

आयकर अपीलीय अधिकरण
पटना 'डीबी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

डॉ. मनीष बोरोड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before
**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SRI SONJOY SARMA, JUDICIAL MEMBER**

I.T.A. Nos.: 222 & 223/Pat/2018
Assessment Years: 2015-16 & 2016-17

DCIT, Circle-1, Patna.....Appellant

Vs.

**M/s. Galpha Laboratories Ltd.....Respondent
[PAN: AABCG 2175 Q]**

Appearances by:

Sh. Sanjay Mukherjee, CIT D/R, appeared on behalf of the Revenue.

Sh. Rakesh Kumar, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : October 13th, 2022

Date of pronouncing the order : November 9th, 2022

आदेश
ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed by the Revenue pertaining to the Assessment Years (in short "AY") 2015-16 & 2016-17 are directed

against separate orders passed u/s 250(6) of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals)-1, Patna [in short ld. "CIT(A)"] dated 15.06.2018.

2. The Revenue is in appeal before this Tribunal raising the following grounds:

Assessment Year 2015-16:

"(1) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in granting relief to the assessee on account of allowing deduction u/s 80IC of the Income Tax Act, 1961.

(2) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in relying upon the judgment in the case of Saurashtra Cement and Chemical Industries 203 ITR 540, as the ratio of judgment is not applicable in this case."

Assessment Year 2016-17:

"(1) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in granting relief to the assessee on account of allowing deduction u/s 80IC of the Income Tax Act, 1961.

(2) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in relying upon the judgment in the case of Saurashtra Cement and Chemical Industries 203 ITR 540, as the ratio of judgment is not applicable in this case."

3. The common issue raised by the Revenue is that ld. CIT(A) erred in granting relief to the assessee on account of allowing deduction u/s 80IC of the Act. At the outset, ld. Counsel for the assessee submitted that the deduction u/s 80IC of the Act was denied by ld. AO on the sole ground that the assessee has not filed the return within due date as prescribed u/s 139(1) of the Act. He further, submitted that return of income for AY 2015-16 & 2016-17 are not belated return and rather filed within the due date as prescribed under the Act and therefore, claim u/s 80IC should

have been allowed by ld. AO/CPC and therefore, the finding of ld. CIT(A) deserves to be confirmed.

4. Per contra, ld. D/R vehemently argued supporting the order of ld. AO.

5. We have heard rival contentions and perused the records placed before us. The Revenue has challenged the finding of ld. CIT(A) for AY 2015-16 & 2016-17 allowing deduction u/s 80IC of the Act. We notice that the return filed by the assessee was processed by the CPC and deduction u/s 80IC of the Act was denied solely for the reason that return of income for both the assessment years were belated, thus invoked the provisions of Section 80AC of the Act. We find that the return of income for AY 2015-16 was filed on 19.11.2015 and for AY 2016-17 on 24.10.2016. The claim of the assessee is that for both the years under appeal, the assessee had entered into transactions which are covered within the meaning of specified domestic transactions as per Section 92BA of the Act and was required to furnish an Audit report on Form-3CE as required u/s 92BA of the Act and for such category of the assessee the due date of filing the return u/s 139(1) of the Act is 30th day of November of the assessment year and therefore, the due date for AY 2015-16 & 2016-17 was 30th November, 2015 & 30th November, 2016 and the assessee has filed the return of income for these two assessment years on 19.11.2015 & 24.10.2016 respectively which were well within the due date prescribed u/s 139(1) of the Act and therefore, the conditions of Section 80AC of the Act stands fulfilled.

6. We, therefore, under the given facts and circumstances of the case, are of the considered view that since the claim u/s 80IC of the Act was denied by the CPC only for the reason that return filed by the assessee was belated, we deem it fit to restore the issue raised in the instant appeal to the file of the jurisdictional Assessing Officer who shall examine the veracity of the claim made by the assessee of having filed the return of income within the due date and decide in accordance with law.

7. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

Kolkata, the 9th November, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 09.11.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **DCIT, Circle-1, Patna.**
2. **M/s. Galpha Laboratories Ltd., 2nd Floor, Jagdish Bhawan Exhibition Road, Patna-800 001.**
3. CIT(A)-1, Patna.
4. CIT-
5. CIT(DR), Patna Bench, Patna.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata