

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1315/Bang/2024
Assessment year : 2023-24

Shri Bhagawnji Harish, No.11/3, 4 th Main Road, Industrial Town, Rajajinagar, Bangalore – 560 044. PAN : AACPH 9005L	Vs.	The Income Tax Officer, Ward 5(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prakash Shridhar Hegde, CA
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.10.2024
Date of Pronouncement	:	06.11.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 14.05.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2023-24 not allowing deduction u/s. 80JJAA of the Act of Rs.13,15,845.

2. Briefly stated the facts of the case are that the assessee filed return of income on 28.10.2023 within the extended due date declaring total income of Rs.96,17,870, claiming deduction u/s. 80JJAA of

Rs.13,15,845. The deduction u/s. 80JJAA was denied while processing the return on 26.02.2024 for the reason that Form 10DA was not filed by the assessee within the due date prescribed. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

3. During the appellate proceedings the assessee filed detailed written submissions which is incorporated in the order of FAA. The Id. FAA further noted that Form 10DA was obtained on 30.09.2023 and the same was digitally signed on 14.10.2023 and electronically filed on 24.10.2023. As per Rule 19AB of the Income-tax Rules, it was mandatory to file the accountant's report in Form 10DA at least one month prior to date of filing of return u/s. 139(1), failing which deduction u/s. 80JJAA of the Act will not be admissible in accordance with the provisions of the Act. He noted that Form 10DA was filed after the prescribed due date which is 30.09.2023 and the return filed on 28.10.2023, which is beyond the prescribed time. Reliance was placed on Hon'ble Apex Court judgment dated 11.7.2022 in Civil Appeal No.1449 of 2022 in the case of Pr. CIT v. Wipro Limited wherein strict construction to reverse the findings of Hon'ble High Court allowing carry forward of such losses. He also relied on Hon'ble Apex Court judgment in the case of CC v. Dilip Kumar [2018] 95 taxmann.com 327 / 69 GST 239. He therefore confirmed the order of the CPC u/s. 143(1)(a) of the Act. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR The Id. AR reiterated the submissions made before the lower authorities and submitted that filing of Form 10DA was directory in nature which was filed before filing return of income. The assessee has duly filed the tax audit report within due date specified on 30.9.2023 claiming deduction of Rs.13,15,845 u/s. 80JJAA in cl. 33 of Form 3CD. The same was certified by independent CA on the same date on 30.09.2023. The assessee has also obtained Form 10DA from the auditor claiming deduction u/s. 80JJAA, however due to technical difficulty, the CA was unable to file the said form along with tax audit report. The said Form was later filed on 28.10.2023 along with return of income i.e., before due date specified u/s. 139(1). He further submitted that there was no dispute on quantum of deduction and while processing the return u/s. 143(1), Form 10DA was available with CPC. In view of this the assessee is eligible for deduction. In support of the claim of deduction, he relied on the following judgments:-

- Akuntha Projects (P) Ltd. v. Dy. Director (CPC)
- Jeans Knit (P) Ltd. v. DCIT, [2022] 138 taxmann.com 480

5. The Id. DR relied on the order of lower authorities and submitted that it is a mandate for assessee to file Form 10DA within due date as per section 80JJAA and assessee has not complied, therefore the lower authorities are justified. The decision relied by the Id. CIT(Appeals) is squarely applicable and strict construction should be considered while granting deduction to the assessee.

6. Considering the rival submissions, we note that here the dispute is disallowance of deduction u/s. 80JJA for not filing Form 10DA within the due date specified. Form 10DA was digitally signed on 14.10.2023 and uploaded in the income tax website on 28.10.2023 before filing return of income. We have also gone through the tax audit report Form 3CD at sl. No.33, it is evident that tax auditor has reported about the deduction u/s. 80JJA of Rs.13,15,845 and there is no variation reported in Form 10DA. Form 3CD was signed on 30.09.2023 which is prior to one month from filing of return of income. It clearly shows that details were certified by tax auditor, only there is delay for certifying and uploading Form 10DA. The Id. AR has relied on the judgment of ITAT Ahmedabad in the case of Akuntha Projects P. Ltd. (supra), the relevant part of the judgment is as under:-

“ 7. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case, we observe that this is not the first year of claim of deduction under Section 80JJA of the Act and similar claim was also made by the assessee/appellant in the previous assessment year as well. From the facts placed on record, it is observed that the chartered accountant of the assessee filed Accountant's report in Form 10DA before the due date of filing of return of income. This position has not been disputed by the Department. Admittedly, the above report was not accepted by the assessee before the due date of filing of return of income. However, the Report in Form 10DA filed by the accountant of the assessee was accepted by the assessee on 06.01.2023, whereas in this case the order under Section 143 (1) of the Act was passed on 16.03.2023, denying the claim of deduction under Section 80JJA of the Act which means that at the time when the order under Section 143(1) of the Act was passed by the CPC, the assessee had accepted the Report filed by the accountant of the assessee in Form 10DA. It would be useful to reproduce the relevant extracts of the decision of Gujarat High Court in the case of *Association of Indian Panelboard Manufacturer v. Dy. CIT [2023] 157 taxmann.com 550* in Revenue Tax Appeal Number 655 of 2022, in which the Gujarat High Court, while dealing with similar issue held that although the requirement of furnishing report was mandatory, filing thereof is a

procedural aspect. Once, it is seen that the audit report, in Form 10B was available with the assessing officer at the time of framing of assessment, even though the same may not have been filed along with the return of income, the assessee is entitled to claim of exemption under Section 11(1) and 11(2) of the Act. The Gujarat High Court made the following observations, while deciding the issue in favour of the assessee/Appellant:

"5.3 Learned advocate for the respondent was not in position to dispute the law emanating from the decision of Xaviers Kelavani Mandal (*supra*) and the other decisions on the issue.

5.4 Recollecting the relevant dates, the income was filed on 31.8.2018. On 15.3.2019 Form 10B was filed electronically. On 7.12.2019 intimation under Section 143(1) of the Act was given to the appellant that the exemptions were denied, while processing the return of income on the ground that alongwith the return of income Form 10B was not filed.

5.5 It is to be observed in the present case that the Form D-the audit report, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under Section 143(1) of the Act. The conditions for claiming exemption under Section 11 was satisfied. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under Sections 11(1) and 11(2) on the ground that the audit report was not filed.

5.6 The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy.

5.7 The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.

6. The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.

6.1 The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report alongwith return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.

6.2 Accordingly the substantial questions of law have to be decided in favor of the appellant.

7. They are accordingly decided. The appeal is allowed. "

8. Further, we observe that these Hon'ble Supreme Court in the cases of *CIT v. G. M. Knitting Industries (P.) Ltd.* [\[2016\] 71 taxmann.com 35/\[2015\] 376 ITR 456](#) held that, even though it is necessary to file certificate in Form 10CCB along with the return of income, but even if the same has not been filed with the return of income, but the same was filed before the final order of assessment was made, the assessee was entitled to claim deduction under Section 80-IB of the Act.

9. Accordingly, looking into the instant facts, and the decisions of the Hon'ble Supreme Court and jurisdictional Gujarat High Court referred to above, we are of the considered view that the claim of the assessee/appellant for deduction under Section 80JJA of the Act cannot be denied for the reason that firstly, the chartered accountant of the assessee had uploaded Form 10DDA before the due date of filing of return of income, and it was only because of procedural lapse/mistake on the part of the appellant/assessee that the aforesaid form could not be accepted before the due date of filing of return of income, secondly, the assessee/appellant had duly accepted the Form 10DDA before the return of income was processed by the CPC on 16.03.2023, thirdly, the Gujarat High Court, has on similar facts observed that although the furnishing of report for claiming the deduction/exemption is mandatory requirement, the mode and stage of filing thereof is a procedural aspect and if the requisite audit report is available with the assessing officer before the assessment order is framed, then the claim of deduction cannot be denied to the assessee/appellant, even if the audit report may not have been filed along with the return of income.

7. Since in the case on hand, the Id. CIT(Appeals) has not doubted on the quantum of deduction u/s. 80JJA of the Act claimed by the assessee, Respectfully following the above judgment, we allow the appeal of the assessee.

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

Pronounced in the open court on this 06th day of November, 2024.

Sd/-
(SOUNДАРARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 06th November, 2024.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.