

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMC', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपीलसं./ITA No. 829/Chd/2018

निर्धारणवर्ष / Assessment Year : 2011-12

M/s Shree Ganesh Concast Group of Industries, Industrial Area, Sansarpur Terrace, Distt. Kangra (H.P.)	Vs. बनाम	The DCIT, Circle- Palampur, (H.P.)
स्थायीलेखासं./PAN NO: ABGFS0856H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh Ashray Sarna, CA

राजस्वकीओरसे/ Revenue by : Sh. Manjit Singh, CIT DR

सुनवाईकीतारीख/Date of Hearing : 06.06.2019

उदघोषणाकीतारीख/Date of Pronouncement : 06.06.2019

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 26.03.2018 of the Commissioner of Income Tax(Appeals), Palampur [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the order passed by the Hon'ble CIT(A) dated 26.03.2018 is against the law and facts of the case.*
2. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s*

147/144 and without complying with the mandatory conditions u/s 147/148/151 as envisaged under the Income Tax Act, 1961.

- 3. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in disallowing the benefit of deduction u/s 80IC amounting to Rs.30,17,900/-, as earlier wrongly claimed by the assessee u/s 80IB of the Act, without giving adequate opportunity of being heard and without observing the principles of natural justice.*
- 4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of deduction u/s 80IC of Rs.30,17,900/- without considering the fact that return was filed within extended period of sub section(4) of Section 139., is bad in law and against the facts and circumstances of the case.*
- 5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

3. A perusal of the above grounds of appeal reveals that the assessee in this appeal has agitated the reopening of the assessment u/s 147 of the Income Tax Act, 1961 (in short 'the Act') as well as the additions made by the Assessing Officer and further confirmed by the CIT(A) on merits.

4. Ground No.1 is general in nature .

5. The Ld. Counsel for the assessee has not addressed any arguments on the validity of re-assessment u/s 147 of the Act. Hence, ground No.2 of the appeal is dismissed as 'not pressed'.

6. Now coming to the issues on merits raised vide ground No. 3 & 4 of the appeal, the Ld. Counsel for the assessee has submitted that the impugned additions have been made by the Assessing Officer by disallowing the deduction claimed by the assessee u/s 80IB of the Act. The Assessing Officer held that the assessee is not entitled to deduction u/s 80IB of the Act and further the assessee had not filed the return of income within the stipulated period as provided u/s 139(1) of the Act.

7. The Ld. Counsel for the assessee has submitted that so far as the denial of claim of deduction u/s 80IB of the Act is concerned, the assessee, otherwise, is entitled to deduction u/s 80IC of the Act also. He has further submitted that even in the subsequent assessment years, on identical issue, the matter has been restored to the file of the Assessing Officer with a direction to examine as if the assessee is entitled to deduction u/s 80IC of the Act and if found so eligible, allow the deduction to the assessee accordingly. He has, therefore, submitted that mere mentioning of wrong section does not disentitle the assessee from claiming deduction, if the assessee is otherwise eligible, as such deduction provisions have been enacted for promotion of certain industries in economic backward area and, hence, are beneficial provisions.

8. So far as the observation of the Assessing Officer that the return of income has been filed beyond the period of limitation u/s 139(1) of

the Act, the Ld. Counsel for the assessee has submitted that though there is a delay of only one day in filing the return of income beyond the period stipulated u/s 139(1) of the Act, however, the return was filed within the extended period as provided u/s 139 (4) of the Act. That vide decision of the Coordinate Chandigarh Bench of the Tribunal in the case of 'Symbiosis Pharmaceuticals (P) Ltd. vs DCIT' reported in (2017) 51 CCH 0632 (Chd-Trib), it has been held that the claim of the assessee of deduction could not be ousted if the return has been filed within the extended period of sub section (4) of section 139 of the I.T. Act. The Ld. Counsel, has further submitted that the delay of one day in filing the return beyond the limitation period prescribed u/s 139(1) of the Act has occurred due to circumstances beyond the control of the assessee and of his counsel. That the counsel for the assessee tried to upload the return of income on 30.9.2011, which was required to be e-filed, however, due to technical glitches, the counsel for the assessee could not upload the return of income. The Ld. Counsel for the assessee in this respect has relied upon the certain computer generated information which shows that the counsel for the assessee had tried to upload the return on 30.9.2011 and an 'XML' file was also created. That the return of income was immediately filed on the next date. The Ld. Counsel, therefore, has submitted that the assessee could not be denied deduction for delay of one day in filing the return of income beyond the

limitation period prescribed u/s 139(1) of the Act, which was beyond the control of the assessee.

9. The Ld. DR, on the other hand, has relied on the findings of the lower authorities.

10. Considering the rival contentions and also considering the decision of the Coordinate Bench of the Tribunal in the case of 'Symbiosis Pharmaceuticals (P) Ltd. Vs DCIT' (supra), I am of the view that the delay of 01 day in on-line filing of the return occurred not due to any negligence of the assessee, rather, the reason for the same was beyond the control of the assessee. Even otherwise, the return has been filed within extended period as provided u/s 139(4) of the Act. In view of this, the matter is restored to the file of the Assessing Officer to examine the limited aspect as to whether the assessee, otherwise, is entitled to claim deduction u/s 80IC of the Act and if so found eligible, the Assessing Officer will allow the claim accordingly irrespective of the fact that there was a delay of 01 day in filing the return of income beyond the prescribed period under the provisions of section 139(1) of the Act.

In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order dictated and pronounced in the Open Court immediately on
completion of hearing.

Sd/-

(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 06.06.2019

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar