

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.340/Bang/2019
Assessment Year: 2016-17

Smt. Neelam Pachisia 126A, Sri Ranga Complex Above Canara Banl Aswath Nagar Bengaluru-560 094 PAN NO : AEYPP4378N APPELLANT	Vs.	Deputy Commissioner of Income-tax, (CPC) Circle-6(3)(1) Bengaluru RESPONDENT
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Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri R. Premi, D.R.

Date of Hearing	:	13.03.2020
Date of Pronouncement	:	17.03.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 20-12-2018 passed by Ld CIT(A)-6, Bengaluru and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in upholding the disallowance of deduction claimed u/s 80IC of the Act while processing the return of income u/s 143(1) of the Act.

2. We heard the parties and perused the record. The facts relating to the issue are discussed in brief. The assessee is engaged in the business of production of toilet roll, hand kerchief, cleaning table

cloth, serviettes, paper napkins, wet tissues, facial tissues, etc. It filed its return of income for the year under consideration on 30-03-2017, i.e., beyond the due date specified u/s 139(1) of the Act. The assessee had also claimed deduction u/s 80IC of the Act to the tune of Rs.38,21,576/-. The return of income was processed u/s 143(1) of the Act on 25.06.2017 by disallowing the claim of Rs.38,21,576/- made u/s 80IC of the Act. The assessee challenged the same by filing appeal before Ld CIT(A).

3. Before Ld CIT(A), the assessee submitted that the audit report for claiming deduction u/s 80IC was filed in time, but the return of income could be filed belatedly, as the assessee did not have adequate funds to pay self assessment tax. The assessee, by placing reliance on certain case laws, contended that the deduction u/s 80IC should be allowed. However, the Ld CIT(A) noticed that the provisions of sec.143(1)(v) specifically states that the deduction u/s 80IC shall be disallowed, if the return of income is furnished beyond the due date prescribed u/s 139(1) of the Act. Accordingly the Ld CIT(A) confirmed the disallowance. Aggrieved, the assessee has filed this appeal.

4. The Ld A.R submitted that the year under consideration is AY 2016-17 and the clauses (iii) to (vi) was inserted into sec.143(1) of the Act by Finance Act, 2016 w.e.f. 1.4.2017. There is no doubt that clause (v) of the amended sec. 143(1) provides for disallowance of deduction claimed u/s 80IC shall be disallowed, if the return of income is furnished beyond the due date prescribed u/s 139(1) of the Act. However, the said clause was inserted with effect from 1.4.2017 and hence, the amended provisions shall apply only from AY 2017-18. Since the year under consideration is AY 2016-17, the above said provisions shall not apply to the year under consideration.

5. The Ld D.R, on the contrary, submitted that the return of income was processed on 25.06.2017, i.e., after 1.4.2017 and hence the claim of the assessee was rightly disallowed u/s 143(1)(v) of the Act. She further submitted that the provisions of sec. 80AC mandates that the deduction can be claimed only if the return of income is filed within the due date.

6. However, on the perusal of the provisions of sec.143(1), it was noticed that the following proviso was also inserted by Finance Act, 2016:-

“Provided that no such adjustment shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode.”

When the bench asked as to whether any intimation was given to the assessee as contemplated under the above said proviso, the Ld A.R submitted that the assessee has not received any intimation as provided under the Proviso to sec.143(1). Hence the Ld D.R was asked to find out as to whether any intimation was given to the assessee. The Ld D.R furnished a letter F.No.CPC/U-IV/Judicial/2019-20 dated 03-03-2020, wherein it was stated that no intimation was given to the assessee. It was also stated that the year under consideration being AY 2016-17, no such intimation needs to be given.

7. We have noticed that the return of income of the assessee pertaining to AY 2016-17 was processed u/s 143(1) on 25.06.2017, i.e., after the date of insertion of clause (v) to sec. 143(1), i.e, after 1.4.2017. The contention of the revenue is that, if processing of return of income of any assessment year is done after 1.4.2017, then the provisions of clauses (iii) to (vi) inserted w.e.f. 1.4.2017 can be applied. In that case, in our view, the proviso mandating giving of intimation to the assessee to the proposed adjustment should have

also been followed by the revenue. It is so because, the said proviso was also inserted in sec.143(1) along with clauses (iii) to (vi) by Finance Act, 2016. Since no such intimation was given to the assessee, the impugned adjustment is liable to be deleted. The Ld D.R invited our attention to the provisions of sec.80AC of the Act. However, the controversy here is related the power of the AO in processing return of income u/s 143(1) of the Act. Hence we are of the view that we need not examine the provisions of sec.80AC of the Act at this stage.

8 Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of deduction claimed u/s 80IC of the Act.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17.3.2020

Sd/-

(Pavan Kumar Gadale)
Judicial Member

Sd/-

(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 17th March, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.