

OD-22

ITAT/237/2022
IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

M/S. WINRO COMMERCIAL (INDIA)
LTD.

-Versus-

PRINCIPAL COMMISSIONER OF
INCOME TAX-1 AND ANR.

Appearance:
Mr. Subash Agarwal, Adv.
...for the appellant.

Ms. Smita Das De, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 22nd November, 2022.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, is directed against the order dated 19th July, 2022 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.1175/Kol/2019 for the assessment year 2014-15.

The assessee has raised the following substantial questions of law for consideration:

- (i) *Whether on the correct and proper interpretation of Sections 80IA(4)v, 80IA(7) and 80AC read with Rule 18BBB(2) and Rule 1292) of the Income Tax Rules, 1962, learned Tribunal was justified in holding that where audit report in Form 10CCB is required to be filed electronically on the Income Tax Portal, then two things are required to be proved, firstly, the assessee has obtained audit report before the due date prescribed under the Act and, secondly, it has been filed before the due date prescribed under the Act ?*
- (ii) *Whether the learned Tribunal completely misread the relevant provision of law prevailing at the relevant time according to which, the only requirement was that the said report was required to be furnished along with return of income ?*
- (iii) *Whether the learned Tribunal was justified in directing the Assessing Officer to examine the factual aspect that having furnished Tax Audit Report in Form 10CCB electronically, whether the same was filed on the Income Tax Portal before the due date of filing return of income prescribed under the Act ?*
- (iv) *Whether the learned Tribunal has failed to appreciate that the requirement of obtaining the audit report in Form 10CCB before the specified date referred to in Section 44AB and furnishing the same by that date has been introduced in the statute by the Finance Act,*

2020 with effect from 1.4.2020 and does not apply to the assessment year 2014-15 ?

We have heard Mr. Subash Agarwal, learned Advocate for the appellant/assessee and Ms. Smita Das De, learned standing advocate for the respondent/revenue.

The short which falls for consideration in the instant case is that whether the assessee was required to electronically upload the audit report in Form 10CCB before the due date prescribed under the Act. The Assessing Officer disallowed the deduction claimed by the assessee under Section 80IA of the Act solely on the ground that such deduction was not claimed in the original return but was claimed in the revised return.

The assessee filed appeal before the Commissioner of Income Tax (Appeals)-10, Kolkata, who by order dated 28th February, 2019 affirmed the view taken by the Assessing Officer on the self same ground. The assessee carried the matter on appeal before the learned Tribunal. The learned Tribunal took note of the legal position and rightly held that it is the consistent view of all the Courts that if the assessee has failed to attach the audit report or claim deduction along with the return of income, that being only a procedural lapse it should be cured even at the stage of the assessment proceedings

where such audit report can be filed or deduction can be claimed. This issue has been decided in several decisions of the various High Courts and we note this issue has been decided in several decisions of various High Courts and we note the decision in the case of Commissioner of Income Tax, Delhi Vs. Contimeter Electricals Private Limited; 2009 178 taxmann 422 (Delhi). The learned Advocate appearing for the appellant /assessee also placed reliance on the decision of this Court in the case of Murali Export House Vs. Commissioner of Income Tax 1999, 238 ITR 257 (Cal), wherein it was held that when a provision is procedural in nature requiring the assessee to submit a a special audit report along with return it has held to be derogatory and not mandatory. The decision in Moral Export House was quoted with approval by the Hon'ble Division Bench of the High Court of the Karnataka in Commissioner of Income Tax Vs.A.C.E. Multi Tax Systems Pvt. Ltd. 2009 317 ITR 207 (Karnataka). As pointed out earlier the Tribunal has rightly taken note of the settled legal position and held that if the defect be procedural it can be cured at a subsequent stage namely at the stage of filing the revised return or even during the course of assessment proceedings. If that was the finding of the learned Tribunal the natural consequence that has to flow is to allow the appeal of the assessee. However,

assessee's appeal has been dismissed on the ground that the audit report has not been filed within the time prescribed under the statute. The learned Tribunal though noted that such prescription of time limit was pursuant to an amendment it failed to take note of the fact as to whether such a amendment would apply to the assessment year under consideration namely A.Y. 2014-15. The amendment to the Act was brought about by the Finance Act 2020 (No. 12 of 2020) dated 27.3.2020. In Section 35 of the Finance Act the amendment brought out to Section 80IA of the Act in sub Section (7) has been mentioned. It has to be noted that Finance Act, 2020 came into force on 1.4.2020. If that be so, the learned Tribunal without examining as to whether such an amendment could apply to the assessee's case had directed to the assessing officer to verify such a matter. The learned Advocate appearing for the appellant submitted that such an issue was never raised by the revenue at any earlier point of time. As could be seen from the materials available on record the assessing officer has not taken such a view, obviously he could not have done so because the assessment order was passed on 29th December, 2016, much earlier to the amendment. The CIT(A) also could not have taken note of the amendment because the order passed by the CIT(A) is dated 28th February, 2019. Therefore, if an issue is to be

raised by the learned Tribunal suo-motu for the first time then the assessee is entitled to notice of such an issue being raised and should have afforded an opportunity to the assessee to put forth their submission. We find that such procedure was not adopted by the Tribunal. In any event, the learned Tribunal in paragraph 18 of its order having rightly noted the legal position ought to have granted relief to the assessee. Failure to do so, would result in order passed by the learned Tribunal liable to be set aside.

Ms. Smita Das De, learned standing Counsel submitted that the Tribunal in paragraph 18 though noted the correct legal position has taken note of the subsequent amendment in the Act requiring the audit report to be filed in prescribed manner within the prescribed time. As mentioned by us above, this issue was never an issue pointed out to the assessee at any earlier point of time and it appears that the issue had been taken up for consideration when the case was heard and orders were reserved by the learned Tribunal. In any event, such point could not have been put against the assessee when the same was never the case of the revenue before the Tribunal.

For all the above reasons, the appeal filed by the assessee is to be allowed. The order passed by the learned Tribunal as well as order passed by the CIT(A) are set aside

and also the order passed by the assessing officer dated 29.12.2016 in so far as it disallows the deduction claimed under Section 80IA of the Act are set aside and there will be a direction to the assessing officer to allow the said deduction claimed by the assessee under Section 80IA of the Act.

Consequently, the substantial questions of law are answered in favour of the assessee.

The applications are also disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)