आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./**I.T.A. No.987/Chny/2019**
निर्धारण वर्ष/Assessment Year: 2012-13

M/s. Sucram Pharmaceuticals Private Limited, H37J, Manthoppu Colony, 8th Avenue, Ashok Nagar, Chennai 600 083.	Vs.	The Income Tax Officer, Corporate Ward 6(4), Chennai.

[PAN:AAKCS2196J]

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Sheila Parthasarathy, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	31.10.2022
घोषणा की तारीख /Date of Pronouncement	:	04.11.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 15, Chennai dated 30.01.2019 relevant to the assessment year 2012-13.

2. Facts are, in brief, that the assessee is in the business of manufacturing of medicines and drugs and filed its return of income for the assessment year 2012-13 on 30.03.2013 admitting NIL income. The case was selected for scrutiny by CASS and after following due

procedure, the assessment under section 143(3) of the Income Tax Act, 1961 [“Act” in short] dated 30.03.2015 was completed by making disallowance of ₹.44,25,514/- under section 80IC of the Act. In the assessment order, the Assessing Officer has noted that the return of income for the assessment year 2012-13 was e-filed only on 30.03.2013, thereby, the assessee company has failed to e-file the return of income within the due date specified as per section 139(1) of the Act. The Assessing Officer has also noted that under section 80IC of the Act, the assessee shall not be entitled to deduction if the return of income is not furnished within the due date as per section 139(1) of the Act. The CBDT empowers as per section 139(1) of the Act to prescribe the manner in which the return of income is filed. Proviso (ab) of sub-rule (3) of Rule 12 clearly specifies that the return of income for the assessment year 2010-11 and subsequent assessment years in the case of a company required to furnish the return of income in ITR-6 and shall furnish the return electronically with digital signature. It is amply clear that the return of income should have been e-filed with digital signature for availing deduction under section 80IC of the Act. The Assessing Officer, further noted that the ITAT has rejected the claim of deduction under section 80IC of the Act for the assessment year 2011-12 on the following grounds:

> 1. *The assessee has filed e-return belatedly and not filed any manual return of income before the due date.*
> 2. *The benefit of ignorance of tax consultant was given to the assessee in AY 2010-11.*
> 3. *After committing the mistake once, if the same mistake is committed again in the next AY, it is unpardonable.*

2.1 For the Assessment year 2012-13, the assessee has filed e-return of income on 30.03.2013, i.e., beyond the due date. Thus, the assessee company has failed to e-file the return of income or manual filing within the due date specified as per section 139(1) of the Act. Hence, it is clear that the facts of assessment year 2012-13 are similar to the facts for assessment year 2011-12. Accordingly, by following the Tribunal order in assessee's own case for the assessment year 2011-12, the Assessing Officer has held that the assessee is not eligible to claim deduction under section 80IC of the Act for the assessment year 2012-13 and disallowed the claim under section 80IC of the Act of ₹.44,25,514/-. On appeal, the ld. CIT(A), by following assessee's own case for the assessment year 2011-12, confirmed the order of the Assessing Officer.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee has submitted that the assessee is eligible for claiming deduction under section 80IC of the Act and the same may be granted.

4. On the other hand, the ld. DR relied on the decision in assessee's

own case for the assessment year 2011-12 and supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has e-filed its return of income for the assessment year 2012-13 on 30.03.2013, i.e., beyond the due date. However, the assessee company has failed to e-file the return of income or manual filing within the due date specified as per section 139(1) of the Act. By following the order of the Tribunal in assessee's own case for the assessment year 2011-12, the Assessing Officer disallowed the claim of deduction under section 80IC of the Act. We have perused the decision of the Tribunal in assessee's own case for the assessment year 2011-12 in I.T.A. No. 808/Mds/2014 dated 18.08.2014, wherein, the Tribunal has observed and held as under:

> *"7. In the AY.2011-12, we find that the assessee has filed return of income under e-mode on 12-12-2011, whereas the due date for filing return of income u/s.139(1) was 30-09-2011. Unlike AY.2010-11, the assessee has not filed manual return of income before the due date. No plausible reason has been given by the assessee for furnishing return of income after the elapse of due date. The only reason put forth is, the tax consultants of the assessee, M/s.Mathi & Associates were not fully aware of the fact that the return has to be filed before 30th September of every year. We are unable to accept the reason given by the assessee for delay in filing of the return. AY.2010-11 was the first year in which, furnishing of return electronically under digital signature was made mandatory. There were chances that the tax consultants may not be aware of the amended provisions in the first AY. The benefit of ignorance of tax consultants was given to the assessee in AY.2010-11. After committing the mistake once, if the same mistake is committed again in the next AY, it is un-pardonable. We are of the*

opinion that the assessee does not deserve any clemency. The assessee has not complied with the provisions of section 80AC and is thus not eligible to claim deduction u/s.80-IC.

8. The ld. Counsel for the assessee in support of his contentions has placed reliance on the decision of the Hyderabad Bench of the Tribunal in the case of ITO Vs. S.Venkataiah (supra). In the said case, the delay in filing of the return was explained. The computer in which the accounts were prepared got corrupted due to virus. Despite best efforts, the data could not be retrieved in time. The entire data had to be re-entered and it was there after that the accounts were finalized and statutory audit was done. Thus, there was delay of seventy four days in filing of the return of income. The delay was beyond the control of assessee. It was the case of supervening impossibility. Therefore, in the facts and circumstances of the case, the co-ordinate bench of the Tribunal granted extension of time in filing the return of income. Whereas, in the present case, we do not find any reason of supervening impossibility. It has been mentioned in the impugned order that the audit report was received by assessee on 02-09-2011. Despite the fact that the audit report was received well in time, the assessee/the tax consultants of the assessee were sluggish in filing return of income. It is a clear case of lackadaisical approach.

The ld. Counsel for the assessee has further placed reliance on the decision of the co-ordinate bench of the Tribunal in the case of Gemini Communication Ltd., Vs. CIT (supra). We find that the facts in the case of Gemini Communication Ltd., Vs. CIT (supra) are distinguishable from the facts in the instant case. The case on which the ld. Counsel for the assessee has placed reliance relates to AY.2008-09. In that AY, it was not mandatory to file return of income electronically. The electronic returns were required to be filed only on the directions of CBDT directions. The co-ordinate bench of the Tribunal under such situation observed:

> *"12. ……………..As argued by the learned counsel appearing for the assessee, the statute consisting of Act and Rules speak of filing of return before due date and contents of that must be furnished in that return. The format has been prescribed by the Rules and also the contents have been prescribed by the Rules. Filing of the return also has been prescribed by the Act. Nowhere in the Act or Rules, there is a mandatory provision that the return must be filed only electronically. This compulsion has been made as a result of the direction issued by the CBDT. As rightly argued by the learned counsel, the direction of the CBDT cannot go beyond the Act and Rules. It cannot overtake the apparent words of the statute. Therefore, what we can hold is that filing of return electronically is a directory provision and if the return is filed manually on or before due date, such return cannot be ignored. The maximum the Assessing Officer can ask the assessee is to file the return again electronically, so that the technicality of processing is satisfied. This is only for the administrative convenience of the Income-tax department".*

The Income Tax Rules have been amended thereafter in the year 2010. As per the amended provisions of Rule 12(3)(ab) w.e.f. 09-07-2010, a company is required to furnish return of income for AY.2010-11 and subsequent AYs electronically under digital signature. In view of amendment in Rule 12 of the Income Tax Rules, the above decision of the Co-ordinate Bench will not provide any support to the case of assessee. We find no merit in the submissions of the ld. Counsel for the assessee. Accordingly, the findings of the CIT(Appeals) in impugned order for AY.2011-12 are set aside and the appeal of the Revenue is allowed.

In result, the appeal in ITA No.804/Mds/2014 is allowed for statistical purposes and ITA No.808/Mds/2014 is allowed."

6. By following the above decision of the Tribunal in assessee's own case for the assessment year 2011-12, the Assessing Officer has made disallowance of deduction claimed under section 80IC of the Act, which was rightly confirmed by the Id. CIT(A). Thus, we find no infirmity in the order passed by the Id. CIT(A). Accordingly, the ground raised by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 04th November, 2022 at Chennai.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 04.11.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.