IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.7612/Del/2019
Assessment Year: 2015-16

M/s. Canadian Specialty Vinyls 49, Rani Janshi Road, Jhandewalan, New Delhi 110055 **PAN AAGFC 0200 J**	vs.	ITO Ward-63(4), Delhi 110055
(Appellant)		(Respondent)

For Assessee :	Shri Shaantanu Jain, Adv.
For Revenue :	Ms. Maimum Alam, Sr. DR

Date of Hearing :	24.04.2023
Date of Pronouncement :	02.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-20 New Delhi dated 321.07.2019 for AY 2015-16.

2. The assessee has raised following grounds of appeal:-

1. On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the Learned CIT(A) has erred both on facts and in law in confirming the addition of interest income of Rs. 7,01,825/- derived from eligible business not allowable under section 801C of Income Tax Act, 1961.

3. (i) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the disallowance of deduction claimed under section 801C of Income Tax Act of Rs. 2,00,10,879/- on account of late filling of income tax return.

(ii). The CIT (A) has erred on facts and in law for not considering the timely filling of Audit Report us 80IC in form 10CCB under rule 18BBB and tax audit report in form 3CB/CD us 44AB of Income Tax Act, 1961 from where Id. AO can very well draw the amount of eligible deduction available to appellant.

4. That on the facts and in the circumstances of the case and in law, Id. CIT (A) erred in not deleting the addition made by Learned AO which was also unlawful and made in violation of principles of natural justice.

3. Ground no. 1 is of general in nature and hence no specific adjudication is required. Apropos ground no. 2 the ld. counsel placing reliance on the judgement of Hon'ble High Court of Madras in the case of CIT vs Seshasayee Paper & Board Ltd. reported as 73 taxman 80 (Mad.) submitted that in respect of profit and gains from industrial under taking the interest received on deposit kept with electricity board should not be deducted from gross total income while computing the relief admissible u/s. 80I of the Income Tax Act 1961 (for short the 'Act').

4. Replying to the above, the ld. Senior DR supported the orders of the authority below and submitted that the interest on FDR cannot be held as derived from eligible business under sub section 2 of section 80IC of the Act, therefore the Assessing Officer was right in disallowing the interest amount while computing the deduction u/s. 80IC of the Act.

5. On careful consideration of above rival submissions, we note that in para A at page 2 to 7 of assessment order the Assessing Officer has dealt the issue of allowability of interest from FDR's kept in four entities on account of power/electricity connection taken to run the factory, FDR against bank guarantee to Uttarakhand Environment Protection & Pollution Control Board to get permission to run the plant, FDR for opening LC for import of goods, interest recovered from customers for credit term allowed against LC and bills were discounted on which interest were also paid.

6. In view of above factual matrix regarding earning of interest income by the assessee when we consider the preposition render by Hon'ble High Court of Madras in the case of CIT vs Seshasayee Paper & Board Ltd.(supra) then we clearly find that their Lordship speaking for High Court held that the interest received on deposit kept with electricity board has to be considered and should not be deducted from gross total income while computing deduction admissible u/s. 80I of the Act. In the present case the Assessing Officer himself at page 2 noted that the interest received by the assessee from four entities was due to FDR's kept with electricity board, environment board, for opening LC therefore, the impugned amount of interest has to be held derived from the eligible business entitle for deduction u/s. 80IC of the Act. however, amount of Rs. 54,680/- interest received on insurance claim cannot be held as derived from eligible

business thus this part is should be reduced for the claim u/s. 80IC of the Act. Accordingly, ground no. 2 of assessee is partly allowed.

Ground no. 3 & 4

7. Apropos ground no. 3 & 4 the ld. counsel submitted that the on the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the disallowance of deduction claimed under section 801C of Income Tax Act of Rs. 2,00,10,879/- on account of late filling of income tax return. He further submitted that the CIT (A) has also erred on facts and in law for not considering the timely filling of Audit Report us 80IC in form 10CCB under rule 18BBB and tax audit report in form 3CB/CD us 44AB of Income Tax Act, 1961 from where Id. AO can very well draw the amount of eligible deduction available to appellant.

8. The ld. counsel submitted that for AY 2015-16 the assessee filed income tax return on 29.02.2016 after the specified due date of filing return u/s. 139(1) of the Act. The ld. counsel submitted that as per rule 18 BBB of the I.T Rules 1962, the audit report in Form 10CCB along with tax audit report in Form 3CB/3CD was to be filed within prescribed due date of filing of return which was filed within the due date of filing of return u/s. 139(1) of the Act. Explaining the cause of delay in filing return the ld. counsel drew our attention towards submissions before ld. CIT(A) which are as follows:-

> *In this regard, we like to explain that Mr. Anil Mahajan is an executive partner of M/s Canadian Speciality Vinlys and taking all business decisions. However, his medical condition was critical and he has undergone medical treatments during March 2014 to 2017 in hospital. He was first diagnosed lungs infection in sep-Oct 2012 and had to admit in hospital for treatment. He had been advised strict precaution, however in spite of that, the lungs problem again re-occurred in Nov 2013 and he was again admitted in the hospital. In the meantime, an acute pain started in his both the hips joints and doctor advised him a hip replacement. Since, both hips cannot be replaced together, Therefore he had his right hip replaced in March 2014, but his left hip joint was still causing regular pain. He further, diagnosed a heart blockage in the year 2014. He then got his bypass surgery of heart in September 2014. Due to this entire medical problem, he was relying upon his staff for all legal matters.*
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> *Chartered Accountant of the assessee had duly audited the books of accounts and filed audit reports within time. Accountant of the assessee has been assigned the work to complete all the formalities and get file the return in this difficult time. He was supposed to pay Income Tax and get the return filed. However as accountant was managing bank accounts and Mr Anil Mahajan was not able to look into the matter, he chose to delay the deposit of tax resulting in late filing of return. Later on, when assessee returned back from hospital and take note of every compliance, he came to know about non filing of IT and got filed the same.*
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> *It is most respectfully submitted that provisions of section 801 are in the nature of incentive. provision and as per decided case laws of supreme court and various High courts, incentive provisions has to be interpreted in a manner so as to advance the*

objects of economic activities in the country and not to deny the claim merely on technical grounds which otherwise assessee entitled to avail.

9. Further placing reliance on the various judgments of Hon'ble Supreme Court, Hon'ble High Courts and co-ordinate benches of the Tribunal particularly order of ITAT Nagpur Bench (At e-court Pune) in the case of Krushi Vibhag Karmchari Vrund Sahakari pat Sanstha vs. ITO dated 07.10.2022 in ITA No. 182/Nag/2019 for AY 2009-10 the ld. counsel submitted that the requirement of making a claim of exemption under Chapter III of the Act in the return of income is mandatory, but, for making the claim of deduction under the relevant sections of Chapter VI-A of the Act, such requirement is not mandatory, but, directory. Therefore, the making of a claim even after filing the return, but, before completion of the assessment proceedings is permissible.

10. The ld. Counsel vehemently contended that in the instant case the issue of 0the disallowance of claim u/s 80IC of the Act on account of non-filing of the return within the prescribed time limit u/s 139(1) of the Act, due to the illness of executive partner of assessee company Shri Anil Mahajan, would be governed by the judgement of the Hon'ble Supreme Court in the case of CIT vs. GM Knitting Industries Pvt. Ltd., reported as 376 ITR 456 (SC), wherein it has been held that filing of the return for making of a claim under Chapter VI-A of the Act is mandatory, but, compliance of timing is directory. Therefore, even if the claim is made during the period of assessment proceedings, such claim u/s. 80IC of the Act, has to be allowed.

11. Replying to the above, the ld. Senior DR supporting the orders of the authorities below submitted that for claiming deduction u/s. 80IC of the Act the claim is required to be made in the return of income file within prescribed time limit u/s. 139(1) of the Act which is a mandatory pre-requirement for claiming said deduction. He vehemently pointed out that the Assessing Officer as well as ld. CIT(A) in para 6.2.6 rightly noted that the non-compliance of said provision cannot be treated as directly and there are no exception to the said compliance. The ld. AR also submitted that there was no serious or plausible cause for the assessee for non-filing of return within prescribed time limit particularly when the complexities of the business carried on efficiently during relevant period by the company. Finally, the ld. Senior DR submitted that the authorities below were quite correct and justified in dismissing the claim of assessee u/s. 80IC of the Act on account of non-filing return of income within prescribed time limit.

12. On careful consideration of above submissions, first of all, from the order of the authorities below, we note that undisputedly the assessee filed audit report in form 10CCB along with tax audit report in Form 3CB/3CD within prescribed due date of filing of return as per Rule 18BBB of the I.T Rules 1962. The issue arose because the return was filed belatedly on 29.02.2016 beyond prescribed time limit of filing of return u/s.

139(1) of the Act. The reason of non-filing of return within prescribed time limit, as per assessee was critical illness i.e. lungs infection and other critical diseases faced by executive partner of assessee. However, this explanation has been dismissed by the authorities below by holding that there was no serious reason for non-filing of ITR within prescribed time limit. Be that as it may, but the facts remains that the Assessing Officer as well as ld. CIT(A) dismissed claim of assessee for deduction u/s. 80IC of the Act on account of belated return beyond prescribed time limit.

13. Now, we proceed to consider the order of the ITAT, Nagpur Bench (AT e-Court, Pune) in the case of Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO (supra) wherein the coordinate Bench of the Tribunal, after considering the provisions of section 80AC of the Act and considering the judgements of the Hon'ble Supreme Court in the case of CIT vs. GM Knitting Industries Pvt. Ltd., (supra) and PCIT vs. Wipro Ltd., 446 ITR 1 (SC) held as follows:

> *"5. I have heard both the sides and scanned through the relevant material on record. It is an undisputed fact that the assessee did not file return of income for the year under consideration either originally or pursuant to notice u/s 148. Computation of income was filed during the course of assessment proceedings in which the deduction u/s 80P was claimed. Whereas, the authorities below have canvassed a view that the assessee violated section 80A(5) and hence the deduction was not available; the assessee has made out a case that section 80A(5) does not apply where no return is furnished and rather it is section 80AC which would govern the case and because of omission of section 80P in the list of sections given in section 80AC, the deduction should be granted. In order to appreciate the contention of the ld. AR, it would be apposite to reproduce section 80AC, before its substitution by the Finance Act, 2018 w.e.f 1.4.2018, which reads as under:*
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> *" Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80- IAB or section 80-IB or section 80- IC or section 80-ID or section 80-IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."*
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> *6. On going through the above provision, it is crystallized that the requirement of filing return before the time u/s 139(1) is sine qua non for claiming deduction under the six sections (80-IA or 80- IAB or 80-IB or 80-IC or 80-ID or 80-IE). In other words, if a return is filed belatedly u/s 139(4) or under any other section, claiming deduction under any of the six sections, the writ of the section 80AC will operate to prevent its granting. This section does not deal with granting or non-granting of deduction under any other sections of Part C of Chapter VI-A, including section 80P. Thus, to infer that since section 80AC does not cover section 80P, the latter section is immune from any other statutory requirement, is wholly incorrect. In fact, section 80AC is alien to deduction under any section except the specified six sections.*

7. Now, I turn to section 80A(5), which has been pressed into service by the AO for denying the benefit of deduction u/s 80P of the Act, which runs as under:

`Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "C.-- Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder.'

8. This section provides that where an assessee fails to make a claim in his return of income for any deduction, amongst others, the sections enshrined in Part C to Chapter VI-A (including section 80P and six sections as given in section 80AC), then the deduction shall not be allowed. A perusal of the mandate of section 80A(5) divulges that the claiming of deduction under various sections of part C of Chapter VI-A in the return of income is essential. The reference in this provision is only to return of income, without any further qualification. The return may be u/s 139(1) or 139(4) or any other relevant section.

9. On a conjoint reading of sections 80A(5) and 80AC, it gets manifest that claiming of deduction under various sections of Part C of Chapter VIA in the return of income is essential. However, an additional requirement for claiming deduction under sections 80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE is that such deduction must be claimed in a return filed u/s 139(1) of the Act. In one sense, section 80AC is an exception to section 80A(5), making the mandate of the latter section more stringent in the prescribed cases. Whereas other deductions of Part C of Chapter VI-A, including section 80P, can be claimed in the return filed under any section, including section 139(4); the six deductions as referred to in section 80AC must necessarily be claimed in the return filed u/s 139(1) only. Ex consequenti, the contention that since section 80P is not covered under section 80AC, the deduction under this section becomes automatically allowable without adhering to the requirement of section 80A(5), is bereft of force and hence dismissed.

10. Now I advert to the requirements of section 80A(5), which stipulates that no deduction under other sections including 80P shall be allowed if the assessee fails to make such a claim in the return of income. Thus, there are twin conditions, viz., first, claiming deduction u/s 80P and second, claiming such deduction in the return of income. There is no dispute on the first condition, which has been satisfied in this case as the assessee did claim the deduction albeit during the course of assessment proceedings. The whole controversy revolves around the second condition, which says that the claim should be made in the return of income. The assessee in the extant case did not file any return of income, but made a claim of the deduction in computation of income filed during the course of the assessment proceedings. The moot question is whether the requirement of making a claim in the return of income is a mandatory or a directory requirement. If it is held as mandatory, then the claim must be made in the return of income, failing which the benefit of deduction would be lost. Au contraire, if it is held as directory, then the claim made either in the return of income or in any manner before the conclusion of assessment proceedings, as is the case under consideration, would validate the entitlement.

11. The Hon'ble Supreme Court in CIT vs. G.M. Knitting Industries (P.) Ltd. (2015) 376 ITR 456 (SC) came across a situation in which the assessee claimed additional depreciation in Form 3AA but the Form was not furnished along with the return of

income. Such Form was submitted during the course of assessment proceedings. The AO denied the claim on the ground that the Form 3AA was required to be statutorily filed along with the return of income. The view of the AO was reversed by the Tribunal as well as the Hon'ble High Court by holding that even if the Form was filed during the course of assessment proceedings, it amounted to sufficient compliance. The Hon'ble Supreme Court, taking note of the judgment in CIT Vs. Shivanand Electronics (1994) 209 ITR 63 (Bom), approved the view of the Hon'ble High Court having the effect that the requirement of filing Form 3AA was a necessary ingredient for claiming additional depreciation, but the timing of filing the Form was a directory requirement, which was fulfilled on filing it even during the course of assessment proceedings. The Hon'ble Bombay High Court in Shivanand Electronics (supra) dealt with the requirement of filing audit report for the purpose of claiming deduction u/s 80J, which required that the report should be filed "along with return of income" under s. 80J(6A). It held that such requirement of filing the audit report along with the return of income was not mandatory, but directory in the sense that if assessee complied with the same before completion of assessment, deduction under s. 80J, on the basis of such report, was allowable.

12. Recently, the Hon'ble Supreme Court was confronted with the claim of benefit u/s 10B in Pr.CIT vs. Wipro Limited (2022) 446 ITR 1 (SC). The assessee furnished original return taking the benefit of section 10B and did not carry forward the loss. Thereafter, a revised return was filed foregoing the claim of deduction u/s 10B. The AO rejected the withdrawal of exemption under Section 10B by holding that assessee did not furnish the necessary declaration in writing before due date of filing return of income, which was an essential requirement for not claiming the benefit of section 10B. The Hon'ble High Court decided the issue in favour of the assessee by holding that the requirement of filing the declaration was mandatory but filing it along with the return of income u/s 139(1) was a directory requirement. The matter was brought by the Revenue before the Hon'ble Supreme Court. The assessee, inter alia, relied on the judgment of the Apex Court in G.M. Knitting Industries (supra). Their Lordships held that the requirement of filing the report in support of deduction u/s 10B was not a directory but a mandatory requirement. It further held that both the conditions of - filing the declaration and filing it before the time limit u/s 139(1) - were mandatory and had to be cumulatively satisfied. Rejecting the reliance on G.M. Knitting Industries (supra), the Hon'ble Supreme Court held that that decision was relevant in the context of deduction provisions and not the exemption provisions as given under Chapter III of the Act. As the Hon'ble Summit Court in Wipro Limited (supra) was dealing with section 10B, falling under Chapter III of the Act, it held qua G.M. Knitting Industries (supra) that: `Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VI-A of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VI-A, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VI-A shall be applicable while considering the claim under Section 10B (8) of the IT Act.'

13. On going through the judgments in G.M. Knitting Industries (supra) in juxtaposition to Wipro Limited (supra), the principle which emerges is that the fulfillment of requirement of making a claim for exemption under the relevant sections of Chapter III

in the return of income is mandatory, but when it comes to the claim of a deduction, inter alia, under the relevant sections of Chapter VI-A, such requirement becomes directory. In the latter case, the making of a claim even after the filing of return but before completing the assessment, meets the directory requirement of making a claim in the return of income. The instant case involves deduction u/s 80P and hence, would be governed by the principle laid down in G.M. Knitting Industries (supra), as per which the making of a claim of deduction is mandatory but the timing is directory. Even if the claim is made during the course of assessment proceedings, such a claim has to be allowed. In view of the foregoing discussion, I am satisfied that the authorities below were not justified in rejecting the assessee's claim of deduction u/s 80P only on the ground that such a claim was not made in the return but during the course of assessment proceedings. The impugned order is ergo set aside and the matter is remitted to the file of the AO for examining the claim of deduction u/s 80P on merits.

14. In view of the foregoing, first of all, from the proposition rendered by ITAT, Pune Bench in the case Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO (supra), we respectfully note that the coordinate Bench of the Tribunal, after considering the proposition rendered by the Hon'ble Supreme Court in the cases of G.M. Knitting Industries (supra) and Wipro Ltd. (supra) held that the Chapter III and Chapter VI-A of the Act operate in different realms and principles of chapter III, which deals with 'incomes which did not form part of total income' cannot be equated with mechanism provided for deductions in Chapter VI-A which deals with 'deductions to be made in computing the total income.' Therefore, it was held that the fulfillment of requirement for making a claim of exemption under the relevant sections of Chapter III in the return of income is mandatory, but, when it comes to the claim of a deduction, inter alia, under the relevant section of Chapter VI-A, such requirement become directory. In a case where the assessee claims deduction under Chapter VI-A of the Act, the making of a claim even after filing of return, but, before completion of the assessment proceedings and passing of assessment order meets the directory requirement of making a claim in the return of income.

15. In the present case, the assessee claimed deduction u/s. 80IC of the Act, which was disallowed by the Assessing Officer on the allegation of non-filing of return within prescribed time limit u/s. 139(1) of the Act. At the very outset we reiterate that it is not in dispute that the assessee filed audit report in Form 10CCB and tax audit report in Form 3CB/3CD within prescribed due date but the return was filed belatedly on 29.02.2016 claiming deduction u/s. 80IC of the Act.

16. Now, the grievance of the Revenue in this appeal is that the ld.CIT(A) has wrongly held that the assessee is entitled to claim deduction u/s 80IC of the Act, because, the claim was not made in the return of income filed within the prescribed time limit provided u/s 139(1) of the Act. At the cost of repetition, we may point out that in the present case, the assessee is claiming deduction u/s 80IC of the Act,

therefore, the same would be governed by the proposition rendered by the Hon'ble Supreme Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), as per which the making of a claim of deduction is mandatory, but, timing is directory. Even if the claim is made during the assessment proceedings, such a claim is to be allowed. In view of the above, we are inclined to hold that the AO was not right in holding that the assessee is not entitled to claim deduction u/s 80IC of the Act on account of belated filing of return beyond the prescribed time limit u/s 139(1) of the Act. The ld.CIT(A) was justified and correct in holding that the assessee is entitled to claim deduction u/s 80IC of the Act as it was prevented by sufficient cause in filing the return of income within the prescribed time limit. In view of the proposition rendered by the Hon'ble Supreme Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), the claim of the assessee has reached to a higher pedestal because the Hon'ble Supreme Court has categorically held that for making a claim under Chapter VI-A of the Act which also includes provision of deduction u/s 80IC of the Act and the making of such claim for deduction is permissible even after filing of the return, but, before completing the assessment meets directory requirement in the filing of return of income.

17. In the present case, however, the return of income of the assessee for AY 2015-16 was filed beyond the prescribed time limit u/s 139(1) of the Act. For that the ld.CIT(A) has recorded a categorical finding that the assessee was prevented by sufficient cause in filing the return within the prescribed time limit perhaps due to illness of executive partner of assessee. Even in a situation the return of income of the assessee for AY 2015-16 is treated as belated return beyond the prescribed time limit provided u/s 139(1) of the Act, then also, as per the judgement of the Hon'ble Supreme Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), which was followed by the coordinate Bench of the ITAT, Pune in the case of Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha (supra), the assessee is very well entitled to claim deduction u/s 80IC of the Act. Therefore, we reach a logical conclusion that the assessee is entitled to get deduction u/s. 80IC of the Act, as the claiming such deduction, which is part of Chapter VI-A of the Act, in the return of income filed within prescribed time limit is not mandatory but directory. Therefore ground no. 3 & 4 of assessee are allowed and Assessing Officer is directed to allow claim of assessee u/s. 80IC of the Act.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 02.06.2023.

Sd/-	Sd/-
(M.BALAGANESH)	(CHANDRA MOHAN GARG)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 02nd June, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi