REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1449 OF 2022
(Arising out of SLP(Civil) No. 7620/2021)

Principal Commissioner of Income Tax-III,
Bangalore and another …Appellants

Versus

M/s Wipro Limited …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.11.2020 passed by the High Court of Karnataka at Bengaluru in Income Tax Appeal No. 462/2017, by which the High Court has dismissed the said appeal preferred by the Revenue and has confirmed the judgment and order dated 25.11.2016 passed by the Income Tax Appellate Tribunal, Bangalore Bench 'C', Bangalore (for short, 'ITAT'), allowing the assessee's claim for carry forward of losses under Section 72 of the Income Tax Act, 1961 (for short, 'IT Act'), the Revenue has preferred the present appeal.

2. The respondent-assessee is a 100% export-oriented unit and engaged in the business of running a call centre and IT Enabled and Remote Processing Services. Assessee filed its return of income on 31.10.2001 for Assessment Year 2001-2002, declaring loss of Rs.15,47,76,990/- and claimed exemption under Section 10B of the IT Act. Along with the original return filed on 31.10.2001, the assessee annexed a note to the computation of income in which the assessee clearly stated that the company 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. That thereafter, the assessee filed a declaration dated 24.10.2002 before the Assessing Officer (AO) stating that the assessee does not want to avail the benefit under Section 10B of the IT Act for A.Y. 2001-02 as per Section 10B (8) of the IT Act. The assessee filed the revised return of income on 23.12.2002 wherein exemption under Section 10B of the IT Act was not claimed and the assessee claimed carry forward of losses.

2.1 Assessing Officer passed an order dated 31.03.2004 rejecting the withdrawal of exemption under Section 10B of the IT Act holding that the assessee did not furnish the declaration in writing before the due date of filing of return of income, which was 31.10.2001. Thereby, the AO made the addition in respect of denial of claim of carrying forward of losses under Section 72 of the IT Act.

2.2 Assessee filed an appeal before the Commissioner of Income Tax (Appeals), New Delhi (for short, 'CIT(A)'). By order dated 19.01.2009, the CIT(A) upheld the order passed by the Assessing Officer making addition in respect of denial of claim of carrying forward of losses under Section 72 of the IT Act.

2.3 Aggrieved by the order passed by the CIT(A), the assessee filed an appeal before the ITAT. Vide order dated 25.11.2016, the ITAT decided the issue in favour of the assessee stating that the declaration requirement under Section 10B (8) of the IT Act was filed by the assessee before the AO before the due date of filing of return of income as per Section 139(1) of the IT Act. ITAT allowed the assessee's claim for carrying forward of losses under Section 72 of the IT Act.

2.4 Feeling aggrieved and dissatisfied with the order passed by the ITAT, allowing the assessee's claim for carrying forward of losses under Section 72 of the IT Act, the Revenue preferred an appeal before the High Court. By the impugned judgment and order, the High Court has dismissed the said appeal. Hence, the Revenue is before this Court by way of present appeal.

3. Shri Balbir Singh, learned Additional Solicitor General of India appearing for the Revenue has vehemently contended that in the present case, as the conditions mentioned in Section 10B (8) of the IT Act are not complied with, inasmuch as the declaration was not filed

before the due date of filing of return, both, the ITAT and the High Court have committed a grave error in allowing the assessee's claim for carrying forward of losses under Section 72 of the IT Act.

3.1 It is submitted that in the present case, the original return of income was filed on 31.10.2001, which was the due date for filing return of income. The assessee filed a declaration on 24.10.2002 before the AO stating that the assessee does not want to avail the benefit under Section 10B of the IT Act for A.Y. 2001-02. That thereafter the assessee filed the revised return of income on 23.12.2002 claiming carry forward of losses under Section 72 of the IT Act. It is submitted that therefore as the declaration required under Section 10B (8) of the IT Act was filed beyond the due date of filing of return and hence the assessee was not entitled to carry forward of losses under Section 72 of the IT Act. It is submitted that in the present case, the ITAT has wrongly noted that the declaration under Section 10B (8) of the IT Act was filed before the due date.

3.2 It is further contended that the High Court has erred in observing that the requirement under Section 10B (8) of the IT Act is a procedural requirement.

3.3 It is submitted that the High Court has not properly appreciated the consequences of not filing the declaration within the time as required under Section 10B (5) and non-compliance of Sections 10B (5) and 10B

(8) of the IT Act. It is submitted that if the view taken by the High Court is accepted, in that case, it shall nullify the provisions of Sections 10B (5) and 10B (8) of the IT Act.

3.4 Shri Balbir Singh, learned ASG appearing on behalf of the Revenue further submitted that in the present case the assessee filed the revised return of income on 23.12.2002, wherein for the first time the assessee did not claim the exemption under Section 10B of the IT Act and claimed carrying forward of losses under Section 72 of the IT Act. That such a claim could not have been made while submitting the revised return of income. That the revised return of income can be filed under Section 139(5) of the IT Act only to remove the omission and mistake and/or correct the arithmetical error. It is submitted that the revised return of income under Section 139(5) of the IT Act cannot be filed for altogether a new claim. Reliance is placed on the decision of the Andhra Pradesh High Court in the case of ***Commissioner of Income Tax v. Andhra Cotton Mills Limited, [1996] 219 ITR 404 (AP)***. That in the aforesaid decision, the Andhra Pradesh High Court has held that a revised return under Section 139(5) can be filed only if there is an omission or a wrong statement. That in the aforesaid case, the assessee in the original return filed the P&L account containing provision for depreciation and did not opt for the option of not providing details regarding depreciation in its P&L account. Therefore, the High Court

held that the intention of the assessee was to withdraw the claim for deduction of depreciation only to get a set-off and since particulars were furnished along with the original return, the ITO was bound to allow the deduction of depreciation in computing the income from business.

3.5 It is submitted that in the present case while filing the original return of income, the assessee specifically declared a loss of Rs. 15,47,76,990/- and claimed exemption under Section 10B of the IT Act. That as per the note annexed to the computation of income, annexed with the original return of income, the assessee specifically stated that "the company is registered as 100% export-oriented unit and is entitled to claim exemption under Section 10B of the IT Act. No loss is therefore being carried forward."

3.6 It is submitted that as an afterthought the assessee filed a declaration as required under Section 10B (5) belatedly and after the due date mentioned in Section 10B (5) and claimed carry forward of losses under Section 72 of the IT Act, withdrawing its claim for deduction under Section 10B of the IT Act. It is contended that the High Court has not properly appreciated the fact that by filing a declaration subsequently and filing the revised return of income, the intent of the assessee was to frustrate the purpose of Section 10B of the IT Act and file a declaration under Section 10B (8) belatedly. It is submitted that the High Court has not properly appreciated the fact that the assessee's intention to file the

revised return was only as an afterthought and with the intention to extend the period of filing the declaration beyond the period specified in Section 10B (8) of the IT Act.

3.7 It is further submitted by learned ASG appearing on behalf of the Revenue that the High Court has seriously erred in observing 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, as the provision does not provide for any adverse consequence for not filing of the declaration by the time limit. It is submitted that the High Court has not properly appreciated and/or considered the fact that non-filing of declaration before the due date, i.e., filing of the return of income would result in denial of the benefit under Section 10B (8) of the IT Act. Therefore, it cannot be said that there is no consequence of not filing of declaration before the due date of return of income.

3.8 It is contended that the High Court has materially erred in following and relying upon the decision of the Delhi High Court in the case of ***Commissioner of Income Tax, Delhi-III, New Delhi v. Moser Baer India Limited, decided on 14.05.2008 in ITA No. 950/2007,*** wherein it was considering the requirement of Section 10B (7) of the IT Act.

3.9 It is next contended that there is a clear distinction between the provisions seeking exemption and the provisions for deduction. That

Chapter III of the IT Act deals with exemptions. However, Chapter VIA deals with deductions. That Section 10B of the IT Act is an exemption provision and the condition for seeking an exemption is required to be complied with strictly with the provision.

3.10 Learned ASG submitted that as held by this Court in a catena of cases that a taxing statute should be strictly construed and that the machinery provisions must be so construed to effectuate the object and purpose of statute and that the exemption provisions must be construed strictly and by a strict interpretation. Reliance is placed on the judgments of this Court in the case of ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana (2014) 6 SCC 444 and Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and others (2018) 9 SCC 1*.**

3.10 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal.

4. The present appeal is vehemently opposed by Shri S. Ganesh, learned Senior Advocate appearing on behalf of the respondent – assessee.

4.1 Learned counsel appearing on behalf of the assessee has submitted that the only question of law which arises in the present case is with regard to the interpretation of Section 10B (8) of the IT Act, viz., whether the requirement of submission of the declaration before the last

date for submission of the return is mandatory or directory. It is submitted that on a true interpretation of Sections 10B (5) and 10B (8) of the IT Act, the High Court has rightly observed and held that the requirement of filing a declaration is mandatory in nature, while the time limit in filing the declaration is directory in nature. It is submitted that the High Court has rightly held the requirement of filing the declaration by the time limit directory as non-filing of the declaration within the time limit does not envisage any consequence. It is urged that the High Court has rightly relied upon the decision of the Delhi High Court in the case of ***Moser Baer (supra).*** It is submitted that the issues of validity of the revised return of income; whether the respondent was entitled to carry forward its losses under Sections 10B and 80 of the IT Act; and whether the assessee had duly complied with Section 80 and Section 10B (5) of the IT Act were not raised before the High Court.

4.2 It is submitted that apart from the above, even on merits also, the Revenue has no case. This is because Section 80 of the IT Act only requires that an assessee claiming carry forward of loss should file a return showing the loss before the last date for submitting the return. It is submitted that in the instant case the assessee filed the original return in time declaring the loss and thereby complied with Section 80 of the IT Act.

4.3 It is further submitted that though it was not necessary for the exercise of option under Section 10B (8) of the IT Act, the assessee filed a revised return only to bring to the notice of the AO the factum of exercise of option under Section 10B. Even if the revised return had not been filed and instead, the assessee had submitted the declaration in writing to the AO during the assessment proceedings, it would have made no difference whatsoever to the exercise of option under Section 10B (8) of the IT Act. It is submitted that therefore the validity of the revised return is wholly immaterial and irrelevant.

4.4 It is further submitted that the accountant's certificate under Section 10B (5) is required only if the assessee claims the deduction under Section 10B. This certificate only certifies the profit/loss of Section 10B unit and the amount of deduction under Section 10B (1), if any. The certificate, if already submitted, becomes irrelevant if the claim is withdrawn under Section 10B. In any event, the contents of this certificate regarding profit/loss are not in any way affected by the withdrawal of the Section 10B claim. It is submitted that in the present case, the loss set out in Section 10B certificate remained exactly the same after withdrawal of the claim made under Section 10B and the respondent making the claim for carry forward of loss. It is submitted that there was no claim for any deduction under Section 10B (1) at any time.

4.5 It is submitted that the incontrovertible position set out in paragraphs 4.2 to 4.4 above is the precise reason why these points were not even attempted to be raised, either before the ITAT or before the High Court, and are sought to be raised before this Court for the first time and without disclosing the correct and complete facts.

4.6 It is further submitted by Shri S. Ganesh, learned counsel appearing on behalf of the assessee that on interpretation of Section 10B (8) of the IT Act, the case is squarely covered by the judgment of this Court in the case of ***CIT, Maharashtra v. G.M. Knitting Industries Pvt. Ltd. (2016) 12 SCC 272***. It is submitted that the case involved a claim for additional depreciation on plant and machinery under Section 32(1) (ii-a) of the IT Act. That provision gave the assessee the option to claim additional depreciation, over and above the usual or ordinary depreciation mandatorily allowed under Section 32(1) of the IT Act. This option had to be exercised by the assessee by filing a statutory Form 3-AA along with the Return of Income, which gave details of the plant and machinery and also a certificate that the claim for additional depreciation was correctly made. Therefore, if the said Form 3-AA was not filed with the Return, it was a clear indication that the assessee had opted not to claim additional depreciation. In the case of **G.M. Knitting (supra),** the assessee did not file Form 3-AA along with the return of income, but chose to file the Form much later, but before the passing of the

assessment order, which may be passed as long as 26 months after the return was filed as provided under Section 153(1) of the IT Act. The Revenue rejected the form on the ground that it had not been filed along with the return of income and declined to grant additional depreciation as claimed by the assessee. It is submitted that this Court held that the requirement that Form 3-AA should be submitted along with return was only directory and that therefore even though the Form had been submitted long after the filing of the return, the assessee was entitled to claim additional depreciation under Section 32(1)(ii-a) of the IT Act.

4.7 It is submitted that exactly the same principle applies to the interpretation of Section 10B (8) of the IT Act. Section 10B (8) enables an assessee to exclude the applicability of the deduction under Section 10B by filing a declaration to that effect before the last date in which the return of income is required to be filed. It is submitted that as held in ***G.M. Knitting (supra)***, the requirement that the Form should be submitted by a certain deadline is directory, though the submission of the Form itself may be regarded as mandatory. It is urged that the present case stands on a far stronger footing and on a far higher pedestal as compared to ***G.M. Knitting (supra)***. This is because Section 10B (8) specifically and unequivocally gives the assessee a statutory right to exercise his option and to decide not to avail of the benefit of section 10B (8) in a particular Assessment Year. For the purpose of Section

32(1)(ii-a) of the IT Act, by permitting the assessee to file the Form 3-AA long after the return, this Court has in effect permitted the assessee to make one option at the time of filing the return and change the option long thereafter, at any time before the assessment is made. That if such change of option could be permitted under Section 32(1)(ii-a), the case for permitting it is far stronger under Section 10B (8) where the statute itself expressly and unequivocally gives the assessee the right to change his option. It is submitted that the basic premise is that a substantive claim, which the assessee considers to be more beneficial, must be allowed to be made until the conclusion of assessment and the time within which any form which enables the claim should be filed, is only directory.

4.8 It is further submitted that this Court in ***G.M. Knitting (supra)*** has specifically approved the judgment of the Bombay High Court in the case of ***Commissioner of Income Tax v. Shivanand Electronics ((1994) 209 ITR 63)***. That judgment dealt with an assessee's claim for deduction under Section 80HHC. Section 80HHC specifically prohibited the grant of deduction under Section 80HHC unless the stipulated audit report was filed along with the return of income. The assessee filed the required audit report long after the return. The Bombay High Court held that while the filing of the audit report was mandatory, the requirement that it should be filed along with the return was only directory, notwithstanding

the peremptory language of the prohibition in Section 80HHC (5). It is of vital importance to note that there is no such prohibition in Section 10B. Further, as already pointed out, Section 10B (8) itself expressly gives the assessee the right to opt out of section 10B. This substantive statutory right cannot in law be nullified by construing the purely procedural time element requirement regarding the filing of the declaration under Section 10B (8) as mandatory. Reliance is placed on the judgment of the Telangana High Court in the case of ***Telangana State Pollution Board v. CBDT (Writ Petition No. 4834/2020, decided on 26.07.2021).***

4.9 It is further submitted by the learned counsel appearing on behalf of the assessee that the submission on behalf of the revenue that by the impugned judgment and order and the interpretation by the High Court, the statutory option expressly given by Section 10B (8) is in effect nullified and that Section 10B (8) is rewritten by introducing in it a prohibition similar to Section 80HHC(5), though the legislature did not enact any such prohibition and it completely overlooks and ignores the legislative background of section 10B has no substance. It is urged that as such the issue involved in the present case is directly covered by the decision of the Delhi High Court in the case of ***Moser Baer (supra)***, against which a special leave petition was preferred in this Court and the same was dismissed as withdrawn. That the decision of ***Moser Baer (supra)*** has been subsequently followed in the case of ***CIT v. Rana***

Polycot Ltd. 2011 SCC OnLine P&H 17591. That both these judgments are on Section 10B itself and they clearly and unequivocally stated that while the submission of the declaration is mandatory, the requirement that it should be submitted before the due date of return is only directory and Section 10B deduction could not be disallowed if the declaration was filed before the assessment was made.

4.10 Shri Ganesh, learned counsel appearing on behalf of the assessee has submitted that there are a large number of judgments dealing with other sections of the IT Act which expressly provide that a particular deduction would not be allowed if a particular report or certificate of declaration was not filed along with the return of income. It is submitted that in each of the cases, it is held that the requirement of submission of the document is mandatory, but the stipulation that it should be filed along with the return of income is only directory. Shri Ganesh, learned counsel has referred to the following decisions:

i) ***Moser Baer (supra)***;
ii) ***Rana Polycot Ltd. (supra)****;*
iii) ***G.M. Knitting Industries Pvt. Ltd. (supra)****;*
iv) ***CIT v. Panama Chemical Works, 2006 SCC OnLine MP 704;***
v) ***CIT v. Punjab Financial Corp. ILR 2002 (1) P&H 438;***
vi) ***CIT v. Hardeodas Aggarwala Trust; 1991 SCC OnLine Cal.414;***
vii) ***CIT v. Gupta Fabs, 2005 SCC OnLine P&H 1315;***
viii) ***Murali Export House v. CIT, 1995 SCC OnLine Cal. 286;***
ix) ***CIT v. Berger Paints India Ltd., 2002 SCC OnLine Cal. 869****;* ***and***

x) ***CIT v. Ramani Relators (P) Ltd., 2014 SCC OnLine Mad. 12717.***

It is submitted that therefore on the principle of ***stare decisis*****,** this Court may not interfere with the impugned judgment and order passed by the High Court.

4.11 Now so far as the submission on behalf of the Revenue that Section 10B is an exemption provision, it is vehemently submitted by the learned counsel appearing on behalf of the assessee that as held by this Court in the case of ***CIT v. Yokogawa India Ltd. (2017) 2 SCC 1***, Section 10B is a deduction provision and not an exemption provision.

4.12 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeal.

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 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.

……J.
[M.R. SHAH]

NEW DELHI;
JULY 11, 2022.

……J.
[B.V. NAGARATHNA]