

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

[CONDUCTED THROUGH VIRTUAL COURT]

**BEFORE: SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
And SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

ITA No. 822/Ind/2018 Assessment Year 2015-16

The ACIT, Central-I, Bhopal (Appellant)	Vs	M/s. Bansal Construction Work Pvt. Ltd., E-2/88 Arera Colony, Bhopal (Respondent)
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**Assessee by: Shri Anil Khabya, A.R.
Revenue by: Shri P.K. Mitra, CIT-D.R.**

Date of hearing : 13-10-2022
Date of pronouncement : 11 -01-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2015-16, arises from order of the CIT(A)-3, Bhopal dated 16-07-2018, in proceedings under section 143(1) of the Income Tax Act, 1961; in short "the Act".

2. The Department has raised the following grounds of appeal:-

“On the facts and in the circumstances of the case, the Ld CIT (A)-3 has erred in:-

1. On the fact and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 15,39,20,130/- made by the A.O., CPC (Bangalore) on account of disallowance of deduction u/s 80IA(4).”

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of development and construction of roads. The assessee has entered into “specified domestic transaction” during the year. The assessee filed return of income for A.Y. 2015-16 on 30-11-2015 declaring gross total income at Rs. 38,48,00,317/- and claimed deduction u/s. 80IA(4) of the Act of Rs. 15,39,20,130/-. Subsequently, the assessee filed revised return of income on 24-12-2015 at the same total income, however, in the said return it claimed credit of self-assessment tax of Rs. 4,50,04,500/- as against Rs. 4500/- claimed in the original return. As the assessee paid self-assessment tax of Rs. 4,50,00,000/- after filing of original return, so assessee revised return to claim credit of this amount.

3.1 Thereafter, CPC, Bangalore processed the original return on 08-12-2016 and disallowed the claim of deduction u/s. 80IA(4) of the Act of Rs. 15,39,20,130/-.

4. Before CIT(A), the assessee submitted that CPC has erred in not granting deduction u/s. 80IA(4) of the Act since the assessee company entered into “specified domestic transaction” as defined u/s. 92BA of the

Act and the assessee was required to file audit report u/s. 92E of the Act. Therefore, as per clause (aa) of section 139(1), Explanation (2), the due date for filing return of income for the assessee is the 30th November of the assessment year. Accordingly, the assessee submitted that during the year under consideration there was no delay in filing of return on the part of the assessee and accordingly Id. CIT(A) allowed the assessee's claim of deduction u/s. 80IA(4) of the Act.

5. The Department is in appeal before us against the order passed by the Id. CIT(A).

6. Before us, the limited issue for consideration is whether the assessee has in the instant set of facts filed the return of income within the due date as specified under the Act. We observe that assessee has entered into "specified domestic transaction" and the assessee was required to file Audit Report u/s. 92E of the Act. The above facts have not been disputed by the Department. Accordingly, the Id. CIT(A) has held that in view of the above facts and specific language of section 139(1), Explanation 2 (aa), the due date of filing of return in case of an assessee who is required to furnish a report referred to u/s. 92E is 30th November of the assessment year and therefore Id. CIT(A) allowed the assessee's appeal with the following observations:-

"Basically ground #1 to 2 are related to first issue pertaining to not granting the deduction u/s 80IA(4) of the Act and ground # 3 & 4 are pertaining to non-grant of credit for self-assessment tax Rs.4,50,00,000/-. As already discussed earlier, the assessee filed return of income on 30.11.2015 claiming deduction u/s 80IA(4) of the Act to the tune of Rs.15,39,20,130/-. It has been observed that while

processing the return u/s 143(1) of the Act, claim for deduction u/s 80IA(4) was rejected because as per CPC return was filed after the "due date". Ld. AR has pointed out that CPC erred in treating the said return as belated whereas the same was within time. It has been contended that since during the year under consideration, the assessee company entered into "specified domestic transaction" defined u/s 92 BA of the Act, assessee was required to file Audit Report u/s 92E of the Act. Therefore, as per clause (aa) of section 139(1) Explanation 2 "due date" for the assessee is 30th November of the assessment year. The assessee has filed copy of Audit Report in Form 3CB u/s 92E of the Act in order to support his claim about 'due date'. On the basis of documents made available, I have no hesitation in holding that 'due date' for filing of return for the assessee was being 30.11.2015 for A.Y. 2015-16 and return was also filed on 30.11.2015, hence, the same was within time. Therefore, CPC, Bangalore was not justified in disallowing the claim for deduction u/s 80IA(4) of the Act treating the return belated by invoking the provision of section 80AC of the Act. In view of the above, I hereby direct the AC to grant deduction of Rs. 15,39,20,130/- u/s 80IA(4) of the Act as claimed in the return. Hence, grounds # 1 to 2 are allowed."

6.1 In the instant facts, we find no infirmity in the order of the Id. CIT(A) who, in our view, has correctly observed that since in the instant set of facts, the assessee has filed the return of income within the due specified date u/s. 139(1), Explanation 2(aa) of the Act and accordingly, the assessee is eligible for claiming deduction u/s. 80IA(4) of the Act.

7. In the result, the appeal of the Department is dismissed.

Order pronounced as per Rule 34 of I.T.A.T Rules, 1963 on .11/01/2023

Order pronounced in the open court on/...../2023
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Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Ahmedabad : Dated 11/01/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Sr. Private Secretary,
Income Tax Appellate Tribunal,
Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	10/01/2023
2) Date on which the typed draft is placed before the Dictating Member & Other Member	10/01/2023 (dictation notebook attached)
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/01/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/01/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/01/2023
6) Date on which the file goes to the Bench Clerk	/01/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	

a.k