



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE COMMISSIONER OF INCOME TAX, APPEAL
ADDL/JCIT (A)-6 MUMBAI

To, SUNITA GUPTA [Redacted]	
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[Redacted]	AY: 2024-25	Dated: 27/02/2025	DIN & Order No : ITBA/APL/S/250/2024-25/1073780811(1)
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Order u/s 250 of Income Tax Act, 1961

Instituted on 19/10/2024 from the order of DEL-W-(56)(3) dated 19/09/2024

Appeal No	ADDL/JCIT (A)-6 MUMBAI/10003/2023-24
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	Others
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 .)	0
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

This appeal was instituted on 19.10.2024, against the order passed under section 143(1) of the Income-tax Act, 1961 (hereinafter, referred as 'the Act') by the AO, CPC Bengaluru for the A.Y. 2024-25 dated 19.09.2024. Subsequently the appeal was allocated to the e-Appeals Scheme 2023 in terms of Notification dated 29th May 2023 issued by the CBDT.

2. Facts of the case:

The appellant had filed its return of income for AY 2024-25 on 27.07.2024 declaring total taxable income 5,40,670/-. The return of income was processed u/s 143(1) on 19.09.2024 accepting the total income returned. In the said intimation order u/s 143(1), the CPC

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Bengaluru had restricted the rebate at Rs. 5,917/- against the total rebate 22,339/- u/s 87A of the Act. Being aggrieved, the appellant has filed this appeal on 19.10.2024.

3. Statement of facts:

The Appellant is Mrs. Sunita Gupta, an Individual Assessee with income under the Heads House Property, Speculative Business Gains or Losses, Capital gains, and Other Sources.

The Appellant duly filed its return i.e. ITR 3 for the Assessment Year 2024-25 on 27th July 2024. The total Income declared by the appellant in its return comprised the following:

1. Income from House Property: ₹ 84,367 (after claiming all deductions)
2. Profits and Gains from Speculative Business: ₹ 181
3. Short-term Capital gains under Section 111A: ₹ 1,09,842
4. Long-term Capital gains under Section 112A: ₹ 12,853
5. Income from other sources: ₹ 3,33,785

-----Total Income: ₹ 5,40,670-----

The tax payable on the above Income was computed at ₹ 22,339. As the Appellant has taken the option for taxability under Section 115BAC i.e. Special Regime of taxation and the total income was less than 7,00,000, the Appellant claimed the benefit of Rebate under Section 87A as equal to the amount of tax payable by the appellant.

An Intimation Order under Section 143(1) dated 19th September 2024 was serviced to the appellant on 20th September 2024. The CPC following the changes made on the 5th of July IT Utility and Calculator were not allowing 87A rebate against short-term Capital Gains u/s 111A. Out of a total amount of ₹ 22,339, the CPC allowed only ₹ 5,917 as the rebate under 87A thereby disallowing the rebate on Short-term Capital Gains of ₹ 16,422 and issuing the demand order of ₹ 18,670 with the applicable Interest under 234B, 234C.

The Appellant respectfully submits that the disallowance of rebate under Section 87A on the Short-term Capital gains is Unjust and inequitable. The claim made by the Appellant is within the boundaries and scope of Section 87A.

The CPC's Intimation order aggrieves the appellant, who has filed this appeal to contest the unjustified and contrary-to-law disallowance of Rebate under Section 87A of ₹ 16,422, relating to the amount of tax calculated on Short term capital Gains.

The appellant respectfully requests that the Hon'ble Commissioner of Income Tax (Appeals) kindly consider the submissions made, facts of the case, and relevant legal provisions, and grant appropriate relief by deleting the demand raised of ₹ 22,339.

4. Grounds of appeal:



2. Grounds of Appeal

Based on the Intimation order received, we raise the following Grounds of Appeal:

1. The learned CPC erred in law and on facts in making disallowance of Rebate of ₹ 16,422 under Section 87A of the Income Tax Act, 1961, by disallowing the Rebate under Section 87A on Short-term Capital Gains.
 2. The appellant submits that the disallowance of the claim is unjust and contrary to the provisions of the Act.
 3. The learned CPC and Income tax authorities erred in the interpretation of provisions of Section 87A and Section 115BAC.
 4. The learned CPC and Income tax authorities erred in wrongfully disallowing the relief under 87A on Special Income, Like Short-term Capital Gain under Section 111A which was allowed in all years before the 5th of July 2024.
 5. The learned CPC and Income tax authorities were unjust and inequitable in claiming that a rebate under 87A is not available on Short-term Capital gain, as nowhere in the budget speech of the finance minister for the Finance Act 2023 purported that the rebate will be limited only to the tax computed on Normal Income as per Section 115BAC.
5. During the course of appellate proceeding, notice u/s 250 of the Income Tax Act, 1961 was issued from time to time and in response to the same, the appellant has furnished submission which is reproduced as under:

i. Brief facts of the Case:

The brief facts of the case are that the Appellant filed its return of income on 27 July 2024. The Assessee's total Income was ₹ 5,40,760, which included the short-term Capital Gain of ₹ 1,09,842. The total rebate under 87A claimed by the Assessee was ₹ 22,339 out of which ₹ 16,670 was related to Short-term Capital Gains.

With the changes made in the ITR utility by July 5th, the CPC disallowed the rebate portion on the amount related to short-term Capital gains, i.e., ₹ 16,670, and raised a demand of ₹ 18,670.

ii. Legal Grounds Challenging the Claim of the Income Tax Department:

1. Pursuant to the position adopted by the Income Tax Department, and as affirmed by higher authorities, the rebate available under Section 87A shall not apply to income taxed at special rates where the assessee has elected the alternative tax regime under Section 115BAC(1A). The relevant provisions of Section 87A of the Income-tax Act, 1961, as amended by the Finance Act, 2023, are reproduced hereunder:

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;

(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.]

2. The provisions of the Special tax regime as outlined in Section 115BAC(1A) are reproduced here below:

[(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:—

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 per cent.

3. The interpretation adopted by income-tax authorities posits that the rebate under Section 87A is confined solely to income taxed in accordance with the calculation methodology prescribed under Section 115BAC(1A), thereby precluding the rebate's availability for special income chargeable under distinct provisions of the Act.

4. Section 115BAC, which provides a special tax regime, is contained within **Chapter XII: Determination of Tax in Certain Special Cases**. This chapter also encompasses other provisions prescribing special tax rates for specific categories of income, including short-term capital gains under Section 111A, long-term capital gains under Sections 112A and 112, and income from virtual digital assets under Section 115BBH, etc.
5. Pre-5th July update to ITR Utility, the rebate under Section 87A on Special Income Like Short-term Capital Gains u/s 111A. Long-term Capital Gains u/s 112, was available to the Individual Assessee opting new tax regime and the Total Income chargeable to tax is less than or equal to ₹ 7,00,000.
6. Proviso to Section 87A states that where the total income is chargeable to tax under Section 115BAC(1A), and the total income does not exceed a sum of ₹ 7,00,000, then rebate will be available on the amount of tax calculated on the Total Income Computed or ₹ 25,000, whichever is lower.
7. It is pertinent to observe that the Income-tax authorities have interpreted the proviso to Section 87A in such a manner that the total income which is chargeable solely under the slab rates prescribed in Section 115BAC(1A), the rebate shall be restricted to the tax computed on such income. Consequently, if the total income, not exceeding ₹7,00,000, includes special income—such as short-term capital gains, among others—no rebate shall be available on that portion of income. The assessee is thus rendered liable to pay tax on such special income.

8. However, this interpretation is unjust and unequivocally contrary to the fundamental principles of natural justice. Interpreting the proviso to Section 87A in isolation, without considering Section 115BAC(1A), renders the interpretation ambiguous and imposes undue hardship on many Individual taxpayers in India.
9. The Proviso to Section 87A is intrinsically linked to Section 115BAC(1A) and cannot be interpreted independently. The term “**under**” in the Proviso to Section 87A has been legally defined as “**directive**” or “**in accordance with,**” implying that Section 87A must be read in strict alignment with the stipulations in Section 115BAC(1A) concerning the chargeability of tax on total income.

Thus, a liberal interpretation of the Proviso to Section 87A requires that its scope be understood in direct connection with Section 115BAC(1A). Interpreting the Proviso broadly, to suggest that only income chargeable at slab rates is covered by the Proviso, would be legally unsound without drawing a clear distinction between total income and special income.

10. Section 115BAC(1A) states that **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:—

There are four limbs in Section 115BAC. The first limb starts with a **“Non-obstante clause”** and a **“Subordination clause”**, and ends with a **comma (,)**. The first limb of Section 115BAC(1A) overrides all the provisions of Income tax but it is made subject to the provisions of Chapter XII. Chapter XII contains the provisions for the taxability of Special Income like Short-term Capital Gains u/s 111A, Long-term Capital Gains u/s 112/112A, etc.

The comma separates the first limb from the other provisions of this clause. Consequently, the primary interpretation of Section 115BAC(1A) is that it has an overriding effect over the Income Tax Act. However, it must strictly adhere to the provisions of Chapter XII wherever applicable, and **those provisions will form an integral part of Section 115BAC(1A).**

11. Whenever a provision contains a **“Subordinate clause”** indicating that it is subject to the other provisions of this chapter, that provision does not constitute an independent provision. Instead, it must be interpreted in conjunction with the other provisions to give full effect to the provision that contains the **“Subordinate clause”**.

Hon'ble Supreme Court in the Case of South India Corporation (P) Ltd vs. Secretary, Board of Revenue Trivandrum and Another 1964 AIR 207, has explained the clause “Subject to” as **“subject to” conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject.**

Hon'ble Supreme Court in the Case of Union of India vs. Brigadier P.S. Gill AIR 2012 Supreme Court 1280 has dealt with a case where one provision (Section 30 of Armed Forces Tribunal Act) was made subject to the provisions of other provisions (Section 31 of Armed Forces Tribunal Act), the Supreme Court has held that Section 30 is made subordinate to Section 31 of the Act. Section 31 must be followed in all cases to make effect on the provisions of Section 30.

In the case of KEI Industries Ltd vs Commissioner, Service Tax Appeal No. 50949 OF 2021, before the Hon'ble CESTAT, all the above cases were discussed, and it was held that where any provision is made subject to the other provisions, it has to be followed strictly and in case of any inconsistency between the two provisions, the latter provision would follow.

In light of the conclusions reached by the Hon'ble Supreme Court and CESTAT, it follows that the computation mechanism under Section 115BAC(1A) is not independent. Instead, it incorporates provisions from Chapter XII that are not expressly addressed within Section 115BAC(1A) itself.

Accordingly, where an assessee opts for the special tax regime under Section 115BAC(1A) and the total income does not exceed ₹7,00,000, any special income, such as short-term capital gains under Section 111A, it will be deemed that the tax calculation forms part of Computation mechanism under Section 115BAC(1A), as the Section 115BAC(1A) has to strictly follow the other provisions of Chapter XII.

12. The Second limb, and the proviso to section 87A talks about the Total Income. Total Income as defined in Section 2(45) of the Income-tax Act means the total amount of income referred to in [Section 5](#), computed in the manner laid down in this Act.

The total income under Section 115BAC(1A) includes all five heads of income, including capital gains. If the legislative intent were to deny the rebate on portions of total income comprising special income, such as that chargeable under Sections 111A and 112, these exclusions would have been expressly stated in the provisions.

In a comprehensive reading of all four clauses within Section 115BAC(1A), a liberal interpretation would yield the following understanding: An eligible assessee opting for the special tax regime under Section 115BAC(1A) must compute tax on their total income—defined as per Section 2(45)—across any or all of the five heads of income. The tax calculation should adhere to the slab rate specified in the fourth limb, while the first limb mandates that Section 115BAC(1A) operates within the confines of the other provisions in this chapter, thus ensuring that the entire chapter is considered within the scope of tax computation under Section 115BAC(1A). Thus, it forms part of Section 115BAC(1A) by establishing a deeming fiction.

13. The rebate under Section 87A is explicitly disallowed on long-term capital gains under Section 112A due to specific provisions enacted by the legislature, and this legislative intent is well understood by taxpayers in India. Section 112A(6), introduced in the Finance Act of 2018, clearly prohibits the allowance of rebate under Section 87A for such gains. However, no similar legislative intent is evident for

disallowing the rebate under Section 87A on income such as short-term capital gains under Section 111A or long-term capital gains under Section 112, nor does it appear to have been intended by Parliament.

This raises the question: where there is no legislative intent to disallow such a claim, how can income tax officers, who are bound to follow the law and Parliament's intent, override this and disallow the rebate under Section 87A on short-term capital gains, where no such restriction or intent has been legislated?

14. As per the budget speech for the Introduction of Finance bill, 2023, the Hon'ble Finance Minister Smt. Nirmala Sitaraman, the minister clarified her position for amending the Section 115BAC as follows:

"The first one concerns rebate. Currently, those with income up to ₹ 5 lakh do not pay any income tax in both old and new tax regimes. I propose to increase the rebate limit to ₹ 7 lakh in the new tax regime. Thus, persons in the new tax regime, with income up to ₹ 7 lakh will not have to pay any tax".

It is well established that when governments worldwide limit benefits previously available to citizens, they typically make a formal announcement in public or in parliament, explaining the rationale behind the change.

For instance, in the recent 2024 budget, the finance minister announced that the lower tax rate of 10% on long-term capital gains under Section 112A would be increased to 12.5%, effective from a specified date. This statement in the budget speech served to explain to the public why the lower rate would no longer apply, as such changes impact millions of taxpayers who make investments and engage in legal tax planning.

The rationale behind the amendment to Section 87A was clearly to encourage more taxpayers to opt for the new tax regime, offering a

higher rebate limit of ₹7,00,000 compared to ₹5,00,000 in the old tax regime. There is no indication from the finance minister that the rebate is available only on income taxable at slab rates under Section 115BAC(1A). On the contrary, the literal interpretation and intent were to provide a higher rebate benefit to those choosing the new tax regime.

Unlike the U.S. slab-rate tax system, where both regular income and capital gains are taxed at slab rates, the new tax regime under Section 115BAC(1A) includes distinct provisions and a computation mechanism that applies slab rates to regular income while taxing special incomes under their respective provisions. Therefore, the slab rate alone does not define the special tax regime; rather, the entire computation approach forms the basis of the special tax regime under Section 115BAC(1A). This has consistently reflected the intent of the legislation.

Summary:

In summary, the Appellant seeks to raise the following question against the Income Tax Authorities:

Q1. In the absence of any legislative intent to disallow the claim of rebate under Section 87A on special income, such as short-term capital gains under Section 111A for assesseees opting for the new tax regime—and without any specific enactment, as seen in Section 112A(6)—were the CPC and Income Tax Authorities justified in denying the rebate under Section 87A on the above-mentioned income? Was this denial based merely on a misinterpretation of the proviso to Section 87A, without fully understanding the provisions of Section 115BAC(1A)?

Additionally, what supporting evidence did the Income Tax Authorities rely upon to substantiate their position?

iii. Grounds of Unjust and Inequitable:

1. Assessee opting for taxation under the old regime for the Assessment Year 2024-25, with a total income not exceeding ₹5,00,000, are eligible for a rebate under Section 87A, even when their total income includes short-term capital gains under Section 111A or long-term capital gains under Section 112. However, in the absence of specific legislation or legislative intent, assessee choosing the new tax regime are not permitted to claim a rebate under Section 87A on special income, such as short-term capital gains under Section 111A or long-term capital gains under Section 112.
2. An assessee who recently entered the capital market or is engaged in the business of trading in listed stocks, and who treats the purchase and sale of these stocks as business transactions in compliance with CBDT Circular No. 6/2016, along with Circular no.4 of 2007 dated June 15, 2007, opting for the new tax regime is eligible for a rebate under Section 87A if their profit amounts to ₹6,90,000 for the assessment year 2024-25.

In contrast, an assessee earning the same ₹6,90,000 from short-term capital gains on similar stock transactions is required to pay tax without a rebate. This distinction in eligibility for the rebate under Section 87A, based solely on

the income classification method for identical transactions, raises concerns regarding the consistency with legislative intent and equitable tax treatment.

Summary:

Q1. On what basis is an assessee opting for the new tax regime subject to unjust and inequitable tax treatment regarding the rebate under Section 87A, when an assessee under the old tax regime is eligible for the same rebate on identical income—namely, short-term capital gains under Section 111A—in the absence of any specific disallowance within Section 111A or Section 115BAC(1A)?

Q2. On what grounds is an assessee opting for the new tax regime subject to unjust tax treatment when an assessee earning identical profits from capital market transactions, but reporting them as business income per CBDT Circular No. 6/2016, is eligible for a rebate under Section 87A, whereas an assessee reporting the same income as short-term capital gains is required to pay tax without rebate?

6. Decision: I have considered the facts of the case, grounds of appeal and submissions made by the appellant. It is seen that all the grounds raised relate to disallowance of rebate u/s 87 of the Income Tax Act hence all are adjudicated together.

6.1.2 In these grounds the appellant has challenged the rejection of the claim of Rs.16,422/- u/s 87A on STCG of Rs.1,09,842/-. The appellant has submitted that her total income was less than Rs.7,00,000/- and hence as per with clause (a) to proviso to section 87A the appellant was eligible for rebate on her whole income of Rs.5,40,668/-. The appellant has also referred to the decision of Hon'ble Supreme Court in the case of Sunil Bakht v. Asst. Director of Income-tax [2024] 167 taxmann.com 267 (SC) wherein it was held that the technological impediment cannot be a reason for harassing an assessee year after year and that the government should upgrade its software to correct the mistake.

6.1.3 The submission made is considered. It is seen from the return that the total income of the appellant, inter-alia, comprised of Rs. 1,09,842/- of STCG u/s 111A and Rs. 12,853/- of LTCG u/s 112A. The appellant had claimed the rebate of Rs.22,339/- on such STCG income of Rs.1,09,840/- However, the AO, CPC had restricted the rebate to 5,917/-. Before adjudicating the issue it will be apposite to refer here section 87A which provides for allowance of rebate of Income Tax in case of certain individuals-

Rebate of income-tax in case of certain individuals.

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:*

²¹***[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.]

6.1.4 Further section 112A(6), which reads as under, restricts the allowance of any rebate on any income from LTCG. In the case of the appellant the LTCG is Rs 12,853/- which is below 1 lac hence exempted.

112A. (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.*

6.1.5 It may also be mentioned that no such restriction is there in section 111A which provides for tax on STCG. Section 111A reads as under-

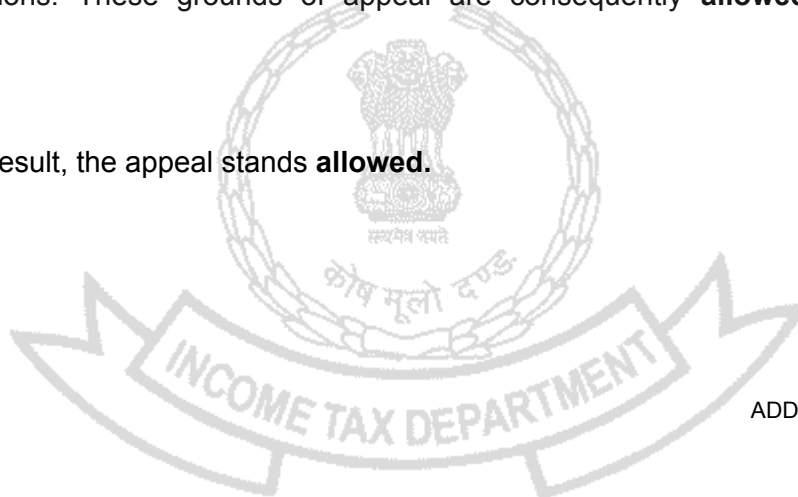
“111A

(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”

Thus the restriction on income from Long Term capital gain and short term capital gains is that the deductions under Chapter VIA will not be allowed on such income. Since section 87A is incorporated in Chapter VIII the above provision is not applicable in this case.

6.1.6 Thus, a composite reading of section 87A r.w.s.111A r.w.s. 112A does not bar the appellant from claiming rebate u/s 87A. In view of the above discussion and also for the fact that the appellant has continued the option exercised u/s 115BAC, it is held that the AO, CPC had erred in restricting the rebate u/s 87A. The AO is directed to allow the deduction u/s 87A as per provisions. These grounds of appeal are consequently **allowed for statistical purpose**.

7. In the result, the appeal stands **allowed**.



UODAL RAJ SINGH
ADDL/JCIT (A)-6 MUMBAI

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