order.

Being aggrieved by the said order, the assessee preferred an appeal before the Tribunal which was allowed by the Tribunal by virtue of the impugned order. The Tribunal took the view that the provisions of section 801A(7) with regard to filing of the audit report along with the return were not mandatory and were merely directory. In coming to such conclusion, the Tribunal referred to the decisions of the Gujarat High Court in CIT vs. Gujarat Oil & Allied Industries,

201 ITR 325 (Guj.). In that decision the provisions of Section 80J(6A) were considered. The wording of Section 80J(6A) is similar to that of section 80-1A(7) which is in issue in the present appeal. The Gujarat High Court took the view that the word 'shall' which occurs in section 80J(6A) be read as 'may' and that the requirement of filing of an audit report along with the return was only to be taken as directory in nature. The Gujarat High Court took the view that in case the audit report is submitted at any time before the framing of the assessment, there would be substantial compliance with the provisions of Section 80J(6A).

The Tribunal also relied on the decision of the Madras High Court in CIT vs. A.N. Arunachalam, 208 ITR 481 (Mad.), which, again, while considering the provisions of Section 80J(6A), took the same view as that of the Gujarat High Court.

We notice that there are other decisions of other Courts taking the same view. The decisions being, CIT vs. Shivanand Electricals (1994) 209 ITR 63 (Bombay); Zenith Processing Mills vs. CIT (1996) 219 ITR 721 (Guj.); Cit vs. Jayant Patel (2001) 248 ITR 199 (Mad.) and CIT vs. Mahalaxmi Rice Factory (2007) 294 ITR 631 (P&H).

In view of this long line on decisions of various High Courts in considering the provisions of Section 80J(6A) which are similar to the provisions of Section 801A(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of the assessment, the requirement of section 801A(7) would be met."

6. We find that similar view has been taken by the Hon'ble Madras High Court in the case of CIT Vs. AKS Alloys Pvt. Ltd. (supra), wherein it has been held as under:

"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 CIT v. ACE Multitaxes Systems (P.) LTD. [2009] 317 ITR 207 (Kar.), 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 CIT v. Contimeters Electricals (P.) Ltd. [2009] 317 ITR 249/ 178 Taxman 422 (Delhi), wherein the Delhi High Court, by following the judgements of the Madras High Court in CIT v. A.N. Arunachalam [1994] 208 ITR 481 / 75 Taxman 529 and in CIT v. Jayant Patel [2001] 248 ITR 199/ 117 Taxman 707 (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 CIT v. Shivanand Electronics [1994] 209 ITR 63 / 75 Taxman 93 (Bom.), apart from Gujarat High Court in Zenith Processing Mills v.

CIT [1996] 219 ITR 721 (Guj.) and Punjab and Haryana High Court in CIT v. Maholaxmi Rice Factory [2007] 294 ITR 631/ 1.63 Taxman 565 (Punj. & Har).

7. The Calcutta High Court in the case in the CIT v. Berger Paints (India) Ltd. [2002] 254 ITR 503/r20031 126 Taxman 435 (Cal.) 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."

7. Similar view has been taken by the Hon'ble Allahabad High Court in the case of PCIT vs. Surya Merchands Ltd. 387 ITR 105 and the Hon'ble High Court of Utrakhand in the case of CIT Vs. Sanjay Kumar Bansal 35 taxmann.com 514, and Hon'ble Karnataka High Court in the case of CIT vs. ACE Multi Taxes Systems Pvt. Ltd. 317 ITR 207. The ratios of the above decision squarely applying to the facts of the case, we hold that filing of audit report in Form 10CCB before the due date for filing of return of income u/s 139(1) is only directory and not mandatory for the year under consideration. Thus, we direct the AO to allow deduction claimed u/s 801A of the Act. Grounds raised by the assessee are allowed."

15. Further, from the perusal of the decision of the Hon'ble Supreme Court in PCIT v/s Wipro Ltd., [2022] 446 ITR 1 (SC), we find that compliance with the provisions of section 10B(8) of the Act was under consideration before the Hon'ble Supreme Court, which specifically requires furnishing of declaration to the Assessing Officer before the due date of furnishing the return of income under sub-section (1) of section 139 of the Act. However, in the facts of the aforesaid case, the taxpayer filed the declaration as required under section 10B(8) alongwith the revised return of income, i.e. after the due date of filing of the original return under section 139(1) of the Act. Admittedly in the present case, the audit report in Form no.10CCB was filed on 17/10/2022, i.e. prior to the due date for furnishing the return of income under sub-section (1) of section 139 of the Act and

before the filing of return of income by the assessee on 04/11/2022. Further, as noted above, the amendment by the Finance Act, 2020 has reduced the timeline for filing the audit report in Form no.10CCB only with an intention to enable the pre-filing of returns in case of persons having income from business or profession. The fact that the assessee filed the audit report in Form No.10CCB on 17/10/2022, even though delayed by 10 days, however the same was filed before the filing of the return of income by the assessee, and thus in our considered view, the same is in conformity with the intention of the aforesaid amendment. Therefore, we are of the considered view that the decision of the Hon'ble Supreme Court in Wipro Ltd (supra) also does not support the case of the Revenue.

16. Thus, the amendment by the Finance Act, 2020 has only modified the due date for filing the audit report in Form no.10CCB without any other significant change, considering which it cannot be said that the requirement is now mandatory in nature. It is also pertinent to note that apart from the aforesaid delay in filing the Form no.10CCB, there is no other allegation by the Revenue to deny the deduction claimed under section 80-IA(4)(iv) of the Act for the year under consideration, which is the 9th year of the claim of deduction by the assessee. Therefore, we are of the considered view that the learned Addl./Joint CIT(A) erred in upholding the disallowance of deduction claimed under section 80-IA(4)(iv) of the Act. Accordingly, on this issue, the impugned order is set aside, and the AO is directed to allow

the deduction claimed by the assessee under section 80-IA(4)(iv) of the Act. Accordingly, the grounds raised by the assessee are allowed.

17. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 27/09/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/09/2024

Aniket Singh Rajput (Stenographer)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai