

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1820/Del/2020  
(Assessment Year : 2018-19)

Ambience Holiday Resorts Ltd., HS 24, Kailash Colony Market, New Delhi-110048  <b>PAN No. AADCA 5494 Q</b> <b>(APPELLANT)</b>	Vs.	DCIT Circle – 2(2) New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri Yogendra Singh, C.A.
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	09.05.2023
Date of Pronouncement:	15.05.2023

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 24.08.2020 of the Commissioner of Income Tax (Appeals)-I, New Delhi relating to Assessment Year 2018-19.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of running Hotel at Manali, Himachal Pradesh. Assessee electronically filed its return of income for A.Y. 2018-19 on 29.10.2018 declaring total income at Rs.72,77,110/- after claiming deduction of Rs.4,57,671/- u/s 80IC of the Act. In the intimation issued u/s 143(1) of the Act, AO denied the claim of deduction u/s 80IC of the Act and also made disallowance of delayed payment of PF/ESI. He thus determined the total income at Rs.78,20,860/- as against the returned income of Rs.72,77,110/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO and dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal and is aggrieved by; (i) denial of claim of deduction u/s 80IC of the Act amounting to Rs.4,57,671/- and (ii) disallowance of delayed payment amounting to Rs.86,080/-.

6. With respect to the claim of deduction u/s 80IC of the Act, before us, Learned AR submitted that the auditor of the assessee tried to file Form 10CCB on 29.10.2018, the day on which it had uploaded the return of income but due to the technical reasons. Form 10CCB could not be uploaded before filing of return of income. Assessee thereafter again tried to file Form 10CCB on

30.10.2018 and on 30.10.2018, assessee could upload Form 10CCB. Before us, Learned AR stated that assessee has claimed deduction u/s 80IC of the Act since A.Y. 2011-12, and A.Y. 2018-19 is the 8<sup>th</sup> year of deduction and further submitted that the amount of deduction was duly certified by the Chartered Accountant in Form 10CCB which was required for claiming deduction u/s 80IC of the Act. He submitted that since the Form 10CCB was uploaded after a day of filing of return of income but before the intimation order was passed u/s 143(1) of the Act, therefore, assessee could not be denied the benefit of deduction u/s 80IC of the Act. In support of his contentions, he also placed reliance on the decision of Hon'ble Apex Court in the case of **G. M. Knitting Industries Pvt. Ltd. reported in 376 ITR 456 (SC)**. He further placed reliance on the decision of Delhi Tribunal in the case of **ACIT vs. Green dot Health Foods Pvt. Ltd. (ITA No.8414/Del/2019) order dated 09.02.2023**. He also placed on record the copy of the aforesaid decisions. He therefore submitted that since the assessee has filed the form 10CCB before the completion of assessment, the assessee be allowed the claim of deduction.

7. Learned DR on the other hand strongly supported the order of lower authorities.

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is

with respect to the denial of claim of deduction u/s 80IC of the Act. Before us, it is the submission of the Learned AR that assessee has claimed deduction u/s 80IC of the Act since 2011-12 on continuous basis, and 2018-19 is the 8<sup>th</sup> year of deduction for which the assessee i.e. eligible for deduction u/s 80IC of the Act. The aforesaid factual contentions of assessee has not been controverted by Revenue. The only reason of denying the claim of deduction u/s 80IC of the Act by the Revenue is the delayed uploading of Form 10CCB by the assessee. It is the contention of the assessee that the return of income was filed by assessee on 29.10.2018 and due to the technical glitches, Form 10CCB could not be filed on that day but it was filed on the next day i.e. on 30.10.2018. The filing of Form 10CCB on the next day of the filing of return of income is not controverted by Revenue. We find that Hon'ble Apex Court in the case of G. M. Knitting Industries Pvt. Ltd. 376 ITR 45 has held that even though Form 10CCB was not filed along with the return of income but when the same was filed before the final of assessment was made, assessee was entitled to claim deduction. Identical issue also arose before the Tribunal in the case of ACIT vs. Green Dot Health Foods Pvt. Ltd. (ITA No.8414/Del/2019 dated 09.02.2023) and the Co-ordinate Bench of Tribunal decided the issue by observing as under:

*“7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is about the denial of claim of deduction u/s 80IC of the Act by AO but allowing the claim of the assessee by CIT(A). The only reason for denying the claim of deduction u/s 80IC of the Act by AO was that the Form 10CCB was uploaded by the assessee on the website of the Income-tax Department on 10.11.2017 whereas the*

*return of income was filed on 24.10.2017 and the return of income was processed u/s 143(1) of the Act on 30.10.2018. We find that CIT(A) while deciding the issue in favour of the assessee has given the finding that though there was delay in upholding Form 10CCB but the same was uploaded before the return of income was processed u/s 143(1) of the Act. For allowing the ground of assessee, CIT(A) had relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Contimeters Electricals (P.) Ltd. [2009] 178 Taxman 422 (Delhi) and other decisions. We find that Hon'ble Apex Court in the case of CIT vs. G. M. Knitting Industries (P.) Ltd. (2017) 71 taxmann.com 35 (SC) has held even though Form 10CCB was not filed along with the return of income but when the same was filed before the final order of assessment was made, assessee was entitled to claim deduction. Before us, Revenue has not pointed to any contrary binding decision in its support nor has pointed to any fallacy in the findings of CIT(A). We, therefore, find no reason to interfere with the order of CIT(A) and thus the ground of Revenue is dismissed."*

9. We therefore, following the decision of Hon'ble Apex Court and the order of Tribunal cited hereinabove and in absence of any contrary binding decision cited by Revenue, we are of the view that assessee is entitled for deduction u/s 80IC of the Act. We therefore direct the AO to allow the claim of deduction. **Thus the ground of assessee is allowed.**

10. **Ground No.2** is with respect to disallowance of PF/ESI amounting to Rs.86,080/- due to delayed deposit.

11. Before us, at the outset, Learned AR submitted that there was delay in depositing of PF/ESI dues but at the same time it was deposited before the filing of return. He fairly conceded that the issue is against the assessee in view of the decision of Hon'ble

Apex Court in the case of **Checkmate Services Pvt. Ltd. and others vs. CIT & others (2022) 448 ITR 518 (SC)**. He therefore submitted that the issue be decided accordingly.

12. Learned DR on the other hand did not controvert the submissions made by AO and supported the order of lower authorities.

13. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of PF/ESIC dues on account of their delayed deposits. Before us, Learned AR fairly submitted that issue is covered against the assessee by the decision of Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. (supra)**. In view of the aforesaid facts, we do not find any infirmity in the order of CIT(A). **Thus the ground of assessee is dismissed.**

**14. In the result, appeal of assessee is partly allowed.**

**Order pronounced in the open court on 15.05.2023**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 15.05.2023

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI