



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2078/PUN/2024

निर्धारण वर्ष / Assessment Year: 2022-23

Roxiler Systems Pvt. Ltd., A 508, Kamal Green Leaf, Khadakwasala, Pune – 411024. PAN: AAHCR8766J	vs	The Income Tax Officer, Ward-5(4), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by :	Shri Sharad S. Vaze and Shri Amod S. Vaze – AR's
Revenue by :	Shri Arvind Desai – Add.CIT(DR)
Date of hearing:	18/11/2024
Date of pronouncement :	30/12/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the assessee against the order of  
ld.Commissioner of Income Tax(Appeals)ADDL./JCIT(A),  
Mysore for Assessment Year 2022-23dated 20/08/2024 passed  
u/sec.250 of the Income tax Act, 1961, emanating from an order  
u/s 143(1) of the Act dated 19/08/2023.The Assessee has raised the  
following grounds of appeal :

“1. On the basis of facts and in the circumstances of the case and as per law, rejection of claim u/s 80IAC of the Income Tax Act 1961 (Act) is beyond the powers of CPC, Bengaluru in the powers of CPS, Bengaluru in proceedings u/s 143(1) of the Act.

2. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-NFAC Delhi is not justified in rejecting the claim of the assessee u/s 80IAC of the Act.

3. The appellant craves leave to add, alter, omit or substitute any of the grounds at the time of hearing of the appeal.”

**Submission of ld.AR :**

2. Ld.Authorised Representative (AR) for the assessee filed a paper book. Ld.AR submitted that Assessee had filed return of income on 01/11/2022. Ld.AR filed a chart as under :

	Date of E filling	Due Date of filling
Return of Income	1/11/2022	07/11/2022
Audit Report in FORM 10CCB	14/10/2022	07/10/2022

2.1. Ld.AR submitted that the Audit report could not be filed within the due date due to unavoidable circumstances. Ld.AR submitted that the CPC has disallowed claim of the deduction u/s 80IAC of the assessee as assessee has not filed the Audit Report in form 10CCB within the time allowed. Ld.AR submitted that for earlier year assessee’s claim was allowed, to explain that otherwise

assessee is eligible for deduction u/s 80IAC of the Act.Ld.AR relied on following case laws :

1. CIT vs. G M Knitting Industries (P.) Ltd., [2016] 71 taxmann.com 35 (SC).
2. CIT vs. Shivanand Electronics [1994] 209 ITR 63 (Bom.).
3. CIT-1 vs. AKS Alloys (P.) Ltd., [2012] 205 Taxman 11 (Mad.) (HC).
4. CIT vs. Contimeters Electricals (P) Ltd., [2009] 317 ITR 249 (Del.) (HC).

**Submission of ld.DR :**

3. Ld.Departmental Representative submitted that the assessee had not filed the Audit Report in form 10CCB within the statutory time limit. Ld.DR submitted that hence CPC has rightly disallowed claim. Ld.DR relied on the order of the CIT(A).

**Findings & Analysis :**

4. We have heard both the parties and perused the records. In this case the assessee had filed return of Income on 1/11/2022 which was within the statutory time limit. Assessee claimed deduction u/s.80IAC of the Act. However, the Audit Report in

form 10CCB was filed on 14/10/2022 where as the due date of filling it was 07/10/2022. Thus, admittedly the Audit report in the prescribed Form was filed beyond the time allowed under the section 44AB of the Act read with section 80IAC of the Act.

4.1. It is important to mention here that the Assessee has not pleaded any reason for such delay. Assessee merely submitted that due to unavoidable reasons the Audit report could not be uploaded.

4.2. In this factual background we will discuss the Proposition of law lay-down by Hon'ble Jurisdictional High Court in the case of CIT vs. Shivanand Electronics 209 ITR 63(Bom) dated 3/9/1993 which has been relied by the Assessee. Hon'ble Bombay High Court in Shivanand Electronics (supra) held as under :

*“When the Legislature casts a duty on the assessee claiming certain benefit, to comply with requirements which are associated with such benefit, the assessee cannot get the benefit without doing his part of the duty. He cannot be allowed to say that it was for the ITO to ask him to do so. If the assessee does not do his part of the statutory duty, the ITO may proceed to decide the allowability or otherwise of the relief on the basis of the facts and material available before him. It will be contrary to the language of sub-section (6A) of section 80J to cast an obligation on the ITO to ask the assessee to do his duty and to comply with the statutory requirements whether directory or mandatory, on the pretext of*

*complying with the principles of natural justice. Principles of natural justice cannot be stretched that far to lead to such absurd results. The position may, however, be different where an assessee does a particular act not within specified time but after the expiry thereof and makes an application for condonation of delay. In such cases, depending on the language of the statute and the object sought to be achieved by prescribing the time limit, it would be the duty of the officer to consider the documents submitted even belatedly, if there is reasonable explanation for the delay. We are, therefore, of the clear opinion that no duty is cast on the ITO to ask an assessee, who has failed to file the report of the audit, to do so before rejecting his claim for relief under section 80J.*

.....

*8. In the result, we answer the question referred to us as follows: The requirement of filing of the audit report 'along with the return of income' is directory and if the assessee complies with the same before completion of the assessment and offers a satisfactory explanation for his failure to submit the same in time, the ITO may consider the same and examine the claim of the assessee for deduction under section 80J on the basis of such report. We, however, do not subscribe to the view taken by the Tribunal that it is the duty of the ITO to tell the assessee that as he had not submitted the report of audit required by sub-section (6A), his claim would not be allowed and to give him an opportunity to file the same."*

Thus, Hon'ble Bombay High Court lay down the proposition that it is mandatory for the assessee to explain the reasons for delay

in filling the Audit report to the Assessing Officer and the AO may consider it if AO finds the explanation satisfactory.

4.3. In this case we have already mentioned that the Assessee has not filed any reason for the delay.

4.4. The Assessee had relied on the decision of Hon'ble Supreme Court in the case of G.M Knitting Industries P ltd 376 ITR 456(SC). In the case of G.M.Knitting P Ltd Hon'ble Supreme Court observed as under :

*“1. It would be suffice to reproduce para 2 of the impugned order whereby action of Income Tax Appellate Tribunal was held to be justified in allowing additional depreciation asclaimed by the respondent-assessee herein: — "Additional depreciation is denied to the assessee on the ground that the assessee has failed to furnish form 3AA along with the return of income. Admittedly, Form 3AA was submitted during the course of assessment proceedings and it is not in dispute that the assessee is entitled to the additional depreciation. In these circumstances, in the light of the judgment of this*

*Court in the case of Commissioner of Income Tax v. Shivanand Electronics [1994] 209 ITR 63 (Bom.), we see no merit in this appeal. The appeal is accordingly dismissed with no order as to costs.*

*2. We concur with the aforesaid view of the High Court and hold that even if Form 3AA was not filed along with return of income but the same was filed during the assessment proceedings and before the final order of the assessment was made that would amount to sufficient compliance. These appeals are, accordingly, dismissed.”*

4.4.1 Thus in the case of G. M.Knitting P Ltd (supra) , the Hon’ble Supreme Court concurred with the finding of the Hon’ble Bombay High Court in the case of CIT vs Shivanand Electronics . We have already reproduced the findings of the Hon’ble Bombay High Court in the case of CIT vs Shivanand Electronics(supra) in earlier paragraph. The view of the Hon’ble Bombay High Court has been upheld by the Hon’ble Supreme Court.

4.5.The assessee has relied on the decision of Hon’ble Delhi High Court in the case of CIT vs ContimetersElectricla P Ltd. 317 ITR

249. Also, Hon'ble Delhi High Court has followed decision of Hon'ble Bombay High Court in the case of CIT vs. Shivanand Electronics which we have discussed above.

4.6. We have studied the facts of the case carefully. Though the Ld.AR has not pleaded before us any reason for not filing the Audit Report in Form 10CCB within Time Limit however, we being the last fact finding authority we take the onus on us to find out the exact facts related to the impugned issue. In this case on perusal of the Paper Book it is observed that the Audit Report in Form 10CCB was digitally signed by the Auditor on 30/09/2022 at 7.59 pm. The said Audit Report is on page 5-11 of the Paper Book. Thus the Audit Report was duly Digitally Signed by the Auditor on 30/09/2022, it means the Audit Report was absolutely ready much before the due date of filing the Audit Report. It is observed that CBDT had issued Circular Number 19/2022 dated 30/09/2022. The said CBDT Circular is reproduced here as under :

*Quote, “ On consideration of difficulties faced by the taxpayers and other stakeholders in electronic filing of various reports of audit under the provisions of the Income-tax Act, 1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers*

*under Section 119 of the Act, extends the due date of furnishing of report of audit under any provision of the Act for the Previous Year 2021- 22, which was 30th September 2022 in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, to 07th October, 2022.” Unquote.*

On perusal of the CBDT circular it is clear that during the relevant year there were some Technical Problems faced by tax payers in uploading the Audit Reports. Keeping this fact in mind that there were some technical problems in uploading, we presume that though the Audit Report was Ready on 30/09/2022, but could not be uploaded by the Auditor may be due to the Technical Problems. The Audit Report was uploaded before filling of return of Income. Thus at the time of Order u/s 143(1) the Audit report was before the Assessing Officer. In these facts and circumstances, as Hon’ble Supreme Court in the case of G.M Knitting (supra) and Hon’ble Jurisdictional High Court in the case of Shivanand Electronics (supra) had held that once the Audit report was available to the Assessing officer at the time of passing Assessment Order the AO should have considered it .

4.7. Therefore, in these facts and circumstances of the case , for elaborate reasons discussed, respectfully following Hon'ble Supreme Court in the case of G.M Knitting (supra) and Hon'ble Jurisdictional High Court in the case of Shivanand Electronics (supra) which has been approved by Hon'ble Supreme Court , we hold that AO shall consider the Audit report in form 10CCB filed by the Assessee . Accordingly the Order u/s 143(1) is set aside to the Assessing Officer to consider the Audit Report filed by the Assessee in form 10CCB. The AO shall provide opportunity to the Assessee. Accordingly, the Ground Number 2 raised by the assessee is allowed for statistical purpose.

5. In the ground number.1 the Assessee has raised the argument there are no powers u/s.143(1) of the Act to disallow claim of the assessee. Since we have decided the Ground number 2 the present ground number 1 becomes academic in nature however we are adjudicating it.

5.1. To appreciate the legal position we have reproduced the relevant section 143(1) of the Act as under :

**143.** (1) Where a return has been made under [section 139](#), or in response to a notice under sub-section (1) of [section 142](#), such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

- (i) any arithmetical error in the return;
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of [section 139](#);
- (iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;
- (v) disallowance of deduction claimed under [section 10AA](#) or under any of the provisions of Chapter VI-A under the heading "*C.—Deductions in respect of certain incomes*", if] the return is furnished beyond the due date specified under sub-section (1) of [section 139](#); or
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

**Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

**Provided further** that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

**Provided also** that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;

(b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

Explanation.—For the purposes of this sub-section,—

**(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—**

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

**(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished;  
or**

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;(emphasis supplied)

5.2. Thus, section 143(1)(a)(ii) of the Act has clearly directed the AO to disallow any Incorrect Claim made by the assessee which is apparent from any information in the return. Further the Explanation to Section 143(1) has explained the meaning of "Incorrect Claim". The Explanation to section 143(1) has explained incorrect claim means the claim in respect of which the information required to furnish as per the Act to substantiate the claim of the assessee has not been furnished. When one reads Section 143(1)(a)(ii) with the Explanation it becomes clear that if the assessee fails to furnish the information as required to substantiate the claim, then the Assessing Office has jurisdiction to disallow the claim. In this case admittedly the Assessee was

required to file Audit Report in prescribed Form within the statutory time limit, which has not been filed within the time limit. Therefore, assessee failed to file the information required to substantiate the claim of deduction. Hence, the Assessing Officer have jurisdiction to disallow the claim u/s 143(1) .

5.3. Accordingly the ground number.1 raised by the assessee is dismissed.

6. No additional ground has been raised.No ground has been modified or altered. Accordingly, Ground number 3 is dismissed.

7. In the result the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 30<sup>th</sup> December, 2024.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> Dec, 2024/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.

4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, “बी” बेंच,  
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.