**(2009) 01 KAR CK 0081**

**In the Karnataka High Court**

**Case No :** Income Tax A. No. 405 of 2008

Commissioner of Income Tax and Another — APPELLANT

Vs

ACE Multitaxes Systems Pvt. Ltd. — RESPONDENT

**Date of Decision :** 05-01-2009

**Acts Referred:**
Income Tax Act, 1961 — Section 12 A (b), 260 A, 80 IA (7)

**Citation :** (2009) 317 ITR 207

**Hon'ble Judges :** K. Ramanna, J;Deepak Verma, J

**Bench :** Division Bench

**Advocate :** M.V. Seshachala, for the Appellant;

**Final Decision :** Dismissed

# Judgement

1. Heard Sri M. V. Seshachala, learned Counsel appeared for the appellants, on the question of admission.

2. This is an appeal at the instance of the Revenue u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), against the order dated November 8, 2007, passed by the Income Tax Appellate Tribunal, Bangalore Bench (B) in I. T. A. No. 132/Bang/2007 for the assessment year 2003-04.

3. Paragraph 2.1 of the impugned order passed by the Tribunal relevant for consideration of the said appeal is reproduced herein below:

2.1. We have heard both the sides. It appears that the learned Commissioner of Income Tax (Appeals) considered the decision of the Calcutta High Court in the case of Murali Export House and Others Vs. Commissioner of Income Tax, where similar audit report was not filed along with the return of income ; but later on, the same was filed. The hon''ble Calcutta High. Court allowed relief to the assessee holding that the Assessing Officer should have given time to file the audit report. In the case of Commissioner of Income Tax Vs. Shahzedanand Charity Trust, the Punjab and Haryana High Court held that the audit report u/s 12A(b) can be furnished at the appellate stage. In the present case, we have already noticed that the audit report was in fact filed before the Assessing Officer before completion of assessment proceeding. Therefore, in our opinion, considering the decisions of different High Courts, we are of the view that the impugned order did not require any interference. This ground is accordingly rejected.

4. Perusal of the aforesaid order makes it clear that the Tribunal has placed reliance on two judgments of the Punjab and Haryana High Court and the Calcutta High Court, touching the same issue.

5. In the matter of the Calcutta High Court it was held that the Assessing Officer should have given time to the assessee for filing the audit report and on that ground the necessary relief could not have been denied to the assessee.

6. In the matter of the Punjab and Haryana High Court, it has been held that the same could have been furnished even at the appellate stage.

7. Whereas in the case in hand, the audit report was filed at the appellate stage, even though wrongly recorded by the Tribunal that it was filed before the Assessing Officer.

8. Sub-section (7) of Section 80IA of the Act also does not cast any obligation on the assessee that the return must be accompanied by the audit report. There appears to be proper reasoning as to why in all cases it cannot be accompanied by audit report. For meeting the practical difficulties of the assessee, it is not necessary that in all cases, it must be accompanied by the audit report.

9. In view of the aforesaid discussions, we are of the considered opinion that no substantial question of law arises in this appeal. Therefore, the same is hereby dismissed.