
(2009) 10 SHI CK 0017
In the High Court Of Himachal Pradesh

Commissioner of Income Tax

APPELLANT

Vs

Khalelan Devi

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Income Tax Act, 1961 — Section 80IB

Citation : (2010) 1 ShimLC 60

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—The short but interesting question which arises in this appeal is as follows:

Whether the Hon''ble Tribunal was right in law in holding that filing of the audit report in form No. 10CCB during the assessment proceedings would satisfy the requirements of provisions of Section 80-IA (7) whereas as per provisions of that Section it is mandatory that no deduction under Sub-section (1) of Section 80-IA/80-IB shall be allowed unless a report in prescribed form No. 10CCB duly signed and verified by the Chartered Accountant is furnished alongwith the return of income?

2. The admitted facts are that the assessee sought to claim benefit of Section 80-IB of the Income Tax Act. As per the provisions of Section 80-IB (7) the assessee was required to file a return duly audited by an accountant. Sub-clause (7) of Section 80-IA reads as follows:

[The deduction] under Sub-section (1) from profits and gains derived from an [undertaking] shall not be admissible unless the counts of the [undertaking] for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below Sub-section (2) of Section 288, and the assessee furnishes, alongwith his return of income, the report of such audit in the prescribed form duly signed and verified by. such accountant.

3. It is contended by Ms. Vandana Kuthiala, Advocate, on behalf of the Revenue that the word "shall" has been used in this Clause and, therefore, the assessee is duty bound to have his accounts audited by an accountant and to file the audited accounts alongwith the return of his income. It is her contention that in case the accounts are not filed alongwith the return, they cannot be permitted to be filed at any later stage.

4. The facts of the present case are that alongwith the return, the assessee only filed the last page of the audited accounts, duly certified. When it was pointed out that the entire audited report had not been filed, the assessee, during the course of assessment proceedings, furnished the audited report also. The Assessing Officer held that this could not be permitted and since the audited report had not been filed alongwith the return, the assessee could not get the benefit of Section 80-IB. The assessee then filed an appeal before the Commissioner of Income Tax (Appeals), who decided the matter in favour of the assessee. The appeal filed by the Revenue before the Income Tax Appellate Tribunal was also rejected as far as this question is concerned. Hence the present appeal.

5. Reliance on behalf of the Revenue is placed on a judgment of the Division Bench of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Jaideep Industries, wherein while dealing with Section 80-I(6-A), the wording of which is similar to Sub-clause (7) hereinabove, the Division Bench held that there could be no escape from the conclusion that the requirement of the audit report being filed alongwith the return of income is mandatory and, therefore, the same could not be filed during the course of assessment proceedings.

6. It would be pertinent to mention that this view of the Punjab and Haryana High Court has been held to be not good law by a Full Bench of the said Court in Commissioner of Income Tax Vs. Punjab Financial Corporation, wherein, after referring to other judgments of the Madhya Pradesh High Court and Gujarat High Court, the Full Bench held that the provisions of Section 32-AB (5) are not mandatory and the Assessing Officer has the discretion to entertain the audit report even though it has not been filed with the return and give benefit of deduction to the assessee in terms of Section 31-AB(1).

7. It would be pertinent to mention that the Gujarat High Court has taken the same view in Commissioner of Income Tax Vs. Gujarat Oil and Allied Industries, and Zenith Processing Mills Vs. Commissioner of Income Tax, The Madhya Pradesh High Court has also taken a similar view in Commissioner of Income Tax Vs. A.N. Arunachalam, , and Commissioner of Income Tax Vs. Jayant Patel, The Bombay High Court has also taken the same view in Commissioner of Income Tax Vs. Shivanand Electronics, The Karnataka High Court has also taken a similar view in Commissioner of Income Tax and Another Vs. ACE Multitaxes Systems Pvt. Ltd., and the Delhi High Court in Commissioner of Income Tax Vs. Contimeters Electricals Pvt. Ltd., Therefore, the view of all the High Courts cited before us is that the audit report can be filed even during the course of

assessment proceedings.

8. We may add that in the present case the last page of the return had in fact been annexed with the return. It is not a case where the audit report has been prepared after the return had been filed. From the facts, it is clear that the audit report was already in existence and had been prepared before the filing of the return. Mere negligence on the part of the Counsel or the party while filing the return without the audit report will not disentitle the said party to the benefit to which otherwise it is entitled. Consequently, the question is decided in favour of the assessee and against the Revenue.

The appeal stands disposed of accordingly.