

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र) एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 217/Kol/2023
Assessment Year : 2016-17

DCIT, Centre Circle-2(3), Kolkata	Vs.	Surendra Steels Pvt. Ltd. (PAN: AAICS 6451 J)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Devesh Poddar, Advocate
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT Sr. D.R

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)- 20, Kolkata [hereinafter referred to as 'Ld. CIT(A)'] dated 13.12.2022 for the assessment year 2016-17.

2. At the outset it was observed that the appeal of the revenue is late by 15 days. We note that the filing of appeal by the revenue has to pass various stages in the hierarchy of tax administration and it was stated before us that the time taken in obtaining necessary approvals is the reason for late filing of appeal. After taking into

account the reasons explained before us for delay of 15 days in filing the appeal , accordingly we are inclined to admit the appeal by condoning the delay.

3. At the outset, the Ld. D.R submitted that the claim u/s 80IC of the Act was allowable in favour of the assessee if the return of income filed was within the due date as prescribed u/s 139(1) of the Act. The ld DR therefore contended that the Ld. CIT(A) erred in allowing deduction and the order of ld CIT(A) may kindly be reversed as the same is not in accordance with the provisions of section 80IC.

4. The Ld. A.R submitted that the sole issue involved in this appeal i.e. the deletion of addition of Rs. 3,36,68,575/- made by AO on account of disallowance u/s 80IC of the Act for the reason that return of income was filed after the due date as contemplated u/s 139(1) of the Act. The Ld. Counsel for the assessee submitted that due date for filing the return of income was 17.10.2016 as per order of CBDT passed u/s 119 of the Act dated 9.9.2016. The Ld. A.R submitted that the books of account of the assessee were audited and accordingly the assessee filed Form 3CA and 3CB on 17.10.2016. Similarly Form 10CCB in respect of eligibility of claim u/s 80IC of the Act thereto was filed on dated 17.10.2016 within due date. The Ld. A.R submitted that the assessee uploaded income tax return on 17.10.2016 due to technical reasons and last minute rush in the IT portal only XML and ITR uploaded on 17.10.2016 and ITR was uploaded early hours on 18.10.2016. The AO/CPC vide its order u/s 143(1) of the Act and subsequent order u/s 154 of the Act dated 14.07.2020 rejected the claim u/s 80IC of the Act on the ground that return was filed after the due date. The Ld. A.R submitted that similar issue was involved in AY 2019-20 by the decision of Co-ordinate Bench of Kolkata in ITA No. 78/Kol/2022 dated 20.05.2022 in assessee's own case. There Ld. A.R therefore prayed that following the same order, the appeal of the revenue may kindly be dismissed. The Ld. CIT(A) allowed the appeal of the assessee by following the decision of the Co-ordinate Bench in assessee's own case for AY 2019-20 by holding that it is debatable issue and it is not permissible u/s 143(1) to reject the claim u/s 80IC of the Act. The Ld. A.R submitted that the Ld. CIT(A) has

followed the decision of Hon'ble Karnataka High Court in the case of Uddeereswara Mining Industries vs. CIT [1993] 204 ITR 550 (Kar).

5. After hearing the rival contentions and perusing the material on record, we find that the case is squarely covered in assessee's own case in M/s Surendra Steels Pvt. Ltd. vs. DCIT in ITA No. 78/Kol/2022 for AY 2019-20 dated 20.05.2022 wherein the similar issue has been decided in favour of the assessee by holding that this is a debatable issue and cannot be the subject matter of an order which is passed u/s 143(1) of the Act. The relevant part is extracted below:

"8. We have duly considered rival contentions and perused the material available on record. To our mind there are two issues involved. First being the procedural irregularity and second the legitimate quantification for disallowance. If the adjustment has been made on the basis of first defect i.e. , for procedural irregularity then according to the decisions referred by the ld. Counsel for the assessee, this irregularity is not fatal enough to deny the claim of deduction u/s 80IC of the Act. More so, when in response to the first proposed adjustment, the assessee has reiterated submission of Form 10CCB. As far as the arguments raised by the Ld. D.R is concerned, if a disallowance is to be made after filing of Form 10CCB, then it is a debatable issue and the same is not permissible u/s 143(1) in a prima facie adjustment and the assessee should have been given a notice for that. In other words, if a disallowance is required to be established by arguments and long drawn process of reasoning on points, which there may conceivably be two opinions about, then the case should have been selected for scrutiny assessment. In view of the above discussion, we delete the disallowance of deduction u/s 80IC of the Act, made by the Assessing Officer and upheld by the Ld. CIT(A) and allow the appeal of the assessee."

Since the facts of the present case are substantially same as decided by the Co-ordinate Bench in AY 2019-20 we therefore respectfully following the same dismiss the appeal of the revenue by upholding the order of Ld. CIT(A).

6. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 9th August, 2023

Sd/-
 (Rajpal Yadav /राजपाल यादव)
 Vice-President/उपाध्यक्ष

Sd/-
 (Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 9th August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Centre Circle-2(3), Kolkata
2. Respondent – Surendra Steels Pvt. Ltd. , Charu Market, SRCB Road, Guwahati-781001
3. Ld. CIT(A)- 20, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata