

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.2447/Kol/2016

(निर्धारणवर्ष / Assessment Year : 2011-12

Jayanta Lamp Industries Pvt. Ltd. T-70, Teghoria, P.O.-Hatiara, Kolkata- 700059	Vs.	ACIT, CPC (Bangalore) (Jurisdiction) ITO, Wd- 11(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACJ 8332 M		
(अपीलार्थी/Assessee)	..	(प्रत्यर्थी / Respondent)

निर्धारितकीओरसे /Assessee by : Shri Anil Sharma, Advocate

राजस्वकीओरसे /Revenue by : Shri Nicholas Murmu, JCIT

सुनवाईकीतारीख/ Date of Hearing : 14/06/2017

घोषणाकीतारीख/Date of Pronouncement 07/ 07/2017.

देश / ORDER

Per Dr.Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Id. Commissioner of Income Tax(Appeals)-15, Kolkata, in Appeal No. 700/CIT(A)-15/15-16/CPC/R&T/Kol,dated 28.09.2016, which in turn arises out of an order passed by the ACIT, CPC, Bangalore, u/s 143(1)/154 of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 13.06.2012.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income electronically for assessment year 2011-12. Thereafter, the assessee field an application u/s 154 of the Act to CPC

Bangalore, for rectification of mistake. The assessee had claimed deduction of Rs. 24,11,826/- u/s 80-IC of the Act, which has been denied by the CPC, Bangalore while processing the return of income. Since, the assessee's application u/s 154 has not been considered by the CPC, Bangalore therefore, the assessee filed an appeal before the Commissioner of Income-tax (Appeal). Before the Commissioner of Income-tax(Appeal), the assessee submitted the copy of the return filed and audit report in Form No.3CD. The assessee has not filed report in Form No. 10CCB and it was informed by the assessee that this report was not obtained and that is why the assessee could not upload the audit report of 10CCB electronically. Since, the assessee neither filed the Form No. 10CCB electronically nor he submitted manually before the Ld. CIT(A) therefore, Ld. CIT(A) denied the claim of the assessee u/s 80-IC of the Act.

3. Not being satisfied with the order of the Ld. CIT(A) the assessee is in appeal before us and has taken following grounds of appeal:-

1. That the authorities below have erred in law and on facts in disallowing the deduction of Rs. 24,11,826/- claimed u/s 80-IC of the Income Tax Act, 1961.

2. That the impugned disallowance is in violation of principles of natural justice, equity and fair play.

4. The Ld. Counsel for the assessee has submitted, before us, that at the time of filing the income tax return, the facility to file Form No. 10CCB was not available on income tax site/portal for online uploading, therefore, the assessee could not file the Form No. 10CCB. That is, the Form No. 10CCB could not be uploaded on the income tax site/ on portal for online uploading. The ld counsel pointed out that the assessee filed its return electronically for assessment year 2011-12 where there was no provision to upload the Form No. 10CCB. The facility to upload the Form No. 10CCB started from assessment year 2012-13. Since, in the assessment

year 2011-12 there was no facility on the income tax site to upload the 10CCB audit report and therefore, the assessee could not file electronically. The Ld. Counsel also submitted that there was amendment in Rule 12A of the Income Tax Rules by way of a notification dated 11.06.2013 wherein sub-Rule 3 of Rule 12A have been amended and facility has been provided by the Government to file electronically Form No. 10CCB/report of audit. Therefore, there was no any delay on the part of the assessee.

5. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the CIT(A), which we have already noted in our earlier Para and is not being repeated for the sake of brevity.

6. Having heard the rival submission, perused the material available on record, we notice that in assessment year 2011-12 there was no any facility to upload the report of audit in Form No. 10CCB on the income tax site. The facility to upload the Form No. 10CCB on the income tax site started from assessment year 2012-13 and therefore, the assessee could not file electronically Form No. 10CCB. Considering the factual position discussed above we are of the view that this issue requires afresh examination at the end of the Ld. CIT(A), therefore, we remand the matter back to the file of the Ld. CIT(A) to adjudicate the issue after considering the submissions of the assessee and as per provisions of the Act. We also direct the assessee to appear before the Ld. CIT(A) on 03.08.2017 and for that no any separate notice should be given to him. This is to ensure that assessee should participate in appellate proceedings. We also direct the assessee to file the necessary details and information as required by the Ld. CIT(A). Accordingly, we allow the assessee's appeal for statistical purposes.

7. In the result, the appeal filed by the assessee, is allowed for statistical purposes .

Order pronounced in the open court on this 07/ 07/2017.

Sd/-

Sd/-

(A.T. VARKEY)

(DR. A.L.SAINI)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता/Kolkata; दिनांक Dated 07/ 07/2017.

SB, Sr.PS.

देशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee- Jayanta Lamp Industries P Ltd.
2. प्रत्यर्थी/ The Respondent.-ACIT, CPC, Bangalore(Jurisdiction) ITO, Wd-11(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

By Order

**Senior Private Secretary
Head of Office/D.D.O,'
I.T.A.T., Kolkata Benches,
Kolkata**