

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-2": NEW DELHI  
(Through Video Conferencing)**

**BEFORE  
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No. 7874/Del/2019  
Asstt. Year 2015-16

Bhisham Kumar Gupta C-7/10, Yamuna Vihar, New Delhi – 110 053 (Appellant)	Vs.	ITO, Ward 4(2) New Delhi. (Respondent)
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Assessee by:	Shri K. Sampat, Sr. Advocate
Department by :	Ms. Shivani Bansal, Sr. DR
Date of Hearing	04/01/2021
Date of pronouncement	04/01/2021

**ORDER**

**PER R.K. PANDA, AM**

This appeal filed by the assessee is directed against the order dated 24<sup>th</sup> April, 2019 passed by Ld. CIT(A) -2, New Delhi relating to assessment year 2015-16.

2. The only effective ground raised by the assessee reads as under :-

*“On the facts and in the circumstances of the case and in law the Ld. CIT(Appeals) erred in confirming the addition made by the Assessing Officer in a sum of Rs. 16,68,754/- by disallowing claim u/s 80JJA of the Income Tax Act, 1961.”*

2. There is a delay of 365 days in filing of the appeal before the Tribunal. The assessee has filed an application seeking condonation of delay stating that in the later years the AO has accepted the assessee's plea on the point of dispute in this appeal and therefore under the genuine impression that the dispute in this case was amenable to rectification, the assessee preferred a rectification application before the Ld. CIT(A) on 27<sup>th</sup> June, 2019. That application stands rejected vide order dated 29<sup>th</sup> July, 2019. The assessee thereafter filed an appeal before the Ld. CIT(A) and there is neither any in-deligence nor any sinister motivation in filing the appeal late. Ld. Counsel for the assessee submitted that the nominal delay is due to bonafide reasons. Relying on various decisions he submitted that the delay in filing of the appeal should be condoned.

3. After hearing the Ld. DR and after considering the contents of the condonation application, the delay in filing of this appeal is condoned and the appeal is admitted for adjudication.

4. Facts of the case, in brief, are that the assessee is an individual and is a director of a company M/s. BAMPSL Securities Ltd.. He filed his return of income on 23<sup>rd</sup> December, 2015 declaring total income of Rs. 3,09,030/-. The AO completed the assessment u/s 143 (3) on 30<sup>th</sup> December 2017 determining the total income of the assessee at Rs. 19,77,780/- wherein he disallowed the claim of Rs. 16,68,754/- made by the assessee u/s 80JJA in absence of complete note on collection/processing and treatment of biodegradable waste and supporting evidence.

4.1 In appeal the Ld. CIT(A) sustained the disallowance made by the AO by observing as under :-

*“6.5 During the appellate proceedings, the appellant has submitted that its returns in subsequent years were processed u/s 143(3) in A.Y. 2017-18 and assessed u/s 143(3) in A.Y. 2016-17 accepting returned income. However, no documentary evidence was produced to prove its case and counter the findings of the AO.*

*I do not find any reason to interfere with the order of the AO. The ground is dismissed.”*

5. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

6. I have heard the rival arguments made by both the sides, perused the order of the AO and Ld. CIT(A) and the paper book filed on behalf of the assessee . I find, the AO in the instant case disallowed the claim of deduction u/s 80JJA on the ground that the assessee did not file complete note on collection/processing and treatment of biodegradable waste and other supporting evidences. I find before the Ld. CIT(A) the assessee pleaded that the AO in the subsequent years i.e. assessment year 2016-17 and 2017-18 has allowed such claim. However the Ld. CIT(A) rejected the claim of the assessee in absence of any documentary evidence produced before him to counter the findings of the AO. It is the submission of the Ld. Counsel for the assessee that given an opportunity, he is in a position to file the necessary details. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to grant one final opportunity to the assessee to submit the assessment orders for assessment year

2016-17 and 2017-18 and other documentary evidences as required by him for deciding the appeal. Ld. CIT(A) shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. Grounds raised by the assessee are accordingly allowed for statistical purposes.

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

**Order pronounced in the open court at time of hearing itself i.e. on 04<sup>th</sup> January, 2021.**

**sd/-**

**(R.K. PANDA)  
ACCOUNTANT MEMBER**

Dated: 04/01/2021

**Veena**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	04/01/2021
Date on which the typed draft is placed before the dictating Member	04/01/2021

Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	