**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'A' BENCH: CHENNAI**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**.ITA Nos.805 & 806/Chny/2022**
**Assessment Years: 2016-17 & 2019-20**

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| Mr.Mahendra Kumar Damani, 7/5, Velayutham Rastha, Sivakasi, Virudhunagar District-626 123. | **v.** | The Asst. Director of-Income Tax, CPC, Bangalore. |
| [**PAN:** AAPPD 4457 M] **(Appellant)** | | **(Respondent)** |

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| Appellant by | : | Mr.T. Vasudevan, Adv.<br>Mr.G. Aniesh, Adv. |
| Respondent by | : | Mr.AR.V.Sreenivasan, Addl.CIT |
| Date of Hearing | : | 31.01.2023 |
| Date of Pronouncement | : | 08.02.2023 |

**O R D E R**

**PER G. MANJUNATHA, AM:**

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, both dated 03.08.2022 and pertains to assessment years 2016-17 & 201920. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

**2.** The assessee has, more or less, raised common grounds of appeal

for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2016-17, are re-produced as under:

*1. The order of the National Faceless Appeal Centre dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.*

*2. The NFAC erred in confirming the denial of deduction under sec.10AA of the Act in an amount of Rs.75,71,621.*

*3. The NFAC failed to appreciate that the filing of the Form 56F along with the return of income is procedural in nature and not a mandatory requirement, other than the first year of claim and hence the denial of deduction u/s.10AA was unsustainable in law.*

*4. The NFAC further failed to appreciate that the deduction claimed u/s.10AA for the preceding two asst. years had been accepted and the non-filing of Form 56F along with the return in this year (i.e., 3rd year) was merely a venial breach not warranting the denial of deduction to the assessee.*

*5. The NFAC further failed to appreciate that the deduction u/s.10AA was allowed by the ADIT for 4 years i.e., (2014-15, 2015-16, 2017-18, 2018-19) and the belated filing of Form 56F for the A.Y 2016-17 cannot be a reason for disallowing the claim u/s.10AA of the Act.*

*6. The NFAC further failed to appreciate that the inadvertent omission to file Form 56F along with return of income was made good by filing the same on 01.3.2022 and sought rectification of the intimation and hence the rejection of the same was untenable in law.*

*7. The NFAC ought to have seen that the decision of the Supreme Court in the case of Wipro Ltd. dealt with the provisions of sec.10B(8) dealing with furnishing of a declaration for non-applicability of the sec. 10B for any particular assessment year and therefore does not apply to the claim of deduction u/s.10AA by the assessee and hence was totally not justified in relying on that decision to deny the claim of deduction by the assessee.*

*8. The NFAC, in any event, ought to have seen that the assessee had duly complied with the statutory requirements of the claim of sec.10AA and hence denial of the claim was untenable in law.*

*9. The NFAC, in any view of the matter, ought to have considered the contentions of the assessee in the proper perspective and allowed the claim of deduction u/s.10AA of the Act.*

**3.** The brief facts of the case are that the assessee has filed his return of income for the AY 2016-17 on 16.10.2016 declaring total income of Rs.3,69,990/- after claiming deduction of Rs.75,75,621/- u/s.10AA

of the Act. The return of income filed by the assessee has been processed u/s.143(1) of the Act, on 24.04.2017 and determined total income of Rs.79,41,610/- and made addition of Rs.75,75,621/- after disallowing deduction claimed u/s.10AA of the Act, for non-filing of Audit Report in Form No.56F by an Accountant as required u/s.10AA(8) of the Act. The assessee carried the matter in appeal before the First Appellate Authority. Before the Ld.CIT(A), the assessee contended that filing of Audit Report as required u/s.10AA(8) of the Act, is procedural and directory in nature and thus, for non-filing of said Audit Report, deduction claimed u/s.10AA of the Act, cannot be denied, when other conditions prescribed thereunder are

satisfied.

**4.** The Ld.CIT(A) after considering relevant submissions of the assessee and also by following the decision of the Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., reported in [2022] 140 taxmann.com 223 (SC) held that as per provisions of Sec.10A(5) of the Act, filing of Audit Report in Form No.56F and furnishing said report along with return of income is mandatory in nature, but not directory. Since, the assessee did not file Audit Report in Form No.56F as required u/s.10AA(8) of the Act, the AO has rightly disallowed deduction

claimed u/s.10AA of the Act, and thus, rejected arguments of the assessee and sustained additions made towards disallowance of deduction claimed u/s.10AA of the Act. The relevant findings of the Ld.CIT(A) are as under:

> *8. I have carefully considered the facts of the case, the intimation u/s.143(1) and the written submission of the assessee. In the intimation u/s.143(1) dated 24.04.2017, the ADIT (CPC) made disallowance of deduction of Rs.75,71,621/- claimed u/s.10AA of the Act, in view of the failure of the assessee to furnish the audit report in Form 56F in support of the said deduction along with the return of income filed on 16.10.2016. In the written submission, the assessee contended that the requirement to file the audit report in Form 56F along with the return of income is merely a procedural/directory requirement and not a mandatory requirement for allowing the said deduction. The assessee contended that since the audit report in Form 56F was belatedly filed on 01.03.2022, subsequent to filing the return of income, the deduction claimed u/s 10AA is required to be allowed. The assessee placed reliance on the decisions of Hon'ble Supreme Court in the cases of Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner (1992 AIR 152, 1991 SCR (3) 336) and Sambhaji and others Vs. Gangabai and others reported in (2008) 17 SCC 117 in support of this contention.*
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> *9. On careful examination, it is considered that the contention of the assessee is not tenable. The assessee filed his return of income on 16.10.2016, wherein he claimed deduction u/s 10AA of the Act. However, the audit report in Form 56F in support of the said deduction was not filed by the assessee along with the return of income. The said report was filed subsequently on 01.03.2022. The deduction claimed u/s 10AA was disallowed in the Intimation u/s 143(1) on account of failure of the assessee to furnish the audit report in Form 56F along with the return of income. Sub-section (8) of section 10AA provides that the provisions of sub-section (5) of section 10A shall apply to in relation to the deduction specified in section 10AA(1). The said section 10A(5) of the Act, which has been made applicable to section 10AA also, deals with the requirement of furnishing a report of the accountant (audit report) in the prescribed form, certifying that deduction has been correctly claimed in accordance in accordance with the provisions of the section. The said section 10A(5) further lays down that the audit report is required to be filed along with the return of income. Rule 16D of the Income Tax rules prescribes that the audit report as specified in section 10A(5) is required to be filed in Form 56F.*
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> *10. It is pertinent to observe that the provisions of section 10A(5) are very clearly and unambiguously worded so as to provide that the deduction shall not be admissible unless the assessee furnishes the report of the accountant in the prescribed form along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of the section. The language so employed in section 10A(5) does not leave any doubt that the requirement to furnish the audit report along with the return of income is a mandatory condition for the admissibility of the deduction. In a recent decision dated 11.07.2022 in the case of Pr.CIT Vs. Wipro Ltd [2022] 140 taxmann.com 223 (SC), the, Hon'ble Supreme Court held, while interpreting the provisions of section 10B(8) requiring a declaration to be filed before the due date for*

*furnishing the return of income, that the twin conditions of furnishing the declaration to the AO and furnishing of the same before the due date for filing the return of income u/s.139(1) are mandatory and they cannot be treated as directory. The Hon'ble Supreme Court held that it cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee. The Hon'ble Supreme Court held that the submission on behalf of the assessee that the assessee had a substantive statutory right under section 10B(8) to opt out of Section 10B which cannot be nullified by construing the purely procedural time requirement regarding the filing of the declaration under section 10B (8) as being mandatory has no substance and that the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement. The relevant portion of the said decision of the Hon'ble Supreme Court is extracted as under:*

*5. We have heard Shri Balbir Singh, learned ASG appearing on behalf of the Revenue and Shri S. Ganesh, learned Senior Advocate appearing on behalf of the assessee at length and perused the material on record.*
*The short question which is posed for consideration of this Court is, whether, for claiming exemption under Section 10B (8) of the IT Act, the assessee is required to fulfil the twin conditions, namely, (i) furnishing a declaration to the assessing officer in writing that the provisions of Section 10B (8) may not be made applicable to him; and (ii) the said declaration to be furnished before the due date of filing the return of income under sub-section (1) of Section 139 of the IT Act.*

*6. In the present case, the High Court as well as the ITAT have observed and held that for claiming the so-called exemption relief under Section 10B (8) of the IT Act, furnishing the declaration to the assessing officer is mandatory but furnishing the same before the due date of filing the original return of income is directory. In the present case, when the assessee submitted its original return of income under Section 139(1) of the IT Act on 31.10.2001, which was the due date for filing of the original return of income, the assessee specifically and clearly stated that it is a company and is a 100% export-oriented unit and entitled to claim exemption under Section 10B of the IT Act and therefore no loss is being carried forward. Along with the original return filed on 31.10.2001, the assessee also annexed a note to the computation of income clearly stating as above. However, thereafter the assessee filed the revised return of income under Section 139(5) of the IT Act on 23.12.2002 and filed a declaration under Section 10B (8) which admittedly was after the due date of filing of the original return under Section 139(1), i.e., 31.10.2001.*

*7. It is the case on behalf of the Revenue that as there was a non- compliance of twin conditions under Section 10B (8) of the IT Act, namely, the declaration under Section 10B (8) was not submitted along with the original return of income, the assessee shall not be entitled to the exemption/benefit under Section 10B (8) of the IT Act. According to the Revenue, furnishing of declaration under Section 10B (8) before the due date of filing original return of income is also mandatory. On the other hand, it is the case on behalf of the assessee, which has been accepted by the High Court, that the requirement of submission of declaration under Section 10B (8) is mandatory in nature, but the time limit within which the declaration is to be filed is directory in nature.*

*8. While considering the issue involved, whether the time limit within which the declaration is to be filed as provided under Section 10B (8) is mandatory or directory, Section 10B (8) is required to be referred to, which reads as under:*

*"10B (8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of Section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years." On a plain reading of Section 10B (8) of the IT Act as it is, i.e., "where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of Section 10B may not be made applicable to him, the provisions of Section 10B shall not apply to him for any of the relevant assessment years", we note that the wording of the Section 10B (8) is very clear and unambiguous. For claiming the benefit under Section 10B (8), the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing the return of income under subsection (1) of section 139 of the IT Act are required to be fulfilled and/or satisfied. In our view, both the conditions to be satisfied are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under sub-section (1) of section 139 are same/similar. It cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.*

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

*10. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration*

*in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B (8) can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B (5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B (5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B (5) would become falsified and would stand to be nullified.*

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

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

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

*14. In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B (8) of the IT Act. We hold that for claiming the benefit under Section 10B (8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1)*

*are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B (8) of the IT Act on non- compliance of the twin conditions as provided under Section 10B (8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.*

*11. The above decision of the Hon'ble Supreme Court in the case of Wipro Ltd (supra) which was rendered with reference to section 10B(8) is squarely applicable to the assessee's case, as the plain language of section 10A(5) is also clear and unambiguous that the conditions of filing the audit report in Form 56F and furnishing the said report along with the return of income are mandatory conditions for admissibility of the deduction. Hence, by respectfully following the said binding decision, it is held that the requirement to furnish the audit report in Form 56F along with the return of income is a mandatory requirement and not a directory requirement. Since the assessee did not furnish the audit report in Form 56F along with the return of income, which is an undisputed fact, it is evident that the assessee did not fulfill the said mandatory requirement for admissibility of the deduction u/s.10AA of the Act. Consequently, it is held that the deduction of Rs.75,71,621/- claimed u/s 10AA of the Act is not admissible, in the hands of the assessee on account of failure to comply with the said mandatory requirement. Accordingly, it is held that the disallowance of deduction u/s.10AA of Rs.75,71,621/- made in the Intimation u/s.143(1) is sustainable. These grounds of appeal are therefore dismissed.*

**5.** The Ld.Counsel for the assessee submitted that although, the assessee could not file Audit Report in Form No.56F along with return of income filed for the relevant assessment year, but such Audit Report has been filed on 01.03.2022. Therefore, when the assessee is otherwise entitled for deduction for the income merely for non-furnishing of Audit Report, deduction cannot be denied u/s.10AA of the Act. The Ld.Counsel for the assessee referring to the decision of the Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., relied upon by the Ld.CIT(A), submitted that in the said case before the Hon'ble Supreme Court was on the issue of u/s.10B(8) of the Act, whereas in the present case, the assessee has claimed deduction u/s.10AA of the Act, and both provisions are operating under different facts and circumstances. Therefore, the AO and the Ld.CIT(A) are grossly erred in following the decision of the Hon'ble Supreme

Court to deny the benefit of deduction u/s.10AA of the Act. In this regard, he relied upon the decision of ITAT Delhi Benches in the case of Xavient Software Solutions (India) Pvt. Ltd. v. DCIT, Circle-3, Noida reported in 2018 (4) TMI 992.

**6.** The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that as per latest decision of the Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., filing of Audit Report as required under the law is mandatory for claiming any deduction. Since, the assessee did not file the Audit Report as required under the provisions of Sec.10AA(8) of the Act, the AO has rightly disallowed deduction and their orders should be upheld.

**7.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee had filed his return of income for the AY 2016-17 on 16.10.2016 and said return was processed u/s.143(1) of the Act, on 24.04.2017. Admittedly, the assessee did not file Audit Report in Form No.56F either along with return of income filed u/s.139(1) of the Act, or before completion of assessment proceedings u/s.143(1) of the Act, which is evident from the fact that as per admission of the assessee, said report in Form No.56F has been filed on 01.03.2022. The provisions of Sec.10AA of the Act, deals with deduction towards

total income of newly established units in Special Economic Zones. As per sub-section 8 of 10AA of the Act, the provisions of sub-Sec.(5) of 10A of the Act, shall apply in relation to deduction specified in Sec.10AA(1) of the Act. Sec.10A(5) of the Act, deals with furnishing of Audit Report from an Accountant along with return of income for claiming deduction u/s.10A of the Act, and said section is made applicable to sec.10AA of the Act also. Therefore, from the plain reading of provisions of Sec.10AA(8) of the Act, it is very clear that deduction shall not be admissible unless, the assessee furnishes the report of the Accountant in the prescribed form along with return of income certifying the deduction has been correctly claimed in accordance with the provisions. The Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., had considered an identical issue in light of deduction claimed u/s.10B of the Act, and after considering relevant provisions including provisions of Sec.10B(8) of the Act, very categorically held that filing of Audit Report as required under the law is mandatory in nature, but not directory for claiming any deduction under the provisions.

The relevant findings of the Hon'ble Supreme Court are as under:

*5. We have heard Shri Balbir Singh, learned ASG appearing on behalf of the Revenue and Shri S. Ganesh, learned Senior Advocate appearing on behalf of the assessee at length and perused the material on record.*

*The short question which is posed for consideration of this Court is, whether, for claiming exemption under Section 10B (8) of the IT Act, the assessee is required to fulfil the twin conditions, namely, (i) furnishing a declaration to the assessing officer in writing that the provisions of Section 10B (8) may not be made applicable to him; and (ii) the said declaration to be furnished before the due date of filing the return of income under sub-section (1) of Section 139 of the IT Act.*

*6. In the present case, the High Court as well as the ITAT have observed and held that for claiming the so-called exemption relief under Section 10B (8) of the IT Act, furnishing the declaration to the assessing officer is mandatory but furnishing the same before the due date of filing the original return of income is directory. In the present case, when the assessee submitted its original return of income under Section 139(1) of the IT Act on 31.10.2001, which was the due date for filing of the original return of income, the assessee specifically and clearly stated that it is a company and is a 100% export-oriented unit and entitled to claim exemption under Section 10B of the IT Act and therefore no loss is being carried forward. Along with the original return filed on 31.10.2001, the assessee also annexed a note to the computation of income clearly stating as above. However, thereafter the assessee filed the revised return of income under Section 139(5) of the IT Act on 23.12.2002 and filed a declaration under Section 10B (8) which admittedly was after the due date of filing of the original return under Section 139(1), i.e., 31.10.2001.*

*7. It is the case on behalf of the Revenue that as there was a non- compliance of twin conditions under Section 10B (8) of the IT Act, namely, the declaration under Section 10B (8) was not submitted along with the original return of income, the assessee shall not be entitled to the exemption/benefit under Section 10B (8) of the IT Act. According to the Revenue, furnishing of declaration under Section 10B (8) before the due date of filing original return of income is also mandatory. On the other hand, it is the case on behalf of the assessee, which has been accepted by the High Court, that the requirement of submission of declaration under Section 10B (8) is mandatory in nature, but the time limit within which the declaration is to be filed is directory in nature.*

*8. While considering the issue involved, whether the time limit within which the declaration is to be filed as provided under Section 10B (8) is mandatory or directory, Section 10B (8) is required to be referred to, which reads as under:*

> *"10B (8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of Section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years." On a plain reading of Section 10B (8) of the IT Act as it is, i.e., "where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of Section 10B may not be made applicable to him, the provisions of Section 10B shall not apply to him for any of the relevant assessment years", we note that the wording of the Section 10B (8) is very clear and unambiguous. For claiming the benefit under Section 10B (8), the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing the return of income under sub-section (1) of section 139 of the IT Act are required to be fulfilled and/or satisfied. In our view, both the conditions to be satisfied are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under*

*subsection (1) of section 139 are same/similar. It cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.*

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

*10. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B (8) can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B (5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B (5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B (5) would become falsified and would stand to be nullified.*

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

*interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B (8) of the IT Act.*

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

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

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

**8.** The decision rendered by the Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., which was rendered with reference to sec.10B(8) of the Act, squarely applicable to the facts and circumstances of the case. The plain language used in sec.10A(5) of the Act, is also clear and unambiguous that the condition of filing Audit Report in Form No.56F along with return of income is mandatory for allowing any deduction. In this case, there is no dispute with regard to the fact that the assessee did not satisfy the mandatory condition prescribed

u/s.10AA(8) of the Act r.w.s.10A(5) of the Act. Since, the assessee did not file the Audit Report in Form No.56F as required under the law, in our considered view, the AO has rightly disallowed deduction claimed u/s.10AA of the Act. The Ld.CIT(A) after considering relevant facts has rightly upheld the additions made by the AO.

**9.** As regards the case law relied upon by the assessee in the case of Xavient Software Solutions (India) Pvt. Ltd. v. DCIT, we find that the latest decision of the Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., prevails overall other decisions rendered prior to the judgment of the Hon'ble Supreme Court and thus, the case law relied upon by the assessee has no application to the facts of the present case and thus, rejected.

**10.** In this view of the matter and respectfully following the decision the Hon'ble Supreme Court in the case of Pr.CIT v. Wipro Ltd., we are of the considered view that the assessee is not entitled for deduction u/s.10AA of the Act, for non-filing of Audit Report in Form No.56F as required

u/s.10AA(8) of the Act. The Ld.CIT(A) after considering relevant facts has rightly upheld the additions made by the AO and thus, we are inclined to

uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the assessee.

**11.** In the result, appeal filed by the assessee for the AY 2016-17 is dismissed.

**ITA No.806/Chny/2022 for the AY 2019-20**

**12.** The facts and issues involved in this appeal are identical to the facts and issues which we had already been considered in ITA No.805/Chny/2022 for the AY 2016-17. The reasons given by us in the preceding paragraphs shall, ***mutatis mutandis,*** apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the assessee for the AY 2019-20 also.

**13.** In the result, appeal filed by the assessee for the AY 2019-20 is dismissed.

**14.** In the result, appeals filed by the assessee in ITA No.805/Chny/2022 for the AY 2016-17 & ITA No.806/Chny/2022 for the AY 2019-20 are dismissed.

Order pronounced on the 08th day of February, 2023, in Chennai.

***Sd/-*** ***Sd/-***

**(**वी. दुगा राव**) (**जी. मंजूनाथा**)**

**(V. DURGA RAO) (G. MANJUNATHA)**

□□□□□ □□□**/JUDICIAL MEMBER** □□□□ □□□**/ACCOUNTANT MEMBER**

□□□/Chennai,
□□□□□/Dated: 08th February, 2023.

***TLN***

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1. □□□□□□/Appellant
2. □□/Respondent
3. □□□□ □□□" (□□□□)/CIT(A)
4. □□□□ □□□"/CIT
5. □□□□□□□ □□□□□□/DR
6. □□□ □□□□/GF