

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.315/Bang/2023
Assessment Year : 2019-20

Shri. Dunichand Khitri Raja, #304, 16 <sup>th</sup> Cross, Sadashivnagar, Bengaluru – 560 080. <b>PAN : ADDPR 6538 G</b>	Vs.	The Assistant Commissioner of Income Tax, CPC, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ankit, CA
Revenue by	:	Shri. Sankar Ganesh K, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.06.2023
Date of Pronouncement	:	07.06.2023

**ORDER**

*Per George George K, Judicial Member:*

This appeal at the instance of assessee is directed against order of CIT(A), dated 16.03.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2019-20.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming the disallowance of claim of deduction under section 80-IA of the Act, amounting to Rs.2,43,586/-.

3. Brief facts of the case are as follows:

For the Assessment Year 2019-20, the return of income was filed on 13.09.2019 declaring total taxable income at Rs.53,42,300/-. Assessee had claimed deduction under section 80-IA of the Act, with respect to a windmill amounting to Rs.2,43,586/-. Assessee received an intimation under section 143(1) of the Act, on 02.06.2020, wherein an amount of Rs.2,43,586/- claimed as deduction under section 80-IA of the Act was not granted for the reason that Form 10CCB was not filed within the time prescribed under section 139(1) of the Act.

4. Aggrieved by the intimation under section 143(1) of the Act denying the benefit of deduction under section 80-IA of the Act, assessee preferred an appeal before the First Appellate Authority (FAA). The CIT(A) confirmed the view taken in the intimation passed under section 143(1) of the Act. The relevant finding of the CIT(A) reads as follows:

*“Considering the facts that appellant has not filed the Form no. 10CCB within the stipulated date mentioned in the Income Tax Act (i.e. To be filed within the date prescribed for filing of Income tax Return u/s 139(1) of Income Tax Act, 1961) in spite of it, the appellant has claimed the deduction u/s 80IA.*

*I concur with the addition/disallowance made by the CPC, on the above issue amounting to Rs. 2,43,586/-. Hence, appeal of the appellant is dismissed.*

*In the result, appeal of the assessee is dismissed.”*

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. The grounds raised read as follows:

**1. General Ground**

1.1 *The learned Assistant Commissioner of Income Tax, CPC, Bengaluru ('AO') erred in passing the intimation under section 143(1) of the Income Tax Act, 1961 (the Act') in the manner passed by him and the Commissioner of Income Tax-(Appeals), National Faceless Appeal Centre, Delhi ('OT(A)) has erred in confirming the said assessment order. The assessment order so passed is bad in law and liable to be quashed.*

**2. Grounds relating claim of deduction under section 80-IA**

2.1. *The learned AO and CIT(A) erred in disallowing the claim of deduction of Rs. 243,586/-under section 80-IA of the Act on the grounds that audit report in Form 10CCB was not filed within the date prescribed under section 139(1).*

2.2. *The learned AO and CIT(A) erred in not appreciating that:*

- a) *the Appellant had obtained audit report In Form 10CCB on 12.09.2019 i.e. within the due date prescribed under the Act;*
- b) *the said audit report could not be uploaded on the e-filing portal due to technical glitches which were beyond the control of the Appellant;*
- c) *claim of deduction under section 80-IA was made in the return of income filed on 13.09.2019 i.e., within the due date as specified under section 139(1) in accordance with the provisions of section 80A(5).*
- d) *Without prejudice, the belated filing of the form, if any, is merely a procedural error and cannot be a ground to bar the claim of deduction under section 80- IA of the Act;*

2.3. *On the facts and circumstances of the case and in law', the disallowance of deduction under section 80-IA amounting to Rs. 243,586 is bad in law and liable to be quashed in its entirety.*

*In the view of above grounds and other grounds to be adduced at the time of hearing, the Appellant prays that the order passed by the NFAC be quashed or in the alternative, the relief prayed for as above be allowed.*

6. Assessee has filed two sets of Paper Books enclosing therein the financial statement for the relevant year, the audit report filed in Form 3CB-3CD for Assessment Year, copy of Form 10CCB, copy of the statement of the total income, copies of the communication during the course of proceedings before the CIT(A), copies of the case laws relied on, etc. The learned AR reiterated the

submissions made before the Income Tax authorities and submitted that the issue in question is squarely covered by the Co-ordinate Bench of the Bangalore Bench of the Tribunal in the case of Jitendra Kumar Nahata Vs. JCIT in ITA No.41/Bang/2022, order dated 13.05.2022.

7. The learned DR supported the order of the CIT(A).

8. We have heard the rival submissions and perused the material on record. Assessee had set up a windmill which is eligible for deduction under section 80-IA of the Act. Assessee had got the books of accounts audited with reference to the windmill established and obtained the audit report in Form No.10CCB on 12.09.2019 (due date of filing the return under section 139(1) was 31.10.2019). Admittedly, in the instant case, the return of income was filed along with audit report in Form 3CB-3CD on 13.09.2019 i.e., well within the period prescribed under section 139(1) of the Act. However, due to the technical glitches, Form 10CCB could not be uploaded on e-filing portal of the Income Tax Department. Therefore, the assessee first contacted e-filing helpdesk for resolving the issue since the issue was related to non-acceptance of Form 10CCB by the e-filing system of the Income Tax Department. The assessee was suggested to approach e-filing helpdesk of the Income Tax Department. The e-filing helpdesk required a formal e-mail from the assessee in respect of the above issue and requested for a few days' time for resolution thereof. Finally, the above referred technical glitches were resolved and the said Form 10CCB was filed on 11.11.2019 with a delay of eleven days. The reasons for non-filing of Form 10CCB along with return of income was on account of reasons beyond the control of the assessee and should not act as a bar to the allowability to the claim of deduction under section 80-IA of the Act. The assessee admittedly is otherwise eligible for the claim of deduction under section 80-IA of the Act. On identical facts of the case,

the Bangalore Bench of the Tribunal in the case of Jitendra Kumar Nahata Vs. JCIT (supra) held that when return has been filed within the specified due date under section 139(1) of the Act and the tax auditor has also certified the deduction in Form 3CD, only for want of non-filing of Form 10CCB within the due date is not fatal to the said claim. The relevant finding of the Tribunal reads as follows:

*“10. Considering the above judgment, since the assessee had filed its return of income before the due date, as specified u/s 139(1) of the Act for the relevant asst. year and in the return of income he has also claimed deduction. The tax Auditor has also certified the deduction claimed as per SI.No.33 of the Form No.3CD therefore, only for want of not filing Form NO.10CCB within the due date the claim of deduction should not be disallowed, to which, the assessee had filed revised return within the due date. In view of this, the assessee is eligible to claim deduction u/s 80IA. Whenever the assessee received Form No.10CCB, he revised his return of income.”*

9. In the light of the aforesaid reasoning, we hold that the assessee is entitled to claim of deduction under section 80-IA of the Act. It is ordered accordingly.

10. In the result, appeal filed by the assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(CHANDRA POOJARI)**  
**Accountant Member**

Sd/-

**(GEORGE GEORGE K)**  
**Judicial Member**

Bangalore.

Dated: 07.06.2023.

/NS/\*

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|-------------------------|---------------|
| 1. Appellants           | 2. Respondent |
| 3. CIT                  | 4. CIT(A)     |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.