Income Tax Appellate Tribunal - Chennai

V.N.Devadoss (Huf),, Chennai vs Department Of Income Tax on 17 January, 2013

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI
BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA Nos.1219 & 1221(Mds)/2012
Assessment Years : 2008-09 and 2009-10

The Assistant Commissioner of Income-tax, Central Circle I(3), Chennai.	Vs.	Shri V.N.Devadoss, 333, Poonamallee High Rd., Amaindakarai, Chennai-600 029. PAN AAFDP4228E.
(Appellant)		(Respondent)

AND

ITA Nos. 1220, 1222 & 1223(Mds)/2012
Assessment Years : 2008-09, 2009-10 & 2010-11

The Assistant Commissioner of Income-tax, Central Circle I(3), Chennai.	Vs.	Shri V.N.Devadoss (HUF), 333, Poonamallee High Rd. Amaindakarai, Chennai-29. PAN AAAHV2596J.
(Appellant)		(Respondent)

Appellant by : Shri Shaji P Jacob, IRS, Addl.CIT
Respondents by : Shri K.M.Mohandass, FCA

Date of Hearing : 17th January, 2013
Date of Pronouncement : 4th February, 2013

ORDER

PER Dr.O.K.NARAYANAN, VICE PRESIDENT This is a bunch of five appeals, all filed by the Revenue. The relevant assessment years are 2008-09, 2009-10 and 2010-11. The Revenue has filed two appeals in the case of Shri V.N.Devadoss in his individual case for the assessment years 2008-09 and 2009-10. The three remaining appeals are filed in the case of Shri V.N.Devadoss(HUF) for the assessment years 2008-09, 2009-10 and 2010-11.

2. The appeals in the case of Shri V.N.Devadoss in his individual case are directed against the common order passed by the Commissioner of Income-tax(Appeals)-I at Chennai, dated 26-3-2012. These two appeals arise out of the respective assessments completed under section 153A, read with section 143(3) of the Income-tax Act, 1961.

3. The remaining three appeals filed in respect of Shri V.N.Devadoss(HUF) are directed against the common order passed by the Commissioner of Income-tax(Appeals)-I at

-3- ITA 1219 to 1223 of 2012 Chennai, dated 26-3-2012. In these cases the appeals for the assessment years 2008-09 and 2008-09 arise out of the assessments completed under section 153A, read with section 143(3) of the Income-tax Act, 1961. The appeal for the assessment year 2010-11 arises out of the regular assessment completed under section 143(3) of the Act.

4. The assessees herein are engaged in the business of developing and building of housing projects approved by local authorities. The assessees have not filed their returns of income for the impugned assessment years within the due dates prescribed under section 139(1) of the Income-tax Act, 1961. Meanwhile, there was a search action under section 132 conducted on the business premises of the assessees on 6-8-2009 and 17-8-2009. In pursuance of the said search carried out under section 132, the Assessing Officer issued notices under section 153A, requiring the assessees to file their returns of income for the period relevant to six assessment years. The notices under section 153A were issued on 26-7-2011. As the assessment in the case of HUF for the assessment year 2010-11 was a regular assessment completed

-4- ITA 1219 to 1223 of 2012 under section 143(3), there was no question of issuing notice under section 153A for the said assessment year 2010-11, in the case of the HUF.

5. Even though the assessees have not filed the returns of income before the due date prescribed under section 139(1) for the impugned assessment years, they had furnished their returns of income before the issue of notices under section 153A of the Act. In the individual case and in the HUF case returns were filed on 11-11-2010, after the due date prescribed under section 139(1) and after the search conducted, but before the issue of notice under section 153A. The return in the case of HUF for the assessment year 2010-11 was filed on 29-11-2011. Thereafter, the assessees again filed returns for the assessment years 2008-09 and 2009-10 on 23-9-2011, in response to the notices issued under section 153A of the Act.

6. It is in the above background that the story of these appeals begins. In the returns filed by the assessees, they claimed the deduction provided under section 80IB(10) of the Act. Section 80IB(10) provides for deduction in respect of profits and gains in the case of an undertaking developing and building

-5- ITA 1219 to 1223 of 2012 housing projects approved before the 31st day of March, 2008, by a local authority, of hundred per cent of the profits derived in the previous year relevant to the assessment year. It is how the assessees have claimed deduction under section 80IB(10).

7. There is another restrictive provision given in section 80AC of the Income-tax Act, 1961. The said section 80AC provides that where in computing the total income of an assessee of the previous year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80IA or section 80IAB or section 80IB or section 80IC or section 80ID or section 80IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section(1) of section 139.

8. In the course of assessment proceedings the Assessing Officer invoked the provision of law stated in section 80-AC on the ground that the assessees have not filed their returns of income on or before the due date specified under sub- section(1) of section 139 of the Act. Accordingly, he denied the

-6- ITA 1219 to 1223 of 2012 claim of deduction made by the assessees under section 80IB(10) of the Act.

9. In first appeals, when this issue was agitated, the Commissioner of Income-tax(Appeals) recorded the following findings of fact:

> 1. The appellants had undertaken housing projects which are eligible for deduction under section 80IB(10).
>
> 2. All the mandatory conditions specified under section 80IB have been complied with.
>
> 3. There has been a delay in filing of returns within the time limit specified under section 139(1) of the Act.
>
> 4. As per section 80AC to be eligible for deduction under section 80IB, the returns should have been filed within the time stipulated under section 139(1).

10. In the light of the above findings of fact, the Commissioner of Income-tax(Appeals) framed two questions to be decided on the issue of deduction under section 80-IB(10):

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(i) Whether section 80AC is directory or mandatory, and

(ii) Whether the returns filed in response to notices issued under section 153A can be taken as returns filed within the time limit stipulated under section 139(1) of the Act.

11. While adjudicating the issue as to whether section 80AC is directory or mandatory, the Commissioner of Income- tax(Appeals) has relied on the various principles of statutory interpretations. Relying on the doctrine of substantial compliance, the Commissioner of Income-tax(Appeals) pointed out that if an attempt is made in good faith to perform the statutory requirements, even if it does not precisely meet the terms of the statutory requirements, the

performance will still be considered complete if the essential purpose is accomplished. The Commissioner of Income-tax(Appeals) also referred to similar provisions as well as the restrictions provided under chapter VI-A, where a claim for deduction should be supported by an audit report, etc. and the cases where in such circumstances the courts have held that filing of audit report is

-8- ITA 1219 to 1223 of 2012 directory and not mandatory. The Commissioner of Income-tax(Appeals) also held that having considered the substantial compliance of statutory requirements made by the assessees, the principle of liberal interpretation should be adopted to decide whether the operation of section 80-AC is mandatory or directory.

12. Finally the Commissioner of Income-tax(Appeals) referred to the 4th proviso to section 10B, wherein similar restriction is provided in claiming the deduction under section 10B. section10B provides deduction of profits and gains as are derived by a hundred per cent export oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be. The fourth proviso inserted under section 10B puts a rider that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section(1) of section 139.

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13. The Commissioner of Income-tax(Appeals) found that the wordings given in section 80-AC and in the fourth proviso to section 10B are similar and there are decisions in the context of the fourth proviso to section 10B that filing of return on or before the due date prescribed under section 139(1) is directory and not mandatory. In support of the above proposition, the Commissioner of Income-tax(Appeals) relied on the decision of the Income-tax Appellate Tribunal, Delhi, in the case of ACIT vs. Dhir Global Industries Pvt. Ltd., 133-TTJ-Del- 580 and also on the decision of the jurisdictional Tribunal in the case of ACIT vs. Polyhose India Pvt. Ltd. in ITA No.122(Mds)/2011 dated 30-6-2011. The Commissioner of Income-tax(Appeals) also relied on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Web Commerce(India) P. Ltd., 318 ITR 135 (Del.).

14. In the light of the above, the Commissioner of Income-tax(Appeals) held that section 80-AC is directory and, therefore, the assessing authority was not justified in denying the assessees' claim for exemption under section 80IB(10) of the Act.

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15. The Commissioner of Income-tax(Appeals) has also examined the issue whether the returns filed by the assessees in response to the notice issued under section 153A can be taken as returns filed within the time stipulated under section 139. He found that section 139 provides for filing of returns in different situations. Return of income has to be filed within the due date prescribed under section 139(1). Belated return is to be filed within the time allowed under section 139(4). Any return filed beyond the time limit prescribed either under section 139(1) or under section 139(4) would be non

est in law and cannot be acted upon.

16. On the above principle the Commissioner of Income-tax(Appeals) held that in these cases the assessees having not filed any return under section 139(1) or under section 139(4), no valid return existed before the issue of notices under section 153A of the Act. Accordingly, he held that the only valid returns filed by the assessees herein are the returns filed by them in response to the notices issued under section 153A of the Act. Since the returns under section 153A have to be construed as returns filed under section 139, all provisions of the Act would

-11- ITA 1219 to 1223 of 2012 apply including the provisions of Chapter VI-A, which deals with various deductions.

17. The Commissioner of Income-tax(Appeals) relied on the order of the Income-tax Appellate Tribunal, Mumbai Bench-F in the case of Mr. Faisal Abbas vs DCIT in ITA No.3485 & 3487/Mum/2010, dated 25-10-2011 and the decision of the Income-tax Appellate Tribunal, Mumbai G-Bench, rendered in the case of DCIT vs. M/s. Eversmile Construction Co. Pvt. Ltd. in ITA No.4238/Mum/2010, dated 30-8-2011. In the case of Mr.Faisal Abbas, the Assessing Officer had denied set off of brought forward losses in the assessment made under section 153A on the ground that such set off could not be given in the assessment under section 153A. The Tribunal held that once the return of income filed under section 153A was to be deemed to be a return of income filed under section 139, all other provisions would apply in view of the provisions of section 153A(1)(a) and, therefore, the brought forward losses were to be set off even in an assessment made under section 153A. Similarly, in the case of DCIT vs. M/s.Eversmile Construction Co. Pvt. Ltd. the assessee has claimed deduction of interest

-12- ITA 1219 to 1223 of 2012 expenditure by way of a note appended to the return of income filed under section 153A. The said expenditure had earlier been disallowed by the Assessing Officer in the regular assessment, which the assessee has not appealed against. In view of the provisions of section 153A(1)(a) that all the provisions would apply to the return of income as if it was a return filed under section 139, the Tribunal directed the Assessing Officer to allow the interest expenditure in the assessment made under section 153A.

18. Relying on the above two decisions of the Tribunal and in the light of the detailed discussion made by him, the Commissioner of Income-tax(Appeals) accepted the alternate contention of the assessees that the returns filed under section 153A should be treated as returns filed under section 139(1) and, therefore, the assessees are entitled for the deduction available under section 80IB(10) of the Act.

19. Thus the Commissioner of Income-tax(Appeals) held that the assessee is entitled for the deduction under section 80IB(10) on both the grounds examined and adjudicated by him.

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20. This is one of the common grounds raised by the Revenue in all these appeals before us. As the issue is common, the grounds raised by the Revenue in all the five appeals are also common as far as this issue of deduction under section 80IB(10) is concerned. It is the case of the Revenue that the Commissioner of Income-tax(Appeals) has erred in allowing the deduction under section 80IB(10) by accepting the main as well as the alternate grounds raised by the assessees. The Commissioner of Income-tax(Appeals) has failed to note that section 80AC was inserted by the Finance Act, 2006 to ensure compliance in furnishing the return of income by the due date under section 139(1). Although furnishing the return of income by the due date under section 139(1) is mandatory and a precondition for claiming deduction under section 80IB(10) as clearly brought out in para 10 of the circular issued by the CBDT in circular No.14/2006 dated 28-12-2006, the assessees failed to furnish their returns of income by the due date under section 139(1) and thereby failed to satisfy the conditions of section 80AC. In fact, the assessees have not filed any valid return of income under section 139 for the impugned assessment years.

-14- ITA 1219 to 1223 of 2012 There is no provision in the Income-tax Act to waive the condition imposed under section 80AC. The concept of liberal interpretation, minor lapse, etc. are not applicable since the legislative intention is clear and unambiguous. It is also the case of the Revenue that the Commissioner of Income-tax(Appeals) has failed to note that the decision of the Income-tax Appellate Tribunal, D-Bench, Chennai, rendered in the case of ACIT vs. M/s.Polyhose India Pvt. Ltd., dated 30-6-2011 in ITA No.122(Mds)/2011, is not directly relevant, since that decision is applicable to the exemption provided under section 10B of the Act.

21. Shri Shaji P Jacob, the learned Commissioner of Income-tax appearing for the Revenue, contended that compliance of section 80AC is mandatory and not directory, as decided by the Commissioner of Income-tax(Appeals). The learned Commissioner of Income-tax explained that the Commissioner of Income-tax(Appeals) has relied on the decisions of the Tribunal in the case of ACIT vs. Dhir Global Industries Pvt. Ltd., 133-TTJ-Del-580 and in the case of ACIT vs. M/s.Polyhose India Pvt. Ltd. in ITA No.122(Mds)/2011, rendered

-15- ITA 1219 to 1223 of 2012 by Delhi Bench and Chennai Bench respectively. Those decisions were rendered in the context of the fourth proviso to section 10B. The wordings of the restriction provided in section 80AC are exactly the same as the wordings provided in the fourth proviso to section 10B. In both cases it is stated that no such deduction shall be allowed to an assessee unless return of income for the assessment year is filed on or before the due date specified in sub-section(1) of section 139.

22. The learned Commissioner of Income-tax further explained that the restrictions provided in the fourth proviso to section 10B and in section 80AC are in pari materia similar to the proviso under section 10A(1A). The proviso to section 10A(1A) provides that no deduction under section 10A shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section(1) of section

139. The Income-tax Appellate Tribunal, Rajkot Special Bench has examined the question whether the said stipulation in the proviso to section 10A(1A) is mandatory or directory. The Special Bench

in the case of Saffire Garments vs. ITO, 20 ITR (Trib) 623 (Rajkot) (SB) has held that the provisions of the

-16- ITA 1219 to 1223 of 2012 proviso to section 10A(1A), which say that no deduction under section 10A shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under section 139(1), are mandatory and not directory. The requirement of filing the return of income is not a procedural aspect. The Special Bench held that when the consequences of not filing the return of income within the due date prescribed under section 139(1) of the Income-tax Act, 1961 are so grave, i.e., charging of interest under section 234A, the possibility of prosecution under section 276CC and denial of various deductions under sections 10A, 10B, 10BA and various sections under Chapter VI-A, it cannot be said that the requirement of filing the return of income is a procedural aspect.

23. The learned Commissioner of Income-tax, therefore, explained that in view of the above Special Bench decision of the Tribunal, the decisions of the Tribunal relied on by the Commissioner of Income-tax(Appeals) stand overruled. Regarding the decision of the Delhi High Court in the case of CIT vs. Web Commerce(India) Pvt. Ltd., 318 ITR 135, relied upon by the Commissioner of Income-tax(Appeals), the learned

-17- ITA 1219 to 1223 of 2012 Commissioner of Income-tax stated that the said decision covers filing of audit report and not filing of return within the due date provided under section 139(1) . He, therefore, submitted that the Commissioner of Income-tax(Appeals) has erred in holding that the provision of law contained in section 80AC is directory and not manddtory.

24. We heard both sides in detail on this point. Ofcourse, the Commissioner of Income-tax(Appeals) has discussed in a profound manner the principles regarding substantial compliance in the rules regarding interpretation of statutory provisions, especially governing the provisions granting various deductions and reliefs to assessees. But, inspite of all these things, as of now, we are bound by the decision of the Income-tax Appellate Tribunal, Rajkot Special Bench, rendered in the case of Saffire Garments vs. ITO, 20 ITR (Trib) 623 (Rajkot)(SB).

25. The riders provided in the proviso to section 10A(1A); in the fourth proviso to section 10B and in section 80AC are similarly worded and analogous and pari materia conveying the very same statutory intention. In all these

-18- ITA 1219 to 1223 of 2012 restrictive clauses, the rule is that no deduction under the respective provisions shall be allowed to an assessee unless the assessee furnishes the return of income for the said assessment year on or before the due date specified under sub-section(1) of section 139 of the Act. This rider was examined by the Income- tax Appellate Tribunal, Rajkot Special Bench in the case of Saffire Garments vs. ITO, 20 ITR (Trib) 623. The Special Bench has held that the restriction provided by way of the proviso to section 10A(1A) is mandatory as the matter governs filing of the return of income within the due date provided under section 139(1). Therefore, we find that the said decision of the Special Bench applies not only to section 10A, but also to sections 10B and 80AC.

26. In the facts and circumstances of the case and in the light of the decision rendered by the Special Bench of the Income-tax Appellate Tribunal, Rajkot in the case Saffire Garments vs. ITO, 20 ITR (Trib) 623, we hold that filing of return under section 139(1) within the due date prescribed under law is a mandatory provision. If the assessees want to claim deduction under section 80IB(10), it is necessary that the assessees must

-19- ITA 1219 to 1223 of 2012 file their returns of income before the due date prescribed under section 139(1) of the Income-tax Act, 1961.

27. Accordingly, this issue is decided in favour of the Revenue and the finding of the Commissioner of Income- tax(Appeals) on this point is set aside.

28. Next we have to examine the decision of the Commissioner of Income-tax(Appeals) rendered on the alternate ground raised by the assessees before him. The alternate ground was whether the returns filed in response to notices issued under section 153A can be taken as returns filed within the time limit stipulated under section 139(1). The Commissioner of Income-tax(Appeals) has decided in favour of the assessees holding that the returns filed under section 153A are to be treated as returns filed under section 139(1) within the time allowed under the statute.

29. The learned Commissioner of Income-tax appearing for the Revenue argued at length that this finding of the Commissioner of Income-tax(Appeals) is erroneous and unsustainable in law. He has pointed out that section 153A(1)(a) provides that the return filed in pursuance of notice under section

-20- ITA 1219 to 1223 of 2012 153A will be treated as a return required to be furnished under section "139" and it does not say that it will be treated as a return filed under section "139(1)". The learned Commissioner of Income-tax explained that the interpretation given by the Commissioner of Income-tax(Appeals) leads to absurdity. A person who did not file return before the date prescribed under section 139(1) will be denied the benefit of deduction under section 80IB(10) in view of section 80AC, but if the defaulter is subsequently searched under section 132 of the Act, he will be getting back his right to make claims for such deductions by filing a return consequent to notice issued under section 153A. This leads to a question as to whether a search under section 132 is conducted for the benefit of an assessee or department. The learned Commissioner of Income-tax argued that the decisions relied upon by the Commissioner of Income-tax(Appeals) in support of his finding on this point are not relevant, as the facts in those cases are different. He also argued that for the assessment years 2008-09 and 2009-10, even the reason given by the Commissioner of Income-tax(Appeals) is not applicable as the assessees did not file the returns in pursuance of issue of

-21- ITA 1219 to 1223 of 2012 notices under section 153A within the time allowed by the assessing authority and the returns were filed within the extended period of time granted by the Assessing Officer. He, therefore, submitted that there is no justification in the finding of the Commissioner of Income-tax(Appeals) that the returns filed by the assessees in these cases in pursuance to notices issued under section 153A satisfy the requirement of filing of the returns within the due date

prescribed under section 139(1).

30. We considered this issue in a detailed manner. In these cases, returns were not voluntarily filed by the assessees within the due date prescribed under section 139(1). Returns were filed by the assessees after search operation was conducted. But it was before the issue of notices under section153A. As such, those returns filed before the issue of notices under section 153A are non est. The assessees have filed returns in pursuance of the notices issued by the Assessing Officer under section 153A. It is to be seen that the returns filed by the assessees in response to the notices issued under section153A alone are valid returns sustainable in law.

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31. The issue is to be examined in the above background. Valid returns sustainable in law are the returns filed by the assessees in response to notices issued by the Assessing Officer under section 153A of the Act, consequent to the search action carried out under section 132 of the Income-tax Act, 1961.

32. How the requirement of section 139(1) is satisfied by filing a return under section 153A? This is assumed in the light of section 153A(1)(a), where it is stated that where a search is initiated under section 132, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years in the prescribed form and verified in the prescribed manner and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. It is because of the above provision of law stated in section 153A(1)(a) that a statutory presumption is made that a return filed under section 153A is a return required to be filed under section 139(1).

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33. Where the law has declared that all the provisions of the Income-tax Act will apply to the returns filed by an assessee in response to a notice issued by the Assessing Officer under section 153A as if such return filed by the assessee was a return filed under section 139(1), there cannot be a clash of interpretation between the character of section 139(1) and section 139 adopted in section 153A(1)(a). It is to be seen that the law stated in section 153A starts with a non obstante clause. It overrides all other provisions stated in the Act in matters of filing of return of income consequent to a search. By declaring through a non obstante clause when section 153A adopts section 139 for the purpose of completing the assessment under section153A, there is no scope for drawing a dividing line between section 139 provided in section 153A and section 139(1) simpliciter.

34. The liability to file a return of income in response to a notice issued under section 153A is as much good as the liability fo file a return under section 139(1). The liability to file return arises under section139 (1). All other sub-sections of section 139 are only derivatives thereof and explanations

-24- ITA 1219 to 1223 of 2012 thereto. Therefore, the reference made to section 139 in section 153A(1)(a) is virtually the reference made to section 139(1).

35. It is suffice to mention section '139' while stating the character of the return filed under section 153A. That is why, sub-section(1) of section 139 has not been more particularly provided in section 153A(1)(a).

36. Search under section 132 enables an Assessing Officer to issue notice to file returns under section 153A. Section 153A is a substantive provision to do the assessment for six assessment years. Section 153A, by way of adaptation, conveys the responsibility for filing of the return under section 139 Therefore, a return filed in pursuance of a notice issued under section 153A is as good as a return filed under section 139 and more particularly under section 139(1).

37. In the present case, the assessees being the builders, had the option to recognize their income either on percentage completion method or on project completion method. Therefore, it was not certain to hold that the assessees were liable at all to file returns under section 139(1). Whether the

-25- ITA 1219 to 1223 of 2012 assessees had recognized their income for the impugned assessment years is also not clear. The returns were filed after search made under section 132 but before the issue of notice under section 153A. Those returns were belated returns. Therefore, those returns are non est in law. The emerging picture is that the assessees had filed returns for the first time only in response to notices issued under section 153A. They were filed within the time. Law has not prescribed any time limit for issue of notice under section 153A or for filing of the return in response to notice issued under section 153A. Law provides that an assessee shall file his return in pursuance of the notice issued under section 153A within the time stipulated in the notice. But it is also available in the hands of the Assessing Officer to extend the period of time to file the return. In these cases the assessees have filed returns within the extended time. Therefore, it is to be held that these returns were filed by the assessees under section 153A within the time. By way of a corollary stated earlier, these returns filed under section 153A within the time are necessarily to be treated as returns filed under section 139(1).

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38. Where an assessee has filed his return of income as prescribed by law, even if as a consequence of search carried out under section 132 and in consequence of notice issued under section 153A, the assessee is obviously entitled for claiming corresponding deductions provided in law. The deduction claimed in a return filed under section 153A cannot be denied on the ground that the claim was not made earlier in a return filed under section 139(1).

39. In the present case, the returns were filed because of section 132, section 153A and consequently because of section 139. Income of the assessees had to be declared because of the event of search. At that time the assessees were equally entitled to claim lawful deductions available to them. A claim made by an assessee cannot be denied only on the ground that the return was filed in consequence of search.

40. The litmus test in the present case is whether the assessees have filed the returns in time, in response to the notices issued under section 153A. If the returns were filed within the time allowed under section 153A, it is as good as having the returns filed under section 139(1) within the due date.

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41. It is in the light of the above discussion that we have to consider the two relevant decisions of the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal, F-Bench, Mumbai in the case of Mr. Faisal Abbas vs DCIT, in ITA Nos.3485 & 3487/Mum/2010 dated 25-10-2011 has held that the return of income filed under section 153A was to be deemed to be a return filed under section 139 and therefore all other provisions of the Act would apply in view of the provisions of law stated in section 153A(1)(a). The Tribunal, therefore, held that even if a return of income was filed under section 153A, the assessee was entitled for the benefit of brought forward losses to be set off against the assessable income. Section 139(3) provides that if any person who has sustained a loss in any previous year under the head 'Profits and gains of business or profession', the same could be carried forward and set off against future income only if the assessee has filed his return within the due date prescribed under section 139(1). It is exactly like the provisions of law stated in section 80AC. Inspite of that, the Tribunal in the above stated case of Mr.Faisal Abbas has held that the assessee is still entitled for carry forward and set off

-28- ITA 1219 to 1223 of 2012 of business loss as the return filed by the assessee under section153A has to be treated as a return filed under section 139(1). The same principle has been followed by the Income-tax Appellate Tribunal, Mumbai G-Bench in the case of DCIT vs. M/s.Eversmile Construction Co. Pvt. Ltd.in ITA No.4238/Mum/2010 dated 30-8-2011.

42. In view of the above discussion and relying on the above mentioned decisions of the Income-tax Appellate Tribunal, Mumbai Benches, we hold that the returns filed by the assessees under section 153A are to be treated as returns filed under section 139(1) by virtue of the law stated in section 153A(1)(a). As such, the assessees are entitled for the deduction available under section 80IB(1). The rider provided in section 80AC does not apply to the present cases, as the returns filed by the assesees under section 153A have been considered as returns filed under section 139(1) within time.

43. Therefore, we uphold the decision of the Commissioner of Income-tax(Appeals) on the alternate ground raised by the assessee as to whether the returns filed in response to notices under section 153A can be taken as returns

-29- ITA 1219 to 1223 of 2012 filed within the time stipulated under section 139(1). We hold that the returns filed under section 153A need to be treated as returns filed within the time limit stipulated under section 139(1). Therefore, the rider provided in section 80AC does not apply to these cases. Therefore, the assessees are entitled for claiming the benefit of deduction available under section 80IB(10) of the Act.

44. Thus the first common issue raised in all these appeals relating to deduction under section 80IB(10) is decided in favour of the assessees and the orders of the Commissioner of

Income-tax(Appeals) on this issue is upheld on the ground that the returns filed under section 153A are returns filed under section 139(1).

45. The second common issue raised in all these appeals is regarding levy of interest under section 234A. The case of the Revenue is that the Commissioner of Income- tax(Appeals) has erred in directing the Assessing Officer to charge interest under section 234A from the date of expiry of the notice period given in the notices under section 153A without noting that charging of interest under section 234A is

-30- ITA 1219 to 1223 of 2012 compensatory and that as per the provisions of section 80AC, the assessees ought to have filed returns of income within the due date under section 139(1) and hence the provisions of section 234A(1) is applicable. It is also the case of the Revenue that the Commissioner of Income-tax(Appeals) has failed to note that the order of the Income-tax Appellate Tribunal, B-Bench, Chennai in the case of Dr. V.Jayakumar vs. ACIT, Circle I, Madurai, in ITA Nos.520 to 529(Mds)/2010 is not applicable to these cases since the facts are distinguishable. In the case of Dr. V.Jayakumar, the assessee had paid taxes much before filing the return, whereas in the present cases the assessees have paid taxes under section 140A. The returns of income filed by the assessees on 23-9-2011 cannot be equated with the returns of income required to be filed under section 139(1). It is the case of the Revenue that the assessees have committed default both under sections 234A(1) and 234A(3). It is true that the jurisdictional Tribunal at Chennai in its order rendered in the case of Dr.V.Jayakumar vs ACIT has held that interest is chargeable under section 234A from the date of expiry of the notice period given to the assessee under section 153A. It is

-31- ITA 1219 to 1223 of 2012 because the return filed under section 153A would be deemed to be a return of income under section 139 as per the express language of the provisions of section 153A(1)(a) and therefore the return of income filed under section 153A also is to be processed under section 143(1) and the income determined thereof. These are all consequences of search conducted under section 132 and the issuance of notice under section 153A. Once a recomputation in the assessment order under section 153A is done, the interest chargeable under section 234A would have to be reckoned from the date of determination of income under section 143(1), read with section 153A to the date of the recomputation of income under section 153A, read with section 143(3). This position is in tune with the law stated in section 234A(3). Therefore we find that the Commissioner of Income- tax(Appeals) is justified in holding that the interest under section 234A is chargeable from the date of expiry of the notice period given under section 153A to the date of completing the assessment under section 143(3). This issue is decided in favour of the assessees.

-32- ITA 1219 to 1223 of 2012

46. The next common issue raised by the Revenue in all these appeals is that the Commissioner of Income- tax(Appeals) has erred in directing the Assessing Officer to charge interest under section 234B from the date of determination of income under section 143(1), read with section 139, read with section 153A(1)(a) to the date of the assessment order under section 153A, read with section 143(3). It is to be seen that interest under section 234B is to be levied only on the additional tax levied on the enhanced income determined under section 153A, read with section 143 and therefore

the period of charge should be from the date of determination of the income under section 143(1), read with section 153A to the determination of increased total income under section 153A, read with section 143(3). For the reasons already stated in the case of levy of interest under section 234A we hold that the decision of the Commissioner of Income-tax(Appeals) on the question of levy of interest under section 234B is also just and proper. This common ground is also rejected.

47. The next common issue raised by the Revenue is regarding the allocation of administrative expenses. This ground

-33- ITA 1219 to 1223 of 2012 is not raised in appeal No.1221(Mds)/2012 relating to the assessment year 2009-10 in the case of Shri V.N.Devadoss in his individual file. The common ground of the Revenue is that the allocation of administrative expenses between 80IB and non 80IB units was without any basis. The assessee has not allocated the administrative expenses relating to the projects eligible for claiming the deduction under section 80IB and therefore the assessee should have allocated administrative expenses atleast 30% of the total administrative expenditure.

48. On going through the facts of the case the Commissioner of Income-tax(Appeals) has made a clear finding of fact that the assessees have already taken into account direct expenses as well as indirect expenses including the administrative expenses while computing the profits under section 80IB(10). As the assessees themselves have allocated the expenses including administrative expenses pertaining to eligible projects and other projects separately, there is no need of any estimate in the present case. We, therefore, uphold the order of the Commissioner of Income-tax(Appeals) on this point.

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49. In result, these appeals filed by the Revenue are partly allowed.

Orders pronounced on Monday, the 4th of February, 2013 at Chennai.

Sd/-	Sd/-
(Vikas Awasthy)	(Dr. O.K.Narayanan)
Judicial Member	Vice-President

Chennai,
Dated, the 4th February, 2013.
V.A.P.

Copy to: 1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. GF.