*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 08 August 2024**
Judgment pronounced on: 14 August 2024

\+ W.P.(C) 8972/2019

SHREE BHAVANI POWER PROJECTS PVT. LTD. .....Petitioner

Through: Mr. Satyen Sethi & Mr. Arta Trana Panda, Advs.

versus

INCOME TAX OFFICER, WARD 23(3), & ANR. .....Respondents

Through: Mr. Vipul Agarwal, SSC with Mr. Gibran Naushad & Ms. Sakashi Shairwal, JSCs.

\+ W.P.(C) 8980/2019

SHREE BHAVANI POWER PROJECTS PVT LTD .....Petitioner

Through: Mr. Satyen Sethi & Mr. Arta Trana Panda, Advs.

versus

INCOME TAX OFFICER, WARD 23(3), & ANR. .....Respondents

Through: Mr. Vipul Agarwal, SSC with Mr. Gibran Naushad, & Ms. Sakashi Shairwal, JSCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. These two writ petitions W.P.(C) 8972/2019 and W.P.(C) 8980/2019 pertaining to **Assessment Years**[1] 2014-15 and 2013-14 respectively impugn the reassessment action initiated in terms of notices issued under Section 148 of the **Income Tax Act, 1961**[2], both dated 26 March 2019. The principal question which stands posited for our consideration is whether a failure on the part of the petitioner to electronically upload Form 10CCB along with its Return of Income and as per the time frames contemplated under Section 139 would constitute a valid ground for the reassessment action being initiated or for the respondents asserting that income liable to tax had escaped assessment.

2. While the petitioners contend that a digital filing of the Audit Report along with the Return of Income was merely procedural and directory and that the statutory prescriptions had been substantially complied with, the respondents on the other hand would urge us to hold that the statutory prescriptions comprised in Section 80-IA(7) are mandatory and the actions initiated under Section 148 thus justified.

3. Since the reasons which ultimately weighed upon the respondents for invoking Section 148 are common to both the writ petitions, we, for the sake of brevity, take note of the reasons assigned while disposing of the objections preferred and as they stand recorded for AY 2013-14. Those reasons are extracted hereinbelow:

> "Sub: **Assessment proceedings for AY 2013-14 - disposal of objections raised - regarding**

[1] AYs
[2] Act

Please refer to your letter dated 07.05.2019 thereby filing objections to the reopening of assessment proceedings for the above said assessment year.

2. The following objections have been raised :-

i) In terms of first proviso to section 147, the assessment u/s 148 call be reopened upto four years relating to cases completed as a scrutiny assessment u/s 143(3) from the end of the assessment year unless there is a reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

ii) In terms of third proviso to section 147, the income in respect of matters which are subject matter of appeal cannot be reassessed.

In support of the first objection, the assessee has relied upon various case laws.

3. The objections raised have been considered and are disposed off as under.

i) The assessment u/s 143(3) of the Act for the year under consideration was made on 29.02.2016. Rule 12 of IT Rules,1962 made effective from 01.04.2013 makes it mandatory that a report of audit specified under sub-clause (iv), (v). (vi) or (via) of clause (23C) of section 10, section 10A, section 10M, clause (b) of subsection (1) of section 12A, section 44AB, section 440A, section 50B, section 80-1A, section 80-1B, section 80-le, section .80-10, section 80JJM, section 80LA, section 92E, section 115JB or section 115W1/ or to give a notice under clause (a) of subsection (2) of section 11 of the Act, the assessee shall furnish the same electronically. The assessee failed to furnish the report u/s 80lA electronically. During the course of assessment proceedings, the assessee failed to point out this discrepancy and thus there is non-disclosure of true and complete particulars.

ii) As regards the third proviso to section 147, it is stated that the same is with respect to the relevant assessment year for which the matter is subjected to appeal and cannot be applied to other years. Each assessment year is a different assessment year and thus third proviso to section 147 is not applicable to be instant assessment year.

The various case laws relied upon by the assessee are not applicable to the year under consideration in view of the insertion/ amendment to Rule 12 of I.T. Rules, 1962 w.e.f. 01.04.2013.

In view of the above, the objections raised by the assessee stands disposed off."

4. For the purposes of examining the challenge which stands raised,

we deem it apposite to take note of the following salient facts as obtaining in W.P.(C) 8980/2019. The petitioner is stated to have submitted a Return of Income for AY 2013-14 on 30 September 2013 claiming deductions as per Section 80-IA(4)(iv)(a) of the Act. It is the case of the writ petitioner that a tax audit report in Form 3CA under Section 44AB was filed electronically on 30 September 2013 along with the Return of Income and the Audit Report in Form 10CCB was filed manually before the **Assessing Officer**[3] on 12 February 2016. The AO concluded the assessment in terms of Section 143(3), allowing the deductions claimed by virtue of Section 80-IA and which becomes evident from a perusal of the assessment order dated 29 February 2016. It is thereafter that the impugned notice under Section 148 came to be issued.

5. As is manifest from the reasons assigned for invocation of Section 148, we find that the respondents have taken the stand that Rule 12 of the **Income Tax Rules, 1962**[4], and which came to be amended by the **Income Tax (Seventh Amendment) Rules, 2013**[5] w.e.f. 01 April 2013 introduced the requirement of an online submission of the Audit Report in Form 10CCB. The respondents assert that the petitioner had failed to point out the failure to digitally submit the report and this would constitute a non-disclosure of true and complete particulars. It is on the aforesaid basis that they called upon the petitioner to show cause why action under Section 148 should not be initiated. The aforesaid reasoning was reiterated in the order disposing of the objections which had come to be preferred by the petitioners. It is the aforesaid view

[3] AO
[4] 1962 Rules
[5] 2013 Amendment

which is assailed by way of the present writ petitions.

6. Appearing for the writ petitioner, Mr. Sethi, learned counsel, contended that undisputedly in AYs 2013-14 and 2014-15, Form 10CCB and which were referable to Section 80-IA(7), were manually submitted before the AO on 12 February 2016 and 28 October 2016 respectively and thus prior to the finalization of the assessment proceedings. Mr. Sethi submitted this in light of the undisputed fact of the assessment orders for AYs 2013-14 and 2014-15 under Section 143(3) having been framed on 29 February 2016 and 04 November 2016 respectively.

7. Mr. Sethi contended that High Courts across the country have taken the consistent position that the filing of an audit report is a procedural requirement and would not detract from the right of an assessee to claim deductions which are otherwise permissible in terms of Section 80-IA. In order to buttress the aforesaid submission Mr. Sethi drew our attention to the following pertinent observations as rendered by this Court in **Commissioner of Income Tax vs. Contimeters Electricals (P.) Ltd.**[6]:

> "**3.** According to the Commissioner of Income-tax, since no Audit Report, duly verified and signed in the prescribed Form No. 10CCB under rule 18BBB had been furnished along with the return, the condition for claiming deduction had not been satisfied and, therefore, the action of the Assessing Officer in allowing rebate under section 80-IA was erroneous and prejudicial to the interest of the Revenue.
>
> **xxxx xxxx xxxx**
>
> **5.** Being aggrieved by the said order, the assessee preferred an appeal before the Tribunal which was allowed by the Tribunal by virtue of the impugned order. The Tribunal took the view that the provisions of section 80-IA(7) with regard to filing of the Audit Report along with the return were not mandatory and

[6] 2008 SCC OnLine Del 1458

were merely directory. In coming to such conclusion, the Tribunal referred to the decision of the Gujarat High Court in CIT v. Gujarat Oil and Allied Industries [1993] 201 ITR 325. In that decision, the provisions of section 80J(6A) were considered. The wording of section 80J(6A) is similar to that of section 80-IA(7) which is in issue in the present appeal. The Gujarat High Court took the view that the word "shall" which occurs in section 80J(6A) be read as "may" and that the requirement of filing of an Audit Report along with the return was only to be taken as directory in nature. The Gujarat High Court took the view that in case the Audit Report is submitted at any time before the framing of the assessment, there would be substantial compliance with the provisions of section 80J(6A).

6. The Tribunal also relied on the decision of the Madras High Court in CIT v. A. N. Arunachalam [1994] 208 ITR 481, which, again, while considering the provisions of section 80J(6A), took the same view as that of the Gujarat High s

7. We notice that there are other decisions of other courts taking the same view. The decisions being, CIT v. Shivanand Electronics [1994] 209 ITR 63 (Bom) ; Zenith Processing Mills v. CIT [1996] 219 ITR 721 (Guj) and CIT v. Jayant Patel [2001] 248 ITR 199 (Mad) and CIT v. Mahalaxmi Rice Factory [2007] 294 ITR 631 (P&H).

8. In view of this long line of decisions of various High Courts in considering the provisions of section 80J(6A) which are similar to the provisions of section 80-IA(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the Audit Report along with the return is not mandatory but directory and that if the Audit Report is filed at any time before the framing of the assessment, the requirement of section 80-IA(7) would be met."

8. Mr. Sethi also drew our attention to the statutory scheme as it existed originally and as it underwent amendments over time. Learned counsel pointed out that Section 80-IA(7) as existing in AYs 2013-14 and 2014-15 read as under:

"(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts 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 92) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form

duly signed and verified by such accountant."

9. Our attention was then drawn to amendments which came to be introduced in the 1962 Rules by the 2013 Amendment and in terms of which Rule 12 came to be recast to read as follows:

> "(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or Form SUGAM (ITR-4S) or Form No. ITR-4 or Form No. ITR-5 or Form No. ITR-6 or Form No. ITR-7 shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act:
> [**Provided** that where an assessee is required to furnish a report of audit specified under sub-clause (iv), (v), (vi) or (via) of clause (23C) of section 10, section 10A, section 10AA, clause (b) of sub-section (1) of section 12A, section 444B, section 44DA, section 50B, section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E, section 115JB or section115VW or to give a notice under clause (a) of sub-section (2) of section 11 of the Act, he shall furnish the same electronically.]"

10. As is manifest from the aforesaid, it was the Proviso inserted in Rule 12(2) which for the first time introduced the requirement of an Audit Report contemplated under Section 80-IA being furnished electronically. We note that although the aforesaid requirement was introduced by virtue of the 2013 Amendment, Section 80-IA(7) as it stood at that time only spoke of the Audit Report being furnished in the prescribed form along with the Return of Income and being duly verified by an accountant of the assessee.

11. By virtue of Finance Act, 2020 sub-section (7), of Section 80-IA came to be amended and now reads as under:

> "(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the

> accounts 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, before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant."

12. The rationale underlying the amendment made to sub-section (7) of Section 80-IA was sought to be explained by Mr. Sethi who drew our attention to the following extracts from the Memorandum explaining the provisions of the Finance Bill, 2020:

> "Further, to enable pre-filing of returns in case of persons having income from business or profession, it is required that the tax Audit Report may be furnished by the said assessees at least one month prior to the due date of ling of return of income. This requires amendments in all the sections of the Act which mandates filing of Audit Report along with the return of income or by the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A,section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section 44DA, section 5OB, section 80-IA, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW of the Act are proposed to be amended accordingly."

13. According to learned counsel, it was the aforesaid rationale which informed the amendments ultimately made in sub-section (7). Mr. Sethi sought to highlight the fact that the requirement of the Audit Report being liable to be furnished before the specified date referred to in Section 44AB was a prescription which came to be incorporated for the first time by virtue of Finance Act, 2020. It was his submission that the provision as it stands now is distinct from the statutory obligations which were otherwise imposed upon an assessee in terms of that provision as it stood prior to the amendments ushered in by way of Finance Act, 2020, and which had only spoken of the Audit Report being furnished along with a Return of Income. According to learned

counsel, the amendments so introduced are still liable to be viewed as being merely directory and the requirements of Section 80-IA(7) would be deemed to have been fulfilled as long as the Audit Report is submitted before the AO prior to conclusion of assessment proceedings.

14. Mr. Sethi then contended that Rule 12(2) as it came to exist on the statute book after the 2013 Amendment cannot possibly be interpreted so as to eclipse the directory character of Section 80-IA (7). It was submitted that a failure to electronically upload the Audit Report would in any case be liable to be viewed as a mere procedural irregularity and the same cannot possibly be equated with an illegality.

15. Questioning the action for reassessment, Mr. Sethi submitted that the reasons assigned in support of the decision to reopen assessment would clearly indicate that the respondents nowhere allege that there was a failure on the part of the petitioner to fully and truly disclose all material particulars. It becomes pertinent to note that the aforesaid submission proceeds on the basis of the First Proviso to Section 147 as it stood prior to the amendments introduced in that provision by virtue of Finance Act, 2021 and which came into effect from 01 April 2021. Mr. Sethi contended that since the original assessment had been made in accordance with Section 143(3), the respondents would have no authority to reopen an assessment concluded in accordance therewith unless it be found that there was a failure on the part of the assessee to make a complete and candid disclosure of all facts. In any case, according to Mr. Sethi, a failure to electronically submit the Audit Report would not be liable to constitute a justifiable reason for reopening assessment bearing in mind the legal position as enunciated by this Court in **The Associated Chambers of Commerce and**

Industry of India vs. Deputy Commissioner of Income Tax & Ors.[7]

16. It becomes pertinent to note that in *Associated Chambers*, we were called upon to examine whether reassessment would be justified in a case where an assessee had erred in digitally uploading Form 10 in accordance with the requirements of Section 11(2)(a) and (c) of the Act read along with Rule 17(3) of the 1962 Rules. While dealing with the aforesaid issue, we had observed as follows:

> "**27.** More fundamentally, we note that the action for reassessment is not founded on income liable to tax having escaped assessment. The respondents also do not question the acceptance of the accumulations in terms of Section 11(2) in the assessment order dated 01 December 2018. The entire action for reassessment is founded solely on Form 10 having been submitted after 17 October 2016 and which was the due date in terms of Section 139(1).
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> **28.** In our considered opinion, an action for reassessment would have to be based on the formation of an opinion that income chargeable to tax has escaped assessment. That primordial condition would clearly not be satisfied on the mere allegation of a delayed digital filing of Form 10."

17. Controverting the aforenoted submissions Mr. Agarwal, learned counsel appearing for the respondent, contended that Rule 12 as it came to exist in its amended avatar and post the 2013 Amendment, in unequivocal terms required an assessee seeking to claim deductions in terms of Section 80-IA to furnish the Audit Report electronically. According to Mr. Agarwal, this position would hold good even when one were to view the provisions of Section 80-IA(7) as it stood at the relevant time and prior to amendments which came to be introduced by virtue of Finance Act, 2020. This, according to Mr. Agarwal, is evident from that provision using the expression "…*and the assessee furnishes along with his return of income, the report of such audit in the*

[7] 2024 : DHC : 5727 - DB

prescribed form…".

18. The bulwark of the submissions of Mr. Agarwal, however, was the decision of the Supreme Court in **Principal Commissioner of Income Tax – III & Anr. vs. Wipro Limited**[8]. According to Mr. Agarwal, *Wipro Limited* is a decision which clearly demolishes the contention which is advanced on behalf of the writ petitioners as the Supreme Court has clearly held that where the statute requires the filing of a form to coincide with the furnishing of a Return of Income, it is liable to be viewed as a mandatory pre-condition for any benefit being claimed by an assessee. According to Mr. Agarwal, the decision of the Supreme Court, though rendered in the context of Section 10B(8) of the Act, would clearly lay to rest the controversy which arises. It was also Mr. Agarwal's submission that the earlier precedents rendered in the context of Section 80-IA, including that of our Court in *Contimeters Electricals*, rested upon the decision of the Supreme Court in **Commissioner of Income Tax vs. G.M. Knitting Industries (P) Ltd.**[9] and which has been explained by the Supreme Court in its later decision in *Wipro Limited*. Mr. Agarwal laid stress upon the following passages appearing in *Wipro Limited*:

> "**38.** On a plain reading of Section 10B(8) of the IT Act as it is, i.e., "where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of Section 10B may not be made applicable to him, the provisions of Section 10B shall not apply to him for any of the relevant assessment years", we note that the wording of the Section 10B(8) is very clear and unambiguous. <u>For claiming the benefit under Section 10B(8), the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing the return of income under sub-section</u>

[8] 2022 SCC OnLine SC 831
[9] 2015 SCC OnLine SC 1015

(1) of section 139 of the IT Act are required to be fulfilled and/or satisfied. In our view, both the conditions to be satisfied are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under subsection (1) of section 139 are same/similar. It cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.

39. In such a situation, filing a revised return under section 139(5) of the IT Act claiming carrying forward of losses subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3). Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under Section 139(1) and cannot transform it into a return under Section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under Section 80 of the IT Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under Section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or setoff of any loss. Filing a revised return under Section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming benefit under section 10B(8) and furnishing the declaration as required under section 10B(8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B(8), both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature.

40. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B(8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of

the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B(8) can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B(5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B(5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B(5) would become falsified and would stand to be nullified.

41. Now so far as the reliance placed upon the decision of this Court in the case of *G.M. Knitting Industries Pvt. Ltd.* (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, Section 10B(8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1)(ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B(8) of the IT Act.

42. Even the submission on behalf of the assessee that the assessee had a substantive statutory right under Section 10B(8) to opt out of Section 10B which cannot be nullified by construing the purely procedural time requirement regarding the filing of the declaration under Section 10B(8) as being mandatory also has no substance. As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.

43. So far as the submission on behalf of the assessee that against the decision of the Delhi High Court in the case of *Moser Baer* (supra), a special leave petition has been dismissed as withdrawn and the revenue cannot be permitted to take a contrary view is concerned, it is to be noted that the special leave petition against the decision of the Delhi High Court in the case of *Moser Baer* (supra) has been dismissed as withdrawn due to there being low tax

effect and the question of law has specifically been kept open. Therefore, withdrawal of the special leave petition against the decision of the Delhi High Court in the case of *Moser Baer* (supra) cannot be held against the revenue.

44. In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B(8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B(8) of the IT Act. We hold that for claiming the benefit under Section 10B(8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B(8) of the IT Act on non-compliance of the twin conditions as provided under Section 10B(8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

It is the aforenoted rival submissions which fall for determination.

19. We at the outset note that although Mr. Agarwal urged us to dismiss these writ petitions consequent to a failure on the part of the writ petitioners to meet the twin conditions of submitting Form 10CCB electronically and along with its Return of Income, the reasons recorded by the respondents seeking to reopen the concluded assessments speaks only of a failure to digitally file the Audit Reports in Form 10CCB. However, we propose to examine and answer the question which stands posited on both scores.

20. However, and before proceeding to rule on the statutory requirements of Section 80-IA(7), we note that the reasons assigned in

the impugned orders nowhere allude to escapement of income which is a pre-condition for the purposes of invoking Section 148. As is manifest from a reading of the reasons which came to be recorded, the only allegation levelled against the petitioner is of its failure to digitally upload the Audit Reports. In our considered opinion, the same clearly does not qualify or meet the prescription of the First Proviso to Section 147 as it existed at the relevant time and which read as under:

> "**Provided** that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:"

21. Undisputedly, the petitioner had been assessed for AYs 2013-14 and 2014-15 in terms of Section 143(3). The Proviso thus clearly required the respondents to establish that income liable to tax had escaped assessment on account of a failure of the petitioner to make a full and true disclosure of all material facts. In our opinion a failure to digitally upload a Form cannot lead one to conclude that the assessee had failed to make a full and true disclosure. In any event, the respondents have woefully failed to establish or assert how that folly, if it may be so termed, resulted in escapement of income. The Section 148 action would thus and following the view taken by us in *Associated Chambers* be liable to be struck down on this short ground alone.

22. We also bear in mind that the reassessment actions for AYs 2013-14 and 2014-15 were commenced with the issuance of notices under Section 148 on 26 March 2019. An action to reopen assessment prior to

the amendments introduced by virtue of Finance Act, 2021 could have at best been initiated within a period of four years and subject to a maximum of six years in terms of the provisions of Section 149 as it existed at the relevant time. The reassessment action, insofar as AY 2013-14 is concerned, being beyond the maximum window of six years would thus falter and fail on this score additionally.

23. That takes us to the principal question and concerning the legal requirements flowing from Section 80-IA read along with Rule 12. We find that insofar as the directory nature of Section 80-IA(7) is concerned, the same stands conclusively answered by this Court in *Contimeters Electricals*, and the aforesaid position having been followed consistently by various other High Courts. We thus find no justification to tread down a different path or deviate from a position in law which has clearly held the field for some time.

24. Analysed independently, we note that Section 80-IA(7) as it existed prior to its amendment in terms of Finance Act, 2020, only placed a requirement of the assessee furnishing the Audit Report along with his Return of Income in the prescribed form. Discernibly, Section 80-IA(7) as it stands in its present form uses the expression "…*before the specified date referred to in section 44AB and the assessee furnishes by that date*…". Thus, it is only by virtue of Finance Act, 2020 that Section 80-IA(7) now embodies a stipulation for the Audit Report being furnished before the specified date referred to in Section 44AB.

25. The requirement of the said report being furnished electronically, however, came to be introduced for the first time in 2013 and which is when Rule 12 came to be amended. However, at this point in time, the

requirement of an electronic submission of Form 10CCB stood confined to Rule 12 since Section 80-IA(7) had not been amended in the manner noted above.

26. Viewed in that light, in our considered opinion, as long as that Audit Report was duly furnished to the AO and was available to be scrutinized and examined by that authority during the assessment proceedings, the provisions of Section 80-IA(7), as it stood prior to the amendments introduced in 2020, would be recognized to have been substantially fulfilled. In any event, a failure to digitally file that report cannot be countenanced to be fatal to the claim that may be laid in terms of Section 80-IA(7).

27. We note that the various decisions which speak of the electronic submission of the Audit Report being directory and procedural were all rendered prior to the amendments introduced by Finance Act, 2020. These writ petitions too are concerned with actions initiated prior to the passing of Finance Act, 2020 and the amendments consequently made in Section 80-IA (7). The present decision is thus not liable to be read as an exposition on the legal position which would prevail post 2020 or the likely impact in light of the inclusion of the phrase "…*before the specified date referred to in section 44AB...".* We thus leave that question open to be examined in an appropriate case.

28. That only leaves us to evaluate the argument of Mr. Agarwal which rested on the decision of the Supreme Court in *Wipro Limited*. It must, and at the outset, be noted that *Wipro Limited* was a decision which was rendered in the context of Section 10B(8) that stands placed in Chapter III of the Act and which makes provisions with respect to

exempt income. This is manifest from the Chapter Heading itself and which is titled "Incomes which do not form part of Total Income". Regard must be had to the fact that Section 80-IA on the other hand is placed in Chapter VIA, and which deals with "Deductions in respect of certain payments" that an assessee may factor in while computing total income. Thus, we at a foundational plane, find ourselves unable to either place Sections 10B and 80-IA on an even pedestal nor hold that exemption and deduction provisions must be interpreted with similitude.

29. We also bear in mind the indubitable fact that Section 10B(8) is clearly couched in terms more imperative than Section 80-IA(7). This becomes manifest from a reading of that provision and which requires the assessee to furnish a declaration before the AO that it chooses not to be assessed in accordance with that provision and the said declaration being liable to be furnished *before* the due date for furnishing of a Return of Income under Section 139(1). This requirement has always existed in Section 10B from inception and since its insertion by virtue of Finance Act, 1988. This is a significant distinguishing feature bearing in mind the indisputable position of the Audit Report being tied to the specified date contemplated in Section 44AB was a stipulation which came to be introduced for the first time and with sufficient certitude by virtue of Finance Act, 2020.

30. We note that in *G.M. Knitting*, the Supreme Court had in unequivocal terms while construing the furnishing of an Audit Report in Form 10CCB approved the consistent position taken by various High Courts holding that the assessee was entitled to claim deductions even where the Audit Report had not been filed with the return but was

otherwise submitted before the assessment was completed. This becomes evident from a reading of the following passages of that decision:

> "**1.** It would be suffice to reproduce para 2 of the impugned order [*CIT* v. *G.M. Knitting Industries (P) Ltd.*, Income Tax Appeal No. 2336 of 2010, order dated 24-6-2011 (Bom)] whereby action of the Income Tax Appellate Tribunal was held to be justified in allowing additional depreciation as claimed by the respondent assessee herein:
>
> *"Additional depreciation is denied to the assessee on the ground that the assessee has failed to furnish Form 3-AA along with the return of income. Admittedly, Form 3-AA was submitted during the course of assessment proceedings and it is not in dispute that the assessee is entitled to the additional depreciation. In these circumstances, in the light of the judgment of this Court in CIT v. Shivanand Electronics [CIT v. Shivanand Electronics, 1993 SCC OnLine Bom 625 : (1994) 209 ITR 63] , we see no merit in this appeal. The appeal is accordingly dismissed with no order as to costs."*
>
> **2.** We concur with the aforesaid view of the High Court and hold that even if Form 3-AA was not filed along with return of income but the same was filed during the assessment proceedings and before the final order of the assessment was made that would amount to sufficient compliance. These appeals are, accordingly, dismissed."

31. One of the reasons which appears to have weighed upon the Supreme Court while rendering its decision in *Wipro Limited* was of Section 10B being an exemption provision. This is evident from the Supreme Court significantly observing that Section 10B(8) being an exemption provision not being liable to be compared with Section 32(1)(ii-a) and which was concerned with a claim for additional depreciation. Regard must also be had to the fact that Section 10B(1) is essentially concerned with the grant of exemptions to newly established hundred per cent export-oriented undertakings and the deduction of profits and gains derived by such an enterprise. Sub-section (8) thereof

enables an assessee to opt out of the exemption provisions contained therein subject to a requisite declaration being submitted. Since such a declaration would have an immediate and indelible bearing on the assessment of the Return of Income itself, it would clearly be liable to be viewed as a mandatory requirement warranting such a declaration being made at the outset itself and the statutory prescriptions made in that regard being liable to be strictly adhered to.

32. The aforesaid position may be contrasted with Section 80-IA(7), and which is principally concerned with deductions that may be claimed and the Audit Report being made available for examination by the AO. In these writ petitions, we are in any case concerned solely with whether a failure to digitally upload the Audit Report could be said to be destructive. It is for the aforenoted reasons that we are inclined to hold that *Wipro Limited* is distinguishable and that it would be the principles enunciated in *G.M. Knitting* which would govern the present matters.

33. Accordingly, and for all the aforesaid reasons, we allow the instant writ petitions. We thus quash the impugned notices issued under Section 148 of the Act dated 26 March 2019 and the consequent initiation of reassessment proceedings for AYs 2013-14 and 2014-15.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 14, 2024/kk