

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.175/Del/2021  
(Assessment Year : 2017-18)

A. R. Industries Khasra No. 52/7, Plot No.6 Village, Pehaladpur, New Delhi - 110 042  <b>PAN No. AAOFA 2476 L</b> <b>(APPELLANT)</b>	Vs.	DCIT CPC Bengaluru  <b>(RESPONDENT)</b>
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Assessee by	Shri Amit Goel, C.A. and Shri Pranav Yadav, Adv.
Revenue by	Shri Kanav Bali, Sr. D.R.

Date of hearing:	22.01.2024
Date of Pronouncement:	25.01.2024

**PER SHAMIM YAHYA, AM :**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) - 12, New Delhi ('CIT(A) in short') dated 27.09.2019 pertaining to Assessment Year 2017-18.

2. The grounds of appeal filed by assessee, reads as under:

- “1. *On the facts and circumstances of the case and in law, the addition/adjustments of Rs.35,14,130/- made in the intimation u/s 143(1) is bad-in-law and without jurisdiction and the CIT(A) erred in not holding so.*
2. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.35,14,130/- made in the intimation u/s 143(1) on the account of disallowance of deduction u/s 80IC of the Act.*

3. *On the facts and circumstances of the case and in law, the CIT(A) erred in passing ex-parte order.*
4. *On the facts and circumstances of the case and in law, the CIT(A) erred in passing order without providing proper opportunity of being heard.*
5. *On the facts and circumstances of the case and in law, the order passed by CIT(A) is against the principles of natural justice.*

*The appellant craves leave to add one or more ground of appeal or to alter/modify the existing ground before or at the time of hearing of appeal.*

*The aforesaid grounds of appeal are without prejudice to each other.”*

3. Brief facts of the case are that in this case, the return of income was filed on 28.10.2017 declaring total income at Rs.1,04,86,560/-. The assessee received intimation under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 08.02.2019 wherein the income has been computed at Rs.1,40,00,690/-. The deduction under section 80IC of the Act has been denied on the ground that the audit report in Form No.10CCB was not filed within the due date.

4. Against this order, assessee appealed before the CIT(A). Learned CIT(A) noted as under:

*“It is submitted that the same cannot be a ground for denial of deduction u/s 80IC of the IT Act. The income tax return was filed within due time. The claim of deduction u/s 80IC alongwith the amount thereof has been duly mentioned in the return of income. The audit report in Form 10CCB has been signed by the auditors before the due date of filing of return of income. The audit report in Form No. 10CCB could not be filed due to inadvertence on the part of the auditors. It cannot be a ground for the denial of deduction u/s 80IC of the Act. The initial assessment year for*

*the claim of deduction was AY 2010-11. The deduction has been consistently allowed since then. The Appellant has enclosed the copy of the assessment orders for AY 2012-13, 2013-14 and 2014-15. The Appellant has relied on some of the decisions and has argued that the filing of the audit report is directory in nature and not mandatory. Deduction cannot be denied on the ground that audit report was not furnished or was furnished beyond the due date of filing of the return of income.”*

5. However, learned CIT(A) was not convinced and he confirmed the disallowance. Against this order, assessee is in appeal before us.

6. We have heard both the parties and perused the records. Learned Counsel for the assessee submitted that the due date of filing of return in this case was 07.11.2017. The return was filed on 29.08.2017 and the Tax audit report was also filed on 28.10.2017 and Form 10CCB on 28.05.2018. The return was processed under section 143(1) of the Act on 08.02.2019. In these circumstances, learned Counsel for the assessee pleaded that there are case laws for the proposition that if Form 10CCB is filed during the course of assessment before the final order the deduction is to be allowed. In this connection, learned Counsel for the assessee relied upon several case laws as under:

- i. CIT vs. GM Knitting Industries Pvt. Ltd. 2015(11) TMI 397 – SC Order*
- ii. ACIT vs. Green Dot Health Foods Pvt. Ltd. 2023(2) TMI 516 – ITAT Delhi*
- iii. ITO vs. Marathon India Ltd. 2018(6) TMI 1831 – ITAT Jaipur*
- iv. Rajesh Kumar Agarwal vs. DCIT 2023 (5) TMI 357 – ITAT Jaipur*
- v. CIT vs. Web Commerce (India) Pvt. Ltd. 2008 (12) TMI 13 – Delhi High Court*

7. Per contra, learned DR relied upon the order of authorities below.

8. Upon careful consideration, we find that in this case, Form 10CCB was filed before the intimation under section 143(1) dated 08.02.2019. In these circumstances, the case laws point out that deduction is to be allowed. In this regard, we may refer to Hon'ble Supreme Court decision in the case of *CIT vs. GM Knitting Industries Pvt. Ltd.* (supra) as under:

*"It would be suffice to reproduce paragraph 2 of the impugned order whereby action of the Income-tax Appellate Tribunal was held to be justified in allowing the additional depreciation as claimed by the respondent- assessee herein*

*"Additional depreciation is denied to the assessee on the ground that the assessee has failed to furnish form 3AA along with the return of income. Admittedly, form 3AA was submitted during the course of assessment proceedings and it is not in dispute that the assessee is entitled to the additional depreciation. In these circumstances, in the light of the judgment of this court in the case of *CIT v. Shivanand Electronics* reported in [1994] 209 ITR 63 (Bom), we see no merit in this appeal. The appeal is, accordingly, dismissed with no order as to costs."*

*2. We concur with the aforesaid view of the High Court and hold that even if form 3AA was not filed along with return of income but the same was filed during the assessment proceedings and before the final order of the assessment was made that would amount to sufficient compliance. These appeals are, accordingly, dismissed."*

9. Similarly, in this case of *ACIT vs. Green Dot Health Foods Pvt. Ltd.* (supra), the ITAT has considered the identical situation and held 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](http://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.”

10. In the background of aforesaid discussions and precedents, we set aside the order of authorities below and decide the issue in favour of the assessee.

11. In the result, this appeal of the assessee stands allowed.

**Order pronounced in the open court on 25.01.2024**

**Sd/-**

**(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

Date:- 25.01.2024

*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI