GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE COMMISSIONER OF INCOME TAX, APPEAL
ADDL/JCIT (A)-1 PUNE

To, BEENA MANISHBHAI FOFARIA 27/161, PRAGATINAGAR , NARANPURA AHMEDABAD 380013 ,Gujarat India	

PAN: AALPF0037H	AY: 2024-25	Dated: 22/11/2024	DIN & Order No : ITBA/APL/S/250/2024-25/1070572937(1)

Order u/s 250 of Income Tax Act,1961

*Instituted on **02/10/2024** from the order of **Deputy Director of income Tax,** dated 19/09/2024*

Appeal No	ADDL/JCIT (A)-1 PUNE/10004/2023-24
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	N.A.
Section under which the order appealed against was passed	143(1)
Date of Order under which the order appealed against was passed	19/09/2024
Income/Loss Assessed (in Rs .)	693260
Tax/Penalty/Fine/Interest Demanded (in Rs.)	0
Date of Hearing(s)	As per record(s)
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

The instant appeal was instituted on 02.10.2024 against the intimation order dated 19.09.2024 passed under section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') for A.Y. 2024-25 by the Centralized Processing Centre (CPC), Bengaluru (herein called 'AO'). The appeal was subsequently migrated to National Faceless Appellate Centre (NFAC) in terms of CBDT Notification No.76/2020 dated 25.09.2020. Thereafter, this appeal was transferred to the work-list of Addl./JCIT(A)-1, Pune under E-appeals Scheme. In the said case, notice for

hearing u/s 250 of the Act were issued electronically from time-to-time. Further, notice of hearing was also issued by the undersigned on 11.11.2024, due to change in incumbency.

2. Brief facts of the case:

2.1 The Appellant is an Individual and had filed her Return of Income (ITR-3) electronically on 29.07.2024 for A.Y. 2024-25, declaring total income of Rs. 6,93,260/-. The said return was processed by the CPC u/s 143(1) of the Act on 19.09.2024, by accepting the returned income of the Appellant. However, the CPC has restricted the rebate u/s 87A of the Act to the tune of Rs. 10,250/- as against the Appellant's claim of Rs. 20,010/-. The screenshot of the computation of rebate u/s 87A of the Act by CPC in the intimation order passed u/s 143(1) of the Act is reproduced below:

Computation of 87A Rebate

Sl.No.	Particulars	Amount
01	Total income as computed	6,93,260
02	Less: Income chargeable at special rates	1,88,260
03	Balance income taxable at slab rate and thus eligible for 87A rebate (1-2)	5,05,000
04	Eligible 87A rebate on the income as per Sr no 3	10,250

2.2 Aggrieved with the above intimation order passed by the CPC u/s 143(1) of the Act, the Appellant filed the present appeal u/s 246A of the Act on 02.10.2024.

3. Statement of facts as submitted by the Appellant:

"The appellant has filed her return of income for the year under consideration on 29.07.2024 declaring total income at Rs.6,93,260/-. The total income consists of capital gain to the tune of Rs. 2,03,115/ consisting of long term capital gain of Rs.1,38,049/- and short term capital gain of Rs. 65,066/-. The appellant has not exercised the option u/s. 115BAC(6) of the Income Tax Act, 1961 (hereinafter referred to as the Act for the sake of brevity) and thus governed by the provisions of Section 115BAC(1A) of the Act for the year under consideration. As the total income of the appellant for the year under consideration did not exceed Rs.7,00,000/-, the appellant was eligible for rebate u/s. 87A of the Act on the total income earned by the appellant except for the long term capital gain on equity shares where the rebate u/s. 87A of the Act is not allowed as per sub-section (6) of Section 112A of the Act. The appellant claimed a rebate of Rs. 20,010/- u/s. 87A of the Act on the total income

except for the long term capital gain. Such rebate consists of the rebate of Rs. 9,760/- claimed on the amount of short term capital gain of Rs. 65,066/-. The appellant claimed a refund of Rs.21,513/- as per the return of income. The return of income was processed u/s. 143(1) of the Act by the Deputy Director of Income Tax, Centralized Processing Center, Bengaluru (hereinafter referred to as Ld. AO for the sake of brevity) and an intimation u/s. 143(1) of the Act was issued to the appellant on 19.09.2024. While processing the return of income, the Ld. AO restricted the rebate u/s. 87A of the Act to the tune of Rs.10,250/-, thereby disallowing the rebate of Rs. 9,760/- claimed on the amount of short term capital gain. This resulted in increase in tax liability of appellant by Rs. 9,760/- and corresponding reduction in the refund claimed by the appellant. The Ld. AO disallowed the claim of rebate u/s. 87A of the Act on short term capital gain without even providing any reasons for such disallowance. Hence this Appeal."

4. Grounds of Appeal:

"1. The Ld. AO has erred in law and on facts of the case in disallowing the claim of rebate of Rs.9,760/- u/s. 87A of the Act with respect to tax on short term capital gain.

2. The Ld. AO has erred in law and on facts of the case in processing the return of income and restricting the claim of rebate u/s. 87A of the Act without providing any opportunity of hearing to the appellant resulting in gross violation of principles of natural justice.

3. The Ld. AO has erred in law and on facts of the case in making prima facie adjustment u/s. 143(1) of the Act in respect of rebate of tax on short term capital gain u/s. 87A of the Act which is a debatable and contentious issue requiring long drawn process of reasoning.

4. The Ld. AO has erred in not appreciating the facts of the case and law on the issue in its proper perspective.

5. Your Appellant reserves the right to add, alter, amend and withdraw any of the above grounds of appeal."

5. Appellant's Submission:

In the course of appellate proceedings, the Appellant has made submissions through e-response from time-to-time in compliance to the hearing notices issued u/s 250 of the Act. The written submission filed/uploaded by the Appellant is reproduced as below:

BEFORE THE ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX (APPEALS)-1, PUNE

Beena Manishbhai Fofaria, Ahmedabad.		
PAN: AALPF0037H	...	**APPELLANT**
Assessment Year	...	2024-25
Status	...	Individual
Appeal against	...	Order u/s 143(1) of the Act

: WRITTEN SUBMISSIONS :

1. The appellant above named craves liberty to place the following submissions in connection with the appeal filed by it against the order u/s. 143(1) of the Income Tax Act, 1961 *(hereinafter referred to as "the Act" for the sake of brevity)* passed by the Deputy Director of Income Tax, Centralized Processing Center, Bengaluru *(hereinafter referred to as the "Ld. AO" for the sake of brevity)* dated 19/09/2024.

2. The appellant has filed her return of income for the year under consideration on 29.07.2024 declaring total income at Rs. 6,93,260/-. The total income consists of capital gain to the tune of Rs. 2,03,115/- consisting of long term capital gain of Rs. 1,38,049/- and short term capital gain of Rs. 65,066/-. The appellant has not exercised the option u/s. 115BAC(6) of the Act and thus governed by the provisions of Section 115BAC(1A) of the Act for the year under consideration. As the total income of the appellant for the year under consideration did not exceed Rs. 7,00,000/-, the appellant was eligible for rebate u/s. 87A of the Act on the tax on total income earned by the appellant except for the tax

on long term capital gain on equity shares where the rebate u/s. 87A of the Act is not allowed as per sub-section (6) of Section 112A of the Act. The appellant claimed a rebate of Rs. 20,010/- u/s. 87A of the Act on the tax on total income except for the long term capital gain. Such rebate of Rs. 20,010/- consists of the rebate of Rs. 9,760/- claimed on tax on short term capital gain on equity shares of Rs. 65,066/-. The appellant claimed a refund of Rs. 21,513/- as per the return of income. The return of income was processed u/s. 143(1) of the Act by the Ld. AO and an intimation u/s. 143(1) of the Act was issued to the appellant on 19.09.2024. While processing the return of income, the Ld. AO restricted the rebate u/s. 87A of the Act to the tune of Rs. 10,250/-, thereby disallowing the rebate of Rs. 9,760/- claimed on the tax on short term capital gain on equity shares. This resulted in increase in tax liability of appellant by Rs. 9,760/- along with consequential charge of health and education cess and corresponding reduction in the refund claimed by the appellant. The Ld. AO disallowed the claim of rebate u/s. 87A of the Act on short term capital gain without even providing any reasons for such disallowance. Hence this Appeal.

3. For the sake of convenience, the issues which require Your Honour's consideration are set out hereinafter:-

i. *The Ld. AO has erred in law and on facts of the case in disallowing the claim of rebate of Rs. 9,760/- u/s. 87A of the Act with respect to tax on short term capital gain.*
ii. *The Ld. AO has erred in law and on facts of the case in processing the return of income and restricting the claim of rebate u/s. 87A of the Act without providing*

any opportunity of hearing to the appellant resulting in gross violation of principles of natural justice.

iii. *The Ld. AO has erred in law and on facts of the case in making prima facie adjustment u/s. 143(1) of the Act in respect of rebate of tax on short term capital gain u/s. 87A of the Act which is a debatable and contentious issue requiring long drawn process of reasoning.*

iv. *The Ld. AO has erred in not appreciating the facts of the case and law on the issue in its proper perspective.*

4. **Ground # (i)** challenges the action of the Ld. AO in disallowing the claim of rebate of Rs. 9,760/- u/s. 87A of the Act in respect of tax on short term capital gain.

4.1 The appellant has filed her return of income for the year under consideration on 29.07.2024 i.e. well before the due date prescribed u/s. 139(1) of the Act declaring total income at Rs. 6,93,260/-. The appellant has not exercised the option u/s. 115BAC(6) of the Act during the year under consideration and thus, the total income and tax liability of the appellant is to be computed in accordance with the provisions of Section 115BAC(1A) of the Act. The appellant has earned short term capital gain of Rs. 65,066/- and long term capital gain of Rs. 1,38,049/- on sale of equity shares during the year under consideration and the same has been disclosed in the return of income. The tax payable by the appellant on the total income as per the return of income was Rs. 22,329/-, bifurcation of which is as under:

Particulars	Amount (Rs.)
Tax on long term capital gain	2,319
Tax on short term capital gain	9,760
Tax on balance income	10,250
Total	**22,329**

The appellant paid the tax of Rs. 2,319/- along with health and education cess on long term capital gain on equity shares and claimed rebate u/s. 87A on the balance tax of Rs. 20,010/- [9,760 + 10,250] i.e. tax on short term capital gain on equity shares and balance income. The details of the total income and tax paid on the total income by the appellant can be verified from the return of income and computation of total income placed at **Pg. No. 1-86 of Paper book of Documents**. The return of income was processed u/s. 143(1) of the Act by the Ld. AO wherein the claim of rebate of Rs. 9,760/- on tax on short term capital gain was disallowed without providing any reasons for the same.

4.2 The appellant submits that the rebate u/s. 87A of the Act is not available on long term capital gain due to specific restriction provided u/s. 112A of the Act itself. The relevant extract of Section 112A of the Act is reproduced as under for ready reference:

"(6) Where the total income of an assessee includes any long-term capital gains referred to in sub-section (1), the rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains."

Considering the above, the appellant has not claimed rebate u/s. 87A of the Act in respect of tax of Rs. 2,319/- on long

term capital gain taxable u/s. 112A of the Act. However, there is no such restriction on claiming rebate u/s. 87A of the Act in respect of tax on short term capital gain either under Section 111A of the Act or Section 115BAC(1A) of the Act.

4.3 Section 111A of the Act is reproduced as under for ready reference:

*"**111A.** (1) Where the total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust and—*

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter,

the tax payable by the assessee on the total income shall be the aggregate of—

(i) the amount of income-tax calculated on such short-term capital gains at the rate of fifteen per cent; and

(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:

***Provided** that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of fifteen per cent :*

***Provided further** that nothing contained in clause (b) shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.*

(2) Where the gross total income of an assessee includes any short-term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

Explanation.—For the purposes of this section,—

(a) "equity oriented fund" shall have the meaning assigned to it in clause (a) of the Explanation to section 112A;

(b) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(c) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43."

On perusal of Section 111A of the Act, it transpires that there is no similar provision like Section 112A(6) of the Act restricting the claim of rebate u/s. 87A of the Act in respect of short term capital gain on equity shares.

4.4 The relevant extract of Section 115BAC of the Act as per which total income and tax liability of the appellant is computed is reproduced as under for ready reference:

*"(1A) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, **the income-tax payable in respect of the total income of a person, being an individual** or Hindu undivided family or association of persons (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, other than a person who has exercised an option under sub-section (6), **for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2024,** shall be computed at the rate of tax given in the following Table, namely:—*

TABLE

Sl. No.	*Total income*	*Rate of tax*
(1)	*(2)*	*(3)*
1.	*Upto Rs. 3,00,000*	*Nil*
2.	*From Rs. 3,00,001 to Rs. 6,00,000*	*5 per cent*
3.	*From Rs. 6,00,001 to Rs. 9,00,000*	*10 per cent*
4.	*From Rs. 9,00,001 to Rs. 12,00,000*	*15 per cent*
5.	*From Rs. 12,00,001 to Rs. 15,00,000*	*20 per cent*
6.	*Above Rs. 15,00,000*	*30 percent*

(2) For the purposes of sub-section (1A), the total income of the person referred to therein, shall be computed—

(i) without any exemption or deduction under the provisions of clause (5) or clause (13A) or prescribed under clause (14) (other than those as may be prescribed for this purpose) or clause (17) or clause (32), of section 10 or section 10AA or clause (ii) or clause (iii) of section 16 or clause (b) of section 24 [in respect of the property referred to in sub-section (2) of section 23] or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section

33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or under any of the provisions of Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or sub-section (2) of section 80CCH or section 80JJAA;

(ii) without set off of any loss,—

(a) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(b) under the head "Income from house property" with any other head of income;

(iii) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed; and

(iv) without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.

xxxxxxxx

*(6) **Nothing contained in sub-section (1A) shall apply to a person where an option is exercised by such person, in the manner as may be prescribed**, for any assessment year, and such option is exercised,–*

(i) on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for such assessment year, in case of a person having income from business or profession, and such option once exercised shall apply to subsequent assessment years; or

(ii) along with the return of income to be furnished under sub-section (1) of section 139 for such assessment year, in case of a person not having income referred to in clause (i):

Provided that the option under clause (i), once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise the option under this sub-section, except where such person ceases to have any income from business or profession in which case, option under clause (ii) shall be available."

4.4.1 As per clause (i) of sub-section (2) of Section 115BAC of the Act, the appellant is not eligible for the exemptions/deductions under the following provisions of the Act when the total income and tax liability is computed in accordance with the provisions of Section 115BAC(1A) of the Act:

- Clause (5)/(13A)/(14)/(17)/(32) of Section 10
- Section 10AA
- Clause (ii)/(iii) of Section 16

- Clause (b) of Section 24 (in respect of property referred to in clause (2) of Section 23)
- Clause (iia) of sub-section (1) of Section 32
- Section 32AD
- Section 33AB
- Section 33ABA
- Sub-clause (ii)/(iia)/(iii) of sub-section (1) or sub-section (2AA) of Section 35
- Section 35AD
- Section 35CCC
- Any of the provisions of Chapter VI-A (i.e. Section 80A to Section 80VV) except the following:
    - sub-section (2) of Section 80CCD
    - sub-section (2) of Section 80CCH
    - Section 80JJAA

4.4.2 Further, as per clauses (ii) to (iv) of sub-section (2) of Section 115BAC of the Act, while computing the total income and tax liability as per sub-section (1A) of Section 115BAC of the Act,

- the assessee is not allowed to set off any carried forward loss or depreciation, if such carried forward loss or depreciation is attributable to any of the deductions referred to in clause (i) of sub-section (2) of Section 115BAC of the Act.
- the assessee is not allowed to set off the loss from the head "Income from House Property" with any other head of income.
- the assessee is not eligible to claim additional depreciation u/s. 32(1)(iia) of the Act

- the assessee is not eligible to claim any exemption or deduction for allowances or perquisite, by whatever name called, provided under any law other than the Income Tax Act

4.4.3 Thus, on perusal of the provisions of Section 115BAC of the Act, it transpires that various deductions/exemptions are not allowed while computing total income and tax liability as per Section 115BAC(1A) of the Act, however, the claim of rebate u/s. 87A of the Act is not included in the list of non-allowable exemptions/deductions provided under sub-section (2) of Section 115BAC of the Act. None of the other sub-sections of Section 115BAC of the Act puts a restriction on claiming rebate u/s. 87A of the Act while computing total income and tax liability as per Section 115BAC(1A) of the Act.

4.5 The appellant further submits that Section 87A of the Act itself provides for rebate when the tax has been computed as per provisions of Section 115BAC(1A) of the Act. The provisions of Section 87A of the Act are reproduced as under for ready reference:

*"**87A.** An assessee, being an individual resident in India, whose total income does not exceed five hundred thousand rupees, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of twelve thousand and five hundred rupees, whichever is less.*

***Provided that** where the **total income** of the assessee is chargeable to tax under **sub-section (1A) of section 115BAC**, and the total income—*

*(a) **does not exceed seven hundred thousand rupees**, the assessee shall be entitled to a deduction from the amount of **income-tax** (as computed before allowing for the deductions under this Chapter) **on his total income** with which he is chargeable for any assessment year, of an amount equal to one hundred per cent of such*

income-tax or an amount of twenty-five thousand rupees, whichever is less;"

As per the proviso to Section 87A of the Act, where the ***total income*** of the assessee is chargeable to tax u/s. 115BAC(1A) of the Act and the ***total income*** does not exceed Rs. 7 lakhs, the assessee shall be entitled to a deduction from the amount of income tax [computed before allowing for the deductions under Chapter VIII (Section 87 to Section 89A)] on his ***total income*** of an amount equal to 100% of income-tax or Rs. 25,000, whichever is less.

4.5.1 As per the proviso to Section 87A of the Act, an assessee is eligible for deduction from the income tax computed on his "total income". It is necessary to understand the meaning of the term "total income" and whether the "capital gain" forms part of "total income".

4.5.2 The term "total income" has been defined u/s. 2(45) of the Act as under:

"(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act ;"

As per Section 2(45) of the Act, the total income means:

i. total amount of income referred to in section 5 of the Act
ii. which is computed in the manner laid down in the Act

4.5.3 The relevant extract of Section 5 of the Act is reproduced as under for ready reference:

*"**5.** (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a **resident includes all income from whatever source derived** which—*

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or

(c) accrues or arises to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India."*

As per sub-section (1) of Section 5 of the Act, the "total income" of a resident assessee includes all the income from whatever source derived. Thus, any kind of income earned by an assessee including the income in form of sale of equity shares is covered by Section 5 of the Act.

4.5.4 Further, the manner of computation of "total income" referred to in Section 5 of the Act is provided under the Chapter-IV "Computation of total income". The manner of computation of total income is laid down u/s. 14 of the Act covered under Chapter-IV. Section 14 of the Act is reproduced as under for ready reference:

*"**14.** Save as otherwise provided by this Act, **all income shall**, for the purposes of **charge of income-tax and computation of total income**, be classified under the following heads of income :—*

A.—Salaries.

B.—[***]

C.—Income from house property.

D.—Profits and gains of business or profession.

E.—Capital gains.

F.—Income from other sources."

As per Section 14 of the Act, all the income of an assessee needs to be classified under five heads of income including the head "Capital Gains" for the purpose of computation of "total income" and charge of income-tax. The "total income" will be computed by summation of all the five heads of income. Thus, the "total income" includes "capital gain" earned by the appellant on sale of equity shares.

4.5.5 As the "capital gain" is a part of "total income" of an assessee and the rebate u/s. 87A of the Act can be claimed on the tax computed on "total income" of an assessee, the rebate u/s. 87A of the Act shall be allowed on the tax computed on short term capital gain on sale of equity shares.

4.6 The appellant further submits that Section 115BAC(1A) of the Act starts with a non-obstante clause. However, along with non-obstante clause, Section 115BAC(1A) of the Act is made subject to provisions of Chapter-XII. At the cost of repetition the provisions of Section 115AC(1A) of the Act is reproduced as under for ready reference:

*"(1A) **Notwithstanding anything contained in this Act but subject to the provisions of this Chapter**, the income-tax payable in respect of the **total income** of a person, being an individual or Hindu undivided family or association of persons (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, other than a person who has exercised an option under sub-section (6), for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2024, **shall be computed at the rate of tax given in the following Table**, namely:—"*

Thus, Section 115BAC(1A) of the Act overrides the other provisions of the Act except the provisions of Chapter-XII. Section 111A of the Act is a part of Chapter-XII. Thus, Section

115BAC(1A) of the Act is subject to the provisions of Section 111A of the Act. At the cost of repetition, the relevant extract of Section 111A of the Act is reproduced as under for ready reference:

*"**111A.** (1) Where the **total income** of an assessee **includes** any income chargeable under the head "**Capital gains**", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust and—*

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter,

*the **tax payable by the assessee on the total income** shall be the aggregate of—*

(i) the amount of income-tax calculated on such short-term capital gains at the rate of fifteen per cent; and

(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:"

On conjoint reading of the provisions of Section 111A and Section 115BAC of the Act, the following points can be carved out:

i. Tax has be to be computed on "total income" earned by the assessee
ii. "Total income" earned by the assessee includes the income chargeable under the head "Capital gains"
iii. Tax has to be computed on "total income" as per the provisions of Section 115BAC(1A) of the Act in absence of exercising of option u/s. 115BAC(6) of the Act
iv. Section 115BAC(1A) of the Act is subject to the provisions of Section 111A of the Act and hence, the

computation of tax on short-term capital gain on equity shares is to be made at flat rate of 15% as prescribed u/s. Section 111A of the Act

v. Tax on balance amount of total income (excluding short-term capital gain on equity shares) is to be computed at the slab rates prescribed u/s. 115BAC(1A) of the Act

The above is the settled position in law and the same is also accepted by the Ld. AO as evident from the order u/s. 143(1) of the Act. The "total income" earned by the appellant is Rs. 6,93,260/- as evident from Sr. No. 2 of the order u/s. 143(1) of the Act. The "total income" of Rs. 6,93,260/- includes "capital gain" of Rs. 2,03,115/-. Thus, the total returned income has not been disputed by the Ld. AO. Further, the tax on short term capital gain of Rs. 65,066/- has been computed at the rate of 15% i.e. Rs. 9,760/- and the tax on balance income excluding long term capital gain is computed at the slab rates specified u/s. 115BAC(1A) of the Act. The "tax payable on total income" (before rebate u/s. 87A of the Act) has thus been computed at Rs. 22,329/- which is also not disputed by the Ld. AO as evident from from Sr. No. 22(d) of the order u/s. 143(1) of the Act. Thus, neither the "total income" nor the "tax payable on total income" is disputed by the Ld. AO.

4.7 The appellant further submits that the proviso to Section 87A of the Act was inserted by Finance Act, 2023. The explanatory memorandum to the Finance Act, 2023 is reproduced as under for ready reference:

"IV. Rebate under section 87A

Under the provisions of section 87A of the Act, an assessee, being an individual resident in India, having total income not exceeding Rs 5 lakh, is provided a rebate of 100 per cent of the amount of income-tax payable i.e., an individual having income till Rs 5 lakh is not required to pay any income-tax.
2. From assessment year 2024-25 onwards, an assessee, being an individual resident in India whose income is chargeable to tax under the proposed sub-section (1A) of section 115BAC, shall now be entitled to a rebate of 100 per cent of the amount of income-tax payable on a total income not exceeding Rs 7 lakh."

A provision for rebate u/s. 87A of the Act was already present in the statue book for all the assessees having total income (including capital gain) upto Rs. 5 lakhs. However, as the Section 115BAC(1A) of the Act was brought as a beneficial provision for the assessees, along with the reduction in tax rates and changes in the slab of income tax, changes were also made in Section 87A of the Act by increasing the threshold limit of total income from Rs. 5 lakhs to Rs. 7 lakhs, thus also providing the benefit of rebate to the assessees having total income upto Rs. 7 lakhs. The only change made in Section 87A of the Act is increase in the threshold limit of total income from Rs. 5 lakhs to Rs. 7 lakhs being a beneficial amendment and nothing has been specified in relation to restriction of rebate u/s. 87A of the Act on tax on short term capital gain on equity shares. Thus, the intention of the legislature was never to restrict the rebate u/s. 87A of the Act on the tax on short term capital gain on equity shares.

4.8 The appellant submits that the rebate u/s. 87A of the Act is provided from the "tax payable on total income", provided the 'total income" of the assessee does not exceed Rs. 7 lakhs. When the "tax payable on total income" of Rs. 22,329/- is

accepted by the Ld. AO and the "total income" of Rs. 6,93,260/- (being less than Rs. 7 lakhs) is also accepted by the Ld. AO, it is not open to the Ld. AO to disallow the claim of rebate u/s. 87A of the Act. Once the "total income" and "tax payable on total income" are finalised, the only thing that requires to be looked by the Ld. AO is whether the "total income" exceeds the threshold limit of Rs. 7 lakhs or not. If the threshold limit of Rs. 7 lakhs is not exceeded, the rebate u/s. 87A of the Act would be allowable and if the threshold limit of Rs. 7 lakhs is exceeded, the rebate u/s. 87A of the Act would not be allowable. As in the present case, the "total income" of the appellant is less than Rs. 7 lakhs, the Ld. AO was wrong in disallowing rebate u/s. 87A of the Act.

4.9 It is also relevant to refer to the words used under the opening part of the proviso to Section 87A of the Act. The same are reproduced as under for ready reference:

*"Provided that where the **total income** of the assessee is **chargeable to tax under sub-section (1A) of section 115BAC** , and the total income—"*

The words used are "total income chargeable to tax under sub-section (1A) of Section 115BAC". The appellant submits that the entire income of an assessee (including capital gain) constitutes "total income" and such "total income" is chargeable to tax as per the provisions of Section 115BAC(1A) of the Act if the assessee does not choose to exercise option u/s. 115BAC(6) of the Act. The relevant extract of Section 115BAC(1A) of the Act is reproduced as under:

*"(1A) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, the **income-tax payable in respect of the***

total income *of a person, being an individual or Hindu undivided family or association of persons (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2,* ***other than a person who has exercised an option under sub-section (6)"***

The appellant submits that the short term capital gain earned by an assessee is also an income forming part of "total income chargeable to tax u/s. 115BAC(1A) of the Act". However, while computing the tax on short term capital gain on equity shares being an income chargeable to tax as per Section 115BAC(1A) of the Act, an assessee has to also consider the provisions of Section 111A of the Act along with the provisions of Section 115BAC(1A) of the Act because the provisions of Section 115BAC(1A) of the Act are subject to Chapter-XII consisting of Section 111A of the Act. Thus, the short term capital gain on equity shares needs to be computed as per the provisions of Section 115BAC(1A) r.w.s. 111A of the Act. It is not that the tax on short term capital gain does not form part of "total income chargeable to tax u/s. 115BAC(1) of the Act" and is governed by a separate code being Section 111A of the Act, otherwise Section 111A of the Act would be having a non-obstante clause. Section 111A of the Act is always to be read with the provisions of computation of total income and not as a separate code. As the short term capital gain is a part of total income chargeable to tax under Section 115BAC(1A) of the Act, the tax on short term capital gain is eligible for rebate as provided under the first proviso to Section 87A of the Act.

4.10 The appellant further submits that the provisions of Section 111A of the Act are equally applicable for the assesses exercising an option u/s. 115BAC(6) of the Act. An assessee

who has exercised an option u/s. 115BAC(6) of the Act has to compute tax liability as per the charging section of the Act i.e. Section 4 reproduced as under for ready reference:

*"**4.** (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :"*

As per Section 4 of the Act, an assessee has to compute income tax on total income at the rates prescribed under any Central Act for that assessment year. The Central Act prescribing the rates at which the income tax has to be computed on the total income is the Finance Act. Every year the Finance Act is enacted wherein the rates of income tax are prescribed for the assessment year in its First Schedule. Exactly in the same manner, Section 115BAC(1A) of the Act prescribed rates of income tax for those assessees who does not exercise an option u/s. 115BAC(6) of the Act and thus, not governed by the rates of income tax prescribed under the Finance Act. However, whether an assessee is governed by the rates of income tax prescribed by the Finance Act or rates of income tax prescribed by Section 115BAC(1A) of the Act, in both the cases, the assessee has to compute the tax on the "total income (including capital gain)" and while computing such tax, he has to take into consideration Section 111A of the Act for the purpose of computing tax on short term capital gain on equity shares. It was a settled position before the introduction of Section 115BAC(1A) of the Act that the rebate u/s. 87A of the Act was allowed on the short term capital gain on equity shares computed at the rate of 15% prescribed u/s. 111A of the Act. When there is no significant change except

the rates of income tax being now prescribed u/s. 115BAC(1A) of the Act itself instead of Finance Act for the persons who does not exercise option u/s. 115BAC(6) of the Act, then such settled position in law of allowability of rebate u/s. 87A of the Act on the tax on short term capital gain on equity shares computed at the rate of 15% prescribed u/s. 111A of the Act cannot be disturbed more so when Section 115BAC(1A) of the Act is also subject to Chapter-XII which includes Section 111A of the Act and a specific proviso is inserted in Section 87A of the Act providing for rebate u/s. 87A of the Act even in the case when the tax is computed as per the provisions of Section 115BAC(1A) of the Act.

4.11 The appellant further submits that Section 112A of the Act provides for computation of tax on long term capital gain on equity shares in same manner as Section 111A of the Act provides for short term capital gain on equity shares. However, there is a specific provision under sub-section (6) of Section 112A of the Act providing that rebate u/s. 87A of the Act is not allowable on long term capital gain on equity shares. In case, Section 111A and Section 112A of the Act were considered as a separate code for capital gain on equity shares and alien to the provisions of Section 115BAC(1A) of the Act, then the tax on capital gain on equity shares would never be eligible for rebate u/s. 87A of the Act and the sub-section (6) of Section 112A of the Act would become otiose. However, the legislature consciously chose to insert sub-section (6) in Section 112A of the Act to indicate that rebate u/s. 87A of the Act would not be available in respect of tax on long term capital gain on equity shares which was otherwise

available. As a result, whether having exercised the option u/s. 115BAC(6) of the Act or not, would not be eligible for rebate u/s. 87A of the Act. Further, if the intention of the legislature was to restrict the claim of rebate u/s. 87A of the Act on short term capital gain on equity shares, it could have also inserted a separate sub-section under Section 111A of the Act in the same manner as Section 112A(6) of the Act, however legislature consciously chose not to do so. Thus, even the legislature never intended to restrict the claim of rebate u/s. 87A of the Act on the tax on short term capital gain on equity shares.

4.12 In nutshell, the appellant submits that the Ld. AO has wrongly disallowed the claim of rebate u/s. 87A of the Act on the tax of Rs. 9,760/- computed on short term capital gain on equity shares. Such disallowance is not justified in the eyes of law. The appellant requests your honour to delete such disallowance and refund such amount along with interest.

5. **Ground # (ii)** challenges the action of the Ld. AO in making adjustment to the claim of rebate u/s. 87A of the Act in violation of principles of natural justice.

5.1 The appellant submits that the Ld. AO has disallowed the claim of rebate u/s. 87A of the Act on the tax on short term capital gain on equity shares without providing any prior opportunity of hearing to the appellant. The Ld. AO has neither issued any show cause notice nor issued any intimation of proposed adjustment before disallowing rebate u/s. 87A of the Act. The Ld. AO directly passed the order u/s.

143(1) of the Act wherein the claim of rebate u/s. 87A of the Act was disallowed. Thus, the appellant came to know about such disallowance for the first time when the appellant received the order u/s. 143(1) of the Act. As per the legal maxim "audi alterem partem", no person shall be condemned unheard. It is well settled that no adverse action in form of adjustment to the total income or tax liability of an assessee can be made by an Assessing Officer without providing a prior opportunity of hearing in this respect to the assessee. The action of the Ld. AO in disallowing claim of rebate of Rs. 9,760/- claimed u/s. 87A of the Act without providing any opportunity of being heard to the appellant is in gross violation of principles of natural justice.

5.2 The appellant further submits that the Ld. AO has not even provided any reasons for disallowing the rebate u/s. 87A of the Act. On perusal of the entire order u/s. 143(1) of the Act, it transpires that the Ld. AO has not even made a whisper about why the tax on short term capital gain on equity shares is not considered for the purpose of computation of rebate u/s. 87A of the Act. It is well settled that an income tax authority has to pass a speaking order or provide the reasons for taking any adverse action against the assessee, otherwise such order is considered as a violation of principles of natural justice. As the order u/s. 143(1) of the Act is a non-speaking order and does not even provide any reason for not considering the tax on short term capital gain on equity shares for the purpose of computation of rebate u/s. 87A of the Act, such order is in gross violation of principles of natural justice.

5.3 As the order u/s. 143(1) of the Act is passed without providing any opportunity of hearing to the appellant and even without providing any reason for disallowance of rebate u/s. 87A of the Act on short term capital gain on equity shares, such order violates the principles of natural justice, is bad in law and liable to be quashed.

6. **Ground # (iii)** challenges the action of the Ld. AO in making prima facie adjustment u/s. 143(1) of the Act in respect of rebate u/s. 87A of the Act which is a debatable issue.

The appellant submits that the adjustments that can be made u/s. 143(1) of the Act are only the prima facie adjustments which are apparent from the return of income. No adjustments can be made u/s. 143(1) of the Act on the issues which are contentious or debatable which requires long drawn process of reasoning. Before the introduction of Section 115BAC(1A) of the Act, it was well settled that rebate u/s. 87A of the Act is available on the tax computed on total income (including short term capital gain on equity shares). This position was also accepted by the department and department was consistently allowing the rebate u/s. 87A of the Act on tax on short term capital gain on equity shares. However, after introduction of Section 115BAC(1A) of the Act with effect from 01.04.2023, the department has started disallowing the rebate u/s. 87A of the Act on tax on short term capital gain on equity shares. It is worthwhile to note that the department is only disallowing the rebate u/s. 87A of the Act on tax on short term capital gain on equity shares for those assessees that does not exercise option u/s. 115BAC(6)

of the Act. In case of assessees that exercise option u/s. 115BAC(6) of the Act, the department is still allowing the rebate u/s. 87A of the Act on tax on short term capital gain on equity shares. The issue of eligibility of rebate u/s. 87A of the Act on tax on short term capital gain on equity shares is a debate between the taxpayers and the department. The department is of the view that the rebate u/s. 87A of the Act is not available on short term capital gain on equity shares for those persons who has not exercise option u/s. 115BAC(6) of the Act while the assessees are of the view that the same is available under the law, thus there being two different views on the same issue. This issue is a debatable and contentious issue which can only be resolved by application of mind, interpretation of law and long drawn process of reasoning. This issue is not an issue that can be decided by a prima facie adjustment made by computerized system processing the returns of income u/s. 143(1) of the Act. As this debatable issue needs judicial scrutiny, the same is beyond the scope of prima facie adjustment u/s. 143(1) of the Act. Legally, it is well settled that no prima facie adjustment u/s. 143(1) of the Act can be made in respect of a debatable or contentious issue, resulting in more than one view, and which requires long drawn process of reasoning. For such debatable or contentious issues, the correct recourse is to make a detailed scrutiny as per the provisions of assessment u/s. 143(3)/147 of the Act. Thus, the Ld. AO has erred in disallowing the rebate of Rs. 9,760/- claimed on tax on short term capital gain on equity shares vide prima facie adjustment u/s. 143(1) of the Act. Reliance is placed on the following:

T.S.Balram, ITO v. Volkart Brothers – [1971] 82 ITR 50 (SC)

"From what has been said above, it is clear that the question whether section 17(1) of the Indian Income-tax Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore, the Income- tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under section 154 of the Income-tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. *As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified ingoing into that question. In Satyanarayan Laxminarayan Hegde v. MallikarjunBhavanappa Tirumale [I960] 1 SCR 890, this court while spelling out the scope of the power of a High Court under article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record—see Sidhramappa AndannappaManvi v. Commissioner of Income-tax [1952] 21 ITR 333 (Bom.).The power of the officers mentioned in section 154 of the Income-tax Act, 1961, to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record." In this case it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the Income-tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent.*
For the reasons mentioned above, we dismiss this appeal with costs."

Kvaverner John Brown Engg. (India) (P.) Ltd. v. ACIT – [2008] 305 ITR 103 (SC)

"4. The only point raised by the appellant is that it is not liable to pay additional tax as section 143(1)(a), as it stood during the relevant year, was not applicable to the facts of this case because a moot point had arisen which could not have been a matter of adjustment under that section and which point needed consideration and determination only under regular assessment vide section 143(3) of the 1961 Act.
5. *We find merit in this civil appeal. As stated above, we are concerned with the assessment years 1996-97 and 1997-98.One of the main conditions stipulated by way of the first proviso to section 143(1)(a), as it stood during the relevant time, referred to prima facie adjustments. The first proviso permitted the Department to make adjustments in the income or loss declared in the return in cases of arithmetical errors or in cases where any loss carried forward or deduction or disallowance which on the*

basis of information available in such return was prima facie admissible but which was not claimed in the return or in cases where any loss carried forward, or deduction or allowance claimed in the return which on the basis of information available in such return was prima facie inadmissible. In the present case, therefore, when there were conflicting judgments on interpretation of section 80-O, in our view, prima facie adjustments contemplated under section 143(1)(a) was not applicable and, therefore, consequently appellant was not liable to pay additional tax under section143(1A) of the 1961 Act."

CIT v. Manubhai M. Patel – [2008] 296 ITR 143 (Gujarat)

"5. Section 143(1)(a) of the Act says that where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, then, particular powers can be exercised by the Assessing Officer. Section 154 of the Act relates to rectification of mistakes. With a view to rectify any mistake apparent from the records, the income-tax authorities referred to in section 116 may amend any order passed by it under the provisions of the Act. ***In the present matter, proceedings were drawn under section 143(1)(a) on the premises that such deductions were not permissible.*** *It is not in dispute before us that on the date when the assessee was claiming the deductions, the judgments of the Tribunal and of the different High Courts were in favour of the assessee wherein the Tribunals or the High Courts had observed that to the extent of 40 per cent, deductions would be permissible subject to verification. We are not concerned with the judgments of the Tribunals or of the High Courts, but,* ***the question would be that whether the Assessing Officer was justified in proceeding under section 143(1)(a), especially, when the matter was debatable and the Assessing Officer could proceed either under section 143(2) or section 143(3) of the Act.***

6. The apex court, in the matter of T.S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50, has observed that ***a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record.***

7. From the said judgment of the apex court, it would be clear that in a case where the mistake is apparent from the record, powers under section 154 of the Act could always be exercised. ***In the present matter, the Assessing Officer, in view of the debatable issue relating to deduction or disallowance of the deductions, could not proceed under section 143(1)(a) of the Act."***

ACIT v. Haryana Telecom Ltd. – [2011] 10 ITR(T) 428 (Delhi)

"24. It is beyond any doubt that when a deduction is claimed in the return of income and it is somewhat controversial, it cannot be treated to be prima facie disallowable. If the claim is made by the assessee is treated not to be free from debate and argument, it is bound to be regarded as debatable

issue, which is not enable to prima facie adjustment within the meaning of section 143(1)(a) of the Act. Thus, where the issue involved is debatable, an intimation under section 143(1)(a) disallowing the claim based on such debatable issue on the ground that it is prima facie inadmissible, cannot be sustained."

ACIT v. Smt. Geeta Mayor – [2000] 74 ITD 314 (Ahmedabad – ITAT)

*"**10.** We have considered the rival submissions and have also gone through the orders passed by the Assessing Officer under section 143(1)(a) as well as CIT(A). The Board's Instruction No. 875 relied upon by the Assessing Officer stipulates that deductions under section 48(2) are to be given after providing for exemption under sections 54E and 54F etc. According to the Assessing Officer, sections 54E and 54F provide for exemption which must be considered prior to the deduction under section 48(2) because section 48(2) is procedural and/or a machinery provision and should not be allowed to frustrate a charging provision such as section 45(1).According to the Assessing Officer prior to insertion of section 48(2), provision as contained in section 80T was ranking only after the provisions of sections 54Eand 54F etc., and the legislative intention even after insertion of section 48(2) in substitution of section 80T must be assumed to be the same as before and therefore the exemption under sections 54E and 54F must be considered first. On the other hand, a plain reading of section 48 which is a complete code in itself so far as deductions in respect of capital gains are concerned, clearly indicates that the computation done by the assessee is correct OR in any case is a very plausible computation notwithstanding the view expressed by Shri N.A. Palkhiwala in his Commentary on Income-tax which view has been approved by Kerala High Court in the case of V.V. George (supra). The ambit of section 48(2), in our opinion, cannot be curtailed by interposing the provisions of sections 54E and 54F etc. and thereby reducing the amount from which deductions under section 48(2) are to be given. **In any case, which of the two computations; one adopted by the Assessing Officer or the other adopted by the assessee is the correct computation, is a highly debatable issue and as such cannot be the subject-matter of prima facie adjustments under section 143(1)(a) in view of the Board's Instruction No. 1814-No. 244/2/89-ITR-II, dated 4-4-1989** addressed to all Chief Commissioners and Directors General of Income-tax on the subject-matter of adjustments permissible under the proviso to section 143(1)(a) wherein in para 9 the Board has expressed the view as under :*

> *"9. In the context of the legal position as outlined above, it follows that it will not be permissible for the Assessing Officer to disallow a claim for deduction, allowance or relief in cases where the claim is made on the basis of the decision of any High Court, Appellate Tribunal or other Appellate Authority, even though a contrary view in the matter may have been expressed by another High Court or another Bench of the Tribunal or any other appellate authority. The fact that the claim is based on a decision which has not been accepted by the Board will also not make any difference to this position."*

***11.** Thus taking into consideration the totality of the facts and circumstances of the case, we are of the opinion that the order passed by*

the CIT(A) requires no interference particularly when the Assessing Officer has already passed the order under section 143(3) in the case of both the assessees after considering the submissions of the assessees and adhering to his view that deduction under section 48(2) is to be allowed only after allowing exemption under sections 54E and 54Fand those orders are subject-matter of appeal before the Appellate Authorities and will be adjudicated on merit in due course.

7. **Ground # (iv)** challenges the action of the Ld. AO in passing the order u/s. 143(1) of the Act without appreciating the facts of the case and law on the issue in its proper perspective.

The appellant submits that the Ld. AO has failed to appreciate the facts of the case and law on the issue in correct perspective. The appellant has claimed rebate u/s. 87A of the Act on the "total income" computed in accordance with the provisions of Section 115BAC(1A) of the Act. However, the Ld. AO has not allowed the rebate of Rs. 9,760/- u/s. 87A of the Act on tax on short term capital gain on equity shares and also charged health and education cess on such amount. Neither the "total income" nor the "tax computed on total income" (before rebate u/s. 87A) are disputed by the Ld. AO. The appellant submits that once the "total income" and "tax computed on total income" are accepted by the Ld. AO, it is not open to the Ld. AO to disallow the rebate u/s. 87A of the Act on short term capital gain on equity shares when the total income of the appellant is less than Rs. 7 lakhs. The provisions of Section 87A of the Act provide the rebate from the "tax computed on total income" and it is only the "total income" which is material for determining whether the rebate is available or not. The rebate u/s. 87A of the Act has no relation with the manner of computation of "tax on total income". The only test to determine whether the rebate u/s.

87A of the Act is available is whether the "total income" earned by an assessee is below the threshold limit prescribed u/s. 87A of the Act or not. If the answer to this test is yes, the assessee will be eligible for rebate and if the answer is no, then the assessee will not be eligible for rebate. The manner of computation of tax on short term capital gain at the rate of 15% prescribed u/s. 111A of the Act cannot have any impact on the eligibility of rebate u/s. 87A of the Act. The Ld. AO has failed to appreciate that the rebate is allowed from the "tax computed on total income" which includes the tax on short term capital gain on equity shares. The Ld. AO has failed to understand the legal framework and the scheme of the Act in relation to computation of total income, tax on total income and allowability of rebate u/s. 87A of the Act from such tax computed on total income. Thus, the action of the Ld. AO in restricting the rebate u/s. 87A of the Act to the tune of tax on income (other than short term capital gain on equity shares) is perverse, discriminatory and bad in law. Such disallowance of rebate u/s. 87A of the Act along with consequential charge of health and education cess needs to be deleted.

8. Your appellant reserves the right to add, alter, amend and withdraw any of the above grounds of appeal.

The Appellant shall be grateful if the above submissions are considered while disposing of the appeals for the year under consideration.

Place: Ahmedabad **Sd/-**
Date: 06/10/2024 **Appellant**

6. Discussions & Decision:

6.1 The solitary issue raised by the Appellant vide all the grounds of the present appeal is that the CPC has restricted the rebate u/s 87A of the Act to Rs. 10,250/-, as against the Appellant's claim of Rs. 20,010/-. This resulted in increase in tax liability of Appellant by Rs. 9,760/- and corresponding reduction in the refund claimed by the Appellant.

6.2 In the course of appellate proceedings, the Appellant has contended that during the year under consideration, the Appellant has total income of Rs. 6,93,260/-. The total income consists of capital gain to the tune of Rs. 2,03,115/- which is comprised of the long-term capital gain of Rs. 1,38,049/- and short-term capital gain of Rs. 65,066/-. Further, the Appellant has relied upon the various case laws and also referred to the contents of the Finance Act, 2023 which is as under-

"where the total income of the assessee is chargeable to tax under Sec 115BAC(1A) and the total income does not exceed □7,00,000/- the assessee shall be entitled to a deduction from the amount of income-tax (as computed before allowing for the deduction under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to- 100% of such income tax or an amount of□25,000/- whichever is less."

6.3 I have gone through the facts of the case along with statement of facts/grounds of appeal/submission filed by the Appellant. The documents filed by the Appellant has been perused thoroughly. The relevant portion of Finance Act, 2023 in respect of rebate u/s 87A of the Act is reproduced below:

44. In section 87A of the Income-tax Act, the following proviso shall be inserted with effect from the 1st day of April, 2024, namely:—

"Provided that where the total income of the assessee is chargeable to tax under sub-section (1A) of section 115BAC, and the total income—

(a) does not exceed seven hundred thousand rupees, the assessee shall be entitled to a deduction from the amount of income-tax (as computed before allowing for the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to one hundred per cent. of such income-tax or an amount of twenty-five thousand rupees, whichever is less;

(b) exceeds seven hundred thousand rupees and the income-tax payable on such total income exceeds the amount by which the total income is in excess of seven hundred thousand rupees, the assessee shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income, of an amount equal to the amount by which the income-tax payable on such total income is in excess of the amount by which the total

income exceeds seven hundred thousand rupees."

6.4 The contention of the Appellant is *prima-facie* found to be genuine as the amendment through Finance Act, 2023 in respect of rebate u/s 87A of the Act, mentions total income chargeable to tax. The CPC has excluded the amount of Rs. 1,88,260/- (being the income chargeable at special rates) from the total income of the Appellant, while calculating the taxable income for the purpose of allowing rebate u/s 87A of the Act. The restriction made by the CPC with respect to the rebate u/s 87A of the Act is found to be not correct in the light of Appellant's detailed argument. However, keeping in mind the principle of natural justice as well as the interest of revenue; the Jurisdictional Assessing Officer (JAO) is directed to verify the allowability of claim made by the Appellant in the return of income filed by her for A.Y. 2024-25, towards rebate u/s 87A of the Act, as per the provisions of law and allow the same accordingly. Thus, all the grounds raised by the Appellant in the present appeal are treated as allowed subject to the discussions held herein before.

7. As a result, present appeal of the Appellant is **allowed** in above terms.

ABDHESH KUMAR JHA
ADDL/JCIT (A)-1 PUNE

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)