

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2219/Mum./2023

(Assessment Year : 2015-16)

M/s. Supreme Treon Pvt. Ltd.
C/o Kalyaniwalla & Mistry LLP, C.As
Esplanade House, 29, Hazarimal Somani
Marg, Fort, Mumbai 400 029 AACCS4085Q

..... Appellant

v/s

Dy. Commissioner of Income Tax
Centralized Processing Centre, Bengaluru

..... Respondent

Assessee by : Shri Nitesh Joshi
Revenue by : Shri Ram Krishna Kedia

Date of Hearing – 04/10/2023

Date of Order – 08/12/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/04/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], which in turn arose from the intimation issued under section 143(1) of the Act, for the assessment year 2015-16.

2. In its appeal, the assessee has raised the following grounds: –

"1. The Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer disallowing the deduction under section 80IC of Rs.

1,35,62,893/- claimed by the Appellant in respect of its eligible unit in Rudrapur, Uttarakhand (8th year of claim).

2. The Commissioner of Income Tax (Appeals) erred in holding that the Appellant did not file the Audit Report in Form 10CCB in respect its Rudrapur unit before the due date of filing the return of income.

3. The Commissioner of Income Tax (Appeals) erred in holding that the due date of filing the Return of Income in the Appellant's case was 30th September, 2015 which was extended to 30th October, 2015.

4. The Commissioner of Income Tax (Appeals) failed to appreciate that the due date for filing the return of income in the Appellants case is 30th November, 2015 in terms of section 139(1) of the Income Tax Act, 1961.

5. The CIT(A) failed to appreciate that since the Appellant had filed the Audit Report in Form 10CCB before the due date of filing the Return of Income u/s. 139(1), the provisions of section 80AC were not attracted and the Appellant was entitled to deduction u/s 80IC.

6. The Commissioner of Income-Tax (Appeals) failed to appreciate that since the Original Return of Income was filed within the due date prescribed under section 139(1), the Revised Return of Income filed under section 139(5) was a valid return.

7. The Commissioner of Income-Tax (Appeals) failed to appreciate that the deduction u/s. 80IC cannot be denied vide intimation u/s. 143(1), without calling the assessee.

8. The Assessing Officer erred in levying interest u/s. 234C of the Act amounting to Rs. 1,00,733/-. The Appellant denies its liability to the levy of such interest."

3. The issue arising in grounds no. 1-7, raised in assessee's appeal, pertains to the disallowance of deduction claimed under section 80-IC of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the manufacturing of auto ancillary products and is a supplier to all the major automobile manufacturers in India. For the year under consideration, the assessee filed its return of income on 29/11/2015 declaring a total income of Rs. 22,12,09,220. The return filed by the assessee was processed vide intimation dated 26/11/2016

issued under section 143(1) of the Act determining the total income at Rs. 23,47,42,110 after disallowance of the deduction of Rs. 1,35,62,893 claimed under section 80-IC of the Act.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee against the aforesaid intimation issued under section 143(1) of the Act and held that the due date for filing the return of income, in the case of the assessee, was 31/10/2015 as the assessee failed to furnish the prescribed audit report in prescribed form within the specified date as per section 92E of the Act and thus the return filed by the assessee on 29/11/2015 can only be considered as a belated return under section 139(4) of the Act. It was further held that no audit report under section 44AB, section 92E, or section 80-IC as required in the case of the assessee as per the Act was furnished along with the return submitted on 29/11/2015 or before that date. It was further held that the assessee has violated the conditions laid down in section 92E of the Act and therefore any report filed under the aforesaid section afterward cannot be given due cognizance as per the provisions of law. It was further held that in the present case, the audit report under section 92E of the Act was furnished on 14/03/2017, i.e. after the completion of processing under section 143(1) of the Act and therefore there was also no information before the AO whether the assessee had undertaken international transactions or specified domestic transactions. The learned CIT(A) further held that once the return is filed belatedly under section 139(4) of the Act, the same cannot be revised under section 139(5) of the Act. The learned CIT(A) also held that the assessee did not furnish the requisite report under section 80-IC of the Act along with the return of income as its accounts were not finalised. Accordingly,

the learned CIT(A) upheld the action of the AO in disallowing the deduction claimed under section 80-IC of the Act, as the assessee failed to comply with the provisions laid down in section 80-IC(7) read with section 80-IA(7) of the Act. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. For the year under consideration, the assessee filed its return of income on 29/11/2015 declaring a total income of Rs. 22,12,09,220 after claiming a deduction of Rs. 1,35,62,893 under section 80-IC of the Act in respect of industrial undertaking located in Uttarakhand, as evident from the original return of income filed in Form ITR-6, forming part of the paper book from pages 2-36. As per the assessee, its original return of income was based on the management accounts and not on audited accounts, since the management could not finalise the accounts for the year ending 31/03/2015 on a timely basis as there were disputes between the shareholders of the assessee. As per the assessee, the year under consideration is the 8th year of the claim of deduction under section 80-IC of the Act for the Rudrapur unit. The assessee has also placed on record a copy of Form No. 10CCB dated 29/11/2015 in respect of the claim of deduction under section 80-IC of the Act.

7. The return of income filed by the assessee was processed vide intimation dated 26/11/2016 issued under section 143(1) of the Act, whereby the deduction of Rs. 1,35,62,893 claimed under section 80-IC of the Act was denied. From the perusal of the aforesaid intimation, we find that the due date for filing the original return of income has been considered as 31/10/2015.

8. As per the assessee, during the year under consideration, it had entered into international transactions with its associated enterprises as defined under section 92A of the Act. Further, the assessee has also entered into specified domestic transactions as defined in section 92BA of the Act exceeding Rs. 5,00,00,000. Therefore, as per the assessee, it was required to furnish a report in Form 3CEB as specified under section 92E of the Act, and thus as per the provisions of Explanation-2 to section 139(1) of the Act, the due date for filing the return of income was 30/11/2015. It is further submitted that the accounts of the assessee were audited on 22/03/2016 and the tax audit report was filed on 14/03/2017. Further, the transfer pricing report in Form 3CEB was filed on 18/03/2017, while the revised Form 10CCB in respect of deduction claimed under section 80-IC was filed on 14/03/2017. Accordingly, the assessee filed its revised return of income on 29/03/2017, wherein the deduction under section 80-IC of the Act was claimed at Rs. 1,35,49,150.

9. As the return filed by the assessee was processed vide intimation issued under section 143(1) of the Act, therefore it is not clear on what basis deduction under section 80-IC was denied to the assessee, even though the learned CIT(A) has upheld the aforesaid disallowance on various grounds. Since in the intimation issued under section 143(1) of the Act, the due date for filing the original return of income was considered as 31/10/2015, therefore, at the threshold, it is pertinent to determine whether the return filed by the assessee on 29/11/2015 is beyond the due date of filing the return of income in the present case. As per section 139(1) of the Act, every person, being a

company or a firm or a person other than a company or a firm, if his total income during the previous year exceeds the maximum amount which is not chargeable to income tax, shall on or before the due date furnish the return of his income in the prescribed form and verified in the prescribed manner and **setting forth such of the particulars as may be prescribed. The term "due date"** is defined in Explanation-2 to section 139(1) of the Act as under: -

"Explanation 2.—In this sub-section, "due date" means,—

*(a) where the assessee other than an assessee referred to in clause (aa) is—
(i) a company; or*

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

the 30th day of September of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in section 92E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year."

10. From the perusal of the aforesaid provision, we find that for a case to fall under clause (aa) of Explanation-2 to section 139(1) of the Act, the assessee is only **"required to furnish the report"** referred to in section 92E of the Act and there is no requirement under the aforesaid clause that the assessee **"has furnished the report"** referred to in section 92E of the Act. Therefore, we find no basis in the conclusion of the learned CIT(A) that since the assessee has failed to comply with the provisions of section 92E of the Act, the due date for filing the return of income was 31/10/2015. Further, it is pertinent to note that

vide Form 10CCB, forming part of the paper book from pages 39-52, filed by the assessee on 29/11/2015, the assessee disclosed the name of the related concerns in India, the nature of the transactions undertaken, and the transaction amount. Thus, from the said details not only the nature of specified domestic transactions undertaken by the Rudrapur unit of the assessee is evident but it is also evident that the aggregate of such transactions entered into by the assessee in the previous year exceeded a sum of Rs. 5,00,00,000. Therefore, we find no basis in the finding of the learned CIT(A) that there was no information before the AO while processing the return under section 143(1) of the Act, whether the assessee had, inter-alia, specified domestic transactions for which it was required to comply with the provisions of section 92E of the Act. Details of international transactions and specified domestic transactions provided in Form 3CEB filed on 18/03/2017 also support the claim of the assessee that the assessee was required to furnish the report referred to in section 92E of the Act. Accordingly, we are of the considered view that the due date for filing the return of income for the year under consideration in the case of the assessee is 30/11/2015 as per clause (aa) of Explanation-2 to section 139(1) of the Act, and thus, the original return filed by the assessee on 29/11/2015 is a valid return of income under section 139(1) of the Act.

11. As regards the finding of the learned CIT(A) pertaining to the revised return filed by the assessee on 29/03/2017, it is pertinent to note that vide intimation dated 26/11/2016 issued under section 143(1) of the Act, the original return filed by the assessee on 29/11/2015 was processed and thus the revised return, which was filed subsequently, was not under consideration. Accordingly, we are of the considered view that the revised return filed by the

assessee on 29/03/2017 was not the subject matter of appeal before the learned CIT(A) and thus the finding vide impugned order that the AO is justified in not accepting the return filed later on 29/03/2017 has no basis. In any case, as regards the reliance placed by the learned CIT(A) upon the **decision of the Hon'ble Supreme Court in Kumar Jagdish Chandra Sinha v/s CIT, 220 ITR 67 (SC)**, since the original return filed by the assessee has been found to be valid return under section 139(1) of the Act, therefore the said decision is not applicable to the facts of the present case.

12. Further, as the return of income filed by the assessee on 29/11/2015 has been found to have been filed on or before the due date specified under section 139(1) of the Act, therefore the applicability of provisions of section 80-AC for denial of deduction under section 80-IC of the Act is also ruled out in the present case.

13. As regards the finding of the learned CIT(A) that the AO has made the necessary adjustment while computing the total income as per section 143(1) of the Act by denying the claim of deduction under section 80-IC, as the assessee failed to comply with the provisions laid down in section 80-IC(7) read with section 80-IA(7) of the Act is concerned, it is evident from the record that the assessee filed Form 10CCB in respect of its claim of deduction under section 80-IC of the Act on 29/11/2015, i.e. on the date of filing the original return of income. The learned CIT(A) also recorded this fact in para 5 of the impugned order. Therefore, the claim of deduction of Rs. 1,35,62,893 under section 80-IC of the Act in its return of income was duly supported with Form 10CCB filed on 29/11/2015. Accordingly, we are of the considered view that

the case of the assessee does not fall within the meaning of section 143(1)(a)(ii) read with Explanation (a)(ii). Insofar as the issue whether Form 10CCB filed by the assessee on 29/11/2015 was in terms of provisions of section 80-IC(7) read with section 80-IA(7) of the Act and Rule 18BBB is concerned, we are of the considered view that such an examination is not permissible under the limited scope of section 143(1) of the Act, as under the said section during the assessment year 2015-16 only *prima facie* adjustments were permissible. Accordingly, we find no merits in the aforesaid findings of the learned CIT(A) to support the conclusion of denial of deduction under section 80-IC vide intimation issued under section 143(1) of the Act. In view of our aforesaid findings, the impugned order upholding the intimation dated 26/11/2016 issued under section 143(1) of the Act is set aside. Accordingly, grounds no.1-7 raised in assessee's appeal are allowed.

14. The issue arising in ground No. 8 raised in assessee's appeal pertains to the levy of interest under section 234C of the Act, which is consequential in nature. Therefore, the same needs no separate adjudication.

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

Order pronounced in the open Court on 08/12/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER
MUMBAI, DATED: 08/12/2023

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai