**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"C" BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT**
AND
**SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

| ITA Nos.166 & 167/Bang/2020 |
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| Assessment years : 2007-08 & 2008-09 |

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| Hyagreeva Hotels & Resorts Pvt. Ltd.,<br>10/6, Lavelle Road,<br>Bangalore – 560 001.<br>**PAN: AAACH 7551A** | Vs. | The Deputy Commissioner<br>of Income Tax,<br>Circle 11(4),<br>Bangalore. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Deepesh Wagle, CA |
| Respondent by | : | Smt. Priyadarshini Baseganni, Addl.CIT(DR)(ITAT), Bengaluru. |

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| Date of hearing | : | 30.06.2022 |
| Date of Pronouncement | : | 18.07.2022 |

**O R D E R**

*Per Padmavathy S., Accountant Member*

These appeals are against the separate orders of the CIT(Appeals)-3, Bangalore dated 23.09.2019 for the assessment years 2007-08 & 2008-09.

2. The assessee is a company engaged in the business of developing and construction of hotels and holiday resorts.

3. We first take up the appeal for **AY 2007-08**. During the relevant year, the assessee filed return of income on 31.3.2008 reporting a total income of Rs.8,17,38,600 u/s. 80IB(7) of the Income-tax Act, 1961 [the Act] in respect of income derived from hotel business. The return was processed u/s. 143(1) accepting the returned income returned. Further, notice u/s. 148 was issued for reopening the assessment u/s. 147 of the Act.

4. During the reassessment proceedings, the AO denied deduction u/s. 80IB(7) of the Act on the ground that the project approval was granted to the assessee by the Regional Director of Tourism, instead of Director General of Tourism, Delhi.

5. On appeal, the CIT(Appeals) took into consideration the directions of the ITAT in assessee's own case for AY 2006-07 & 2009-10, order dated 21.3.2014, accepting the project approved by Regional Director of Tourism, Chennai. However, deduction u/s. u/s. 80IB(7) of the Act was denied stating that the return of income was not filed by the assessee within the due date for filing the return as prescribed u/s. 139(1) of the Act. Aggrieved, the assessee is in appeal before us.

6. The only issue that arises for consideration out of the various grounds raised by the assessee is the eligibility of the assessee to claim deduction u/s. 80IB(7) of the Act.

7. Before us, the ld. AR submitted that the CIT(Appeals) denied the deduction without giving an opportunity to explain the reasonable

cause for the delay in filing the return by the assessee. The ld. AR submitted that the delay was due to reasons and situation beyond the control of the assessee and prayed for condonation of delay in filing the appeal before the CIT(Appeals) and allow deduction u/s. 80IB(7) of the Act. He relied on the decision of the coordinate Bench of the Tribunal in the case of *Vanishree Builders & Developers Pvt. Ltd. v. ITO in ITA No.386/Bang/2012 dated 07.12.2012*.

8. The ld. DR supported the order of the CIT(Appeals).

9. We have considered the rival submissions and perused the material on record. In *Saffire Garments Vs. ITO 140 ITD 0006(SB)(Rajkot)*, the Special Bench of the Tribunal in the context of deduction u/s.10A of the Act had to consider the effect of the proviso to Sec.10A(1A) of the Act which is similar to the provisions of Sec.80AC of the Act. Sec.10A(1A) and the proviso thereto is as follows:-

> " (1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be,—
>
> > (i) hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and

gains for further two consecutive assessment years, and thereafter;

(ii) for the next three consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Allowance Reserve Account") to be created and utilised for the purposes of the business of the assessee in the manner laid down in sub-section (1B) :

**Provided that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139."**

(emphasis supplied)

10. The Special Bench held that as per proviso to Sec.10A(1A) of the Act, the assessee was required to file the return of income within the prescribed time as per the provisions of Section 139(1) of the Act and the proviso to section 10A(1A) was nothing but a consequence of failure of the assessee to file the return of income within the due date prescribed u/s 139(1). For such a failure of the assessee to file his return within the due date prescribed u/s 139(1), disallowance of deduction u/s.10A of the Act was not the only consequence. Another consequence of such failure was prescribed in section 234A also as per which, the assessee was liable to pay interest on the tax payable by him after reducing advance tax and TDS/TCS, if any, paid by him apart from some other reductions. The legal position is by now settled that charging of interest under various sections including u/s 234A was mandatory. When one of the consequences for not filing the return within the due date prescribed u/s 139(1) was mandatory then, other consequences on the same failure of the assessee, could not be directory, but

the same was also mandatory. The provisions of the proviso to Section 10A(1A) is mandatory and not directory.

11. Another argument put forth before the Special Bench was that Sec.139(4) is a proviso to Sec.139(1) of the Act and therefore return filed before the time limit prescribed in Sec.139(4) should also be considered as a return filed u/s.139(1) of the Act. This argument was also considered and rejected and the Special Bench held that the Hon'ble Supreme Court in the case of ***Prakash Nath Khanna vs. CIT*** as reported in ***266 ITR 01 (SC)*** has held that filing of return of income within the time allowed u/s 139(4) of the Income tax Act, 1961 cannot dilute the infraction in not furnishing return in due time as prescribed u/s 139(1) of the Income tax Act, 1961.

12. The ruling of the Special Bench will equally apply to the provisions of Sec.80AC of the Act which are identical to proviso to Sec.10A(1A) of the Act. The provisions of Sec.80AC of the Act reads thus:-

> "80AC. Deduction not to be allowed unless return furnished.- Where in computing the total income of an assessee of the 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."

*13.* We also notice that the Calcutta High Court in the case of *Suolificio Linea Italia (India) (P.) Ltd. v. JCIT, 93 taxmann.com 462 (Calcutta)* has considered a similar issue and held as follows:-

> "**10.** The ratio is utterly inapplicable when the statute confers a benefit and imposes a condition for the enjoyment of the benefit. The dictum would not be applicable, particularly, since the embargo is couched in negative words. Had it been a case where the express prohibition as in the words quoted from Section 80AC were not there, an arguable case could have been made out. However, when the governing provision expressly mandates that no such deductions shall be allowed unless the assessee filed his returns of income "on or before the due dates specified under" Section 139 (1) of the Act, there is no question of referring to the extended period permitted under Section 139(4) of the Act to seek the benefit. Indeed, if the embargo were not as strict as is evident from the relevant provision, the entirety of Section 139 would have been mentioned in the relevant expression in Section 80AC of the Act which would have included within its sweep the extended period under sub-section (4) thereof. But in such provision referring only to sub-section (1) of Section 139 of the Act, the reference to the other provisions of Section 139 must be understood to have been excluded."

14. In the decision cited by the ld. AR in the case of *Vanshree Builders & Developers Pvt. Ltd. (supra)*, the coordinate Bench of the Tribunal has denied deduction by holding that :-

> "**18.** Considering the facts and circumstances of the issue as deliberated upon in the fore-going paragraphs and also in conformity with the rulings of the hon'ble Benches of the Tribunals cited supra, we are in agreement that section 80AC of the Act prohibits deduction under section 80-IB of the Act if the return is not furnished on or before the due date as specified under section 139(1) of the Act. It is ordered accordingly."

15. Considering the above judicial precedents, we hold that the provisions u/s. 80AC of the Act requiring the assessee to furnish return of income before the due date specified u/s. 139(1) of the Act is mandatory and not directory. Therefore, we hold the assessee is not eligible for deduction u/s. 80IB(7) of the Act.

16. For the **AY 2008-09,** the assessee filed its return of income on 20.3.2009 declaring an income of Rs.1,93,37,543 after claiming deduction of Rs.82,87,519 u/s. 80IB(7) of the Act. The facts for this year being identical with AY 2007-08, we hold that the assessee is not eligible for deduction u/s. 80IB(7) of the Act.

17. During the course of haring, the ld. AR submitted that the assessee had made an application before the CBDT u/s. 119(2B) of the Act for condonation of delay in filing the return by the assessee. Accordingly, we direct the AO to decide the issue in accordance with law pursuant to the CBDT directions.

18. In the result, both the appeals by the assessee are dismissed.

Pronounced in the open court on this 18th day of July, 2022..

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| Sd/- | Sd/- |
| ( N V VASUDEVAN ) | ( PADMAVATHY S ) |
| VICE PRESIDENT | ACCOUNTANT MEMBER |

Bangalore,
Dated, the 18th July, 2022.
/*Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.