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

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+ **ITA 239/2015 & CM No. 6678/2015**

COMMISSIONER OF INCOME TAX-VI ..... Appellant

Through Mr Rohit Madan, Advocate.

versus

M/S UNITECH LTD. .... Respondent

Through Mr Salil Aggarwal and Mr Ravi Pratap  
Mall, Advocates.**CORAM:****HON'BLE DR. JUSTICE S.MURALIDHAR****HON'BLE MR. JUSTICE VIBHU BAKHRU****ORDER**% **05.10.2015****CM No. 6678/2015 (Delay in refiling)**

1. For the reasons stated in the application, the delay of 296 days in refiling the appeal is condoned.
2. The application stands disposed of.

**ITA 239/2015**

3. This is an Appeal by the Revenue against the order dated 18<sup>th</sup> December, 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1014/Del/2012 for the Assessment Year (AY) 2008-09.



4. In the present case the Assessee filed its return of income for the AY in question on 2<sup>nd</sup> April 2009 claiming the benefit of deduction under Section 80IB (10). This was allowed by the Assessing Officer (AO) while making assessment under Section 143(3) of the Income Tax on 30<sup>th</sup> December, 2009. In terms of Section 80AC of the Act the return had to be filed by the Assessee, ‘on or before the due date specified under Section 139(1)’, which in this case meant on or before 31<sup>st</sup> October, 2008.

5. A short question before the Commissioner of Income Tax (CIT) who initiated proceedings under Section 263 and proceeded to withdraw the deduction claimed by the Assessee under Section 80IB(10) was whether the requirement under Section 80AC, that the return had to be filed within the time prescribed under Section 139(1) of the Act, was mandatory.

6. The ITAT in the impugned order allowing appeal filed by the Assessee noted that there was a cleavage of opinion on the issue as was evident from two lines of decisions of the ITAT itself. Since a possible view in favour of the Assessee could be taken if one line of decisions was applied, the ITAT concluded that there was no justification for CIT to have invoked the jurisdiction Section 263 of the Act.

7. Before this Court Mr Rohit Madan, learned Standing Counsel for the Revenue has placed reliance on the decision dated 27<sup>th</sup> August 2012 of the Uttarakhand High Court in ITA No. 07/2012 (*Umesh Chandra Dalakoti v. Assistant Commissioner of Income Tax*) as well as of the Calcutta High Court in *CIT v. Shelcon Properties (P) Ltd. [2015] 370 ITR 305 (Cal)* both



of which have held the provision under Section 80AC of the Act to be mandatory. He has also referred to the decisions of the ITAT Special Bench in *Saffire Garments v. ITO 20 ITR (Trib) 623*, of the ITAT Madras Bench in 1219-1223/MDS/2012 (*ACIT v. Shri V.N. Devadoss*), of the ITAT Chandigarh Bench in 250-2511CHD/2003 (*Lakshmi Energy and Foods Ltd. v. ACIT*) and the decision dated 30th January 2015 of the ITAT Mumbai Bench in ITA No. 4727/Mum/2012 (*Dwarkadas Panchmatiya v. ACIT*).

8. Mr Salil Aggarwal, learned counsel for the Assessee, on the other hand, has placed reliance on the decisions of this Court in *CIT v. Integrated Databases (I) Ltd. (2009) 178 Taxman 432 (Del)* and *CIT v. Contimeters Electricals (P) Ltd. (2009) 178 Taxman 422 (Del)*. He also placed reliance on the decision dated 26th June 2013 of the Andhra Pradesh High Court in ITTA No. 114 of 2013 (*CIT v. Sri S Venkataiah*), the decisions dated 29th April 2013 of the ITAT Madras in ITA No. 1214/Mds/2012 (*ACIT v. Precot Meridian Ltd.*) and 4th February 2013 in ITA No. 1219-1223/Mds/2012 (*ACIT v. V.N. Devadoss*), the decisions of the ITAT Delhi dated 30th July 2010 in *ACIT v. Dhir Global Industrial (P) Ltd. 133 TTJ (Del) 580* and dated 25th January 2012 in ITA No. 3352/Del/2011 (*Hansa Dalakoti v. ACIT*), the decision of the Bangalore ITAT dated 12th April 2013 in *M/s Vanshee Builders & Developers P. Ltd. v. CIT 63 SOT 30* and the decision of the Kolkata ITAT dated 19th April 2013 in ITA No. 1586/Kol/2012 (*M/s Shelcon Properties (P) Ltd. v. JCIT*).

9. The Court notices at the outset that the decisions of this Court both in *CIT*



*v. Integrated Databases (I) Ltd. (supra)* and *CIT v. Contimeters Electricals (P) Ltd. (supra)* were on the question whether the provision of Section 10-B (5) of the Act which requires the filing of a report of an accountant along with the return was mandatory. Neither decision was directly on question whether the time limit for filing the return in terms of Section 80AC read with Section 139 (1) of the Act was mandatory. Although the decision of the A.P. High Court in *CIT v. Sri S Venkataiah (supra)* concerned this very issue, it was one declining to frame a question of law thereby affirming the order of the ITAT. It was a short order in the facts of the case where the Assessee appears to have shown “reasonable cause for filing the return of income belatedly” and that it was “beyond the control of the Assessee.” On the other hand, the decisions of the Uttarakhand High Court in *Umesh Chandra Dalakoti (supra)* and of the Calcutta High Court in *CIT v. Shelcon Properties (P) Ltd. (supra)* appear to support the case of the Revenue that Section 80 AC is mandatory. However, there appears to be no authoritative pronouncement of this Court on the interpretation of Section 80AC of the Act and whether the said provision is mandatory or directory.

10. As far as the present case is concerned, the Court is satisfied that at the time when the CIT passed the order dated 6<sup>th</sup> February, 2012 under Section 263 of the Act there was a conflict of opinions of the various benches of the ITAT on whether 80AC was mandatory. Consequently, the ITAT was not in error in reversing the order of the CIT as far as the question of exercising jurisdiction under Section 263 of the Act was concerned. No substantial question of law arises on the said issue.



11. It is clarified that the question whether the requirement under Section 80AC of the Act is mandatory is left open for consideration in an appropriate case. The appeal is dismissed in the above terms.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**OCTOBER 05, 2015**

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