

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 389/Kol/2023
Assessment Year : 2017-18

Wilson Engineering Industries Pvt. Ltd.	Vs .	DCIT, Bangalore
PAN: AAACW 2689 J		
Appellant		Respondent

Date of Hearing	06.06.2023
Date of Pronouncement	12.06.2023
For the Assessee	Shri K.M. Roy, AR
For the Revenue	Shri Vijay Kumar, Alld. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 10.03.2023 passed by the Id. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

“That the disallowance of deduction u/s 80IC is misconceived and unsustainable since original return of income was filed within the due date which is in accordance with the extant provisions of the Act.”

2. Brief facts of the case are that the assessee filed its return of income for A.Y. 2017-18 on 31.10.2017 declaring total income of Rs. 50,55,090/- and same was revised on 13.06.2018 by the assessee. However, CPC vide intimation dated 28.12.2018 u/s 143(1) of the Act determined the total income of assessee at Rs.

56,13,720/- by denying the claim of deduction of Rs. 5,58,637/- u/s 80IC of the Act.

3. Aggrieved by the above order passed by the ld. AO, assessee carried the matter before the ld. CIT(A), NFAC vide its order dated 10.03.2023 dismiss the appeal of the assessee.

4. Dissatisfied with the above order, assessee is in appeal before us.

5. At the outset, ld. counsel for the assessee submitted that the assessee had filed its original return of income on 31.10.2017 by declaring its total income at Rs. 50,55,090/- by claiming deduction of Rs. 5,58,637/- u/s 80IC of the Act. Subsequently, to it, assessee revised the same and filed a return of income on 13.06.2018 along with Form No. 10CCB. However, the claim of assessee was denied by the AO and ld. CIT(A) also sustained the order passed by the AO without taking into consideration of the fact that the assessee had already filed its original return of income on 31.10.2017 which was filed within the due date i.e. 07.11.2017 as prescribed u/s 139(1) of the Act for the A.Y. 2017-18. While taking into consideration, the return filed by the assessee, the AO had considered the revised return filed on 13.06.2018 and due to this reason the character of the return filed by the assessee turned into belated return. Therefore, the claim of the assessee u/s 80IC was denied by the AO. The ld. counsel for the assessee prayed before us that the impugned order passed by the ld. CIT(A) needs to be set aside and allow the claim of assessee of Rs. 5,58,637/- u/s 80IC of the Act. The ld. counsel to substantiate his claim, he has placed a paper book

wherein he brought to our notice to prove the fact that the copy of the original return of income filed by the assessee dated 31.10.2017 and copy of the revised return filed on 13.06.2018 along with copy of Form No. 10CCB dated 13.06.2018 to prove his case that the return of assessee was filed within due date as prescribed u/s 139(1) of the Act. In such circumstances, assessee's claim u/s 80IC cannot be denied by the authorities below.

6. We have heard the rival submissions of the parties and perused the material available on record. In the instant case, grievance of the assessee is that about the denial of claim made u/s 80IC of the Act by the AO and which was sustained by the ld. CIT(A). The only reason for denying the claim of deduction u/s 80IC of the Act on the part of authorities below is that return of income was filed by assessee belatedly i.e. on 13.06.2018. However doing so the authorities below did not looking into the fact that assessee had already filed its original return of income on 31.10.2017 which was prior to the alleged date as stated in the impugned order. Since the instant case, the assessee has produced all necessary documents before us to prove the fact that return of income was filed within the time as prescribed u/s 139(1) of the Act and placed reliance on the decision of Hon'ble Apex Court in the case of CIT vs G.M. Knitting Industries (P) Ltd. 376 ITR 456 wherein it has been held that when Form No. 10CCB is not filed with the return of income but it is filed before passing of assessment order, then in that case, the claim of deduction cannot be denied. In such circumstances, the claim made by assessee cannot be denied. Accordingly, we set aside the impugned order passed by the ld. CIT(A) and direct the AO to allow

the claim of assessee made u/s 80IC of the Act of Rs. 5,56,637/-. In terms of the above, the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12.06.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 12.06.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Wilson Engineering Industries Pvt. Ltd., Block-7B, 7th Floor, Anuj Chambers, 24, Park Street, Kolkata-700016.
2. Respondent – DCIT, CPC, Bangalore.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata