

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**(ITA No. 380/RPR/2023)**  
(Assessment Year: 2022-23)

Deputy Commissioner, 8 <sup>th</sup> Floor, Tower-A, CBD Complex, Atal Nagar, Nava Raipur, 492018	V S	Shri Shyam Ispat (India) Private Limited, Singhal House-10, Sector-1, Shankar Nagar, 492007, Chhattisgarh
<b>PAN: AADCS5057R</b>		
<b>(अपीलार्थी/Appellant)</b>	.	<b>(प्रत्यर्थी / Respondent)</b>
निर्धारिती की ओर से /Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से / Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	29.05.2024
घोषणा की तारीख /Date of Pronouncement	:	23.08.2024

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal is instituted at the instance of department against the order of Commissioner of Income Tax / Addl. / JCIT(Appeal), NFAC, Madurai. Which in turn arises from the intimation u/s 143(1) of the Income Tax Act 1961 (in short "The Act"), dated 29.04.2023 issued by ACIT to the Central Processing Unit (in short "CPC") to Bangaluru for the Assessment Year 2022-23.

2. The grounds of appeal raised by the department are as under:

1. Whether on facts and circumstances of the case and in law, Ld. Addl./ JCIT(A) was justified in allowing the deduction u/s 80IA of Rs. 31,92,60,329/- by condoning the delay in filing of form 10CCB which was

rightly disallowed by Ld. AO(CPC) as per provision of the Income Tax Act, 1961 due to non-filing of Form 10CCB within due date?

2. Whether on facts and circumstances of the case and in law, Ld. Addl./JCIT(A) was justified in allowing the deduction u/s 80IA on the ground that the delay in filing of Form 10CCB was due to technical glitches that are claimed to have prevailed in the Income Tax portal on the night of 31.10.2022 at the time of filing of Form 10CCB relying only upon the statement provided by the assessee in Form 35, ignoring that no evidence whatsoever has been adduced by the assessee in this regard, such as ticket raised in ITBA or screenshot of the error or e-mail sent to concerned authority or screenshot of the dialogue box / message appearing on screen declining the uploading of Form 10CCB, etc.?
3. Whether on facts and circumstances of the case and in law, Ld. Addl./JCIT(A) was justified in condoning delay in submission of Form 10CCB based on the contention that due to the technical glitches in the Income Tax Portal on 31.10.2022, the due date for filing of Tax Audit report was extended by 7 days, i.e., till 7th November 2022, ignoring that the extended due date till 7th November 2022 issued vide CBDT circular no. 20/2022 is not applicable in the case of the assessee?
4. Whether on the facts and the circumstances of the case and in law, Ld. Addl. / JCIT(A) was justified in condoning delay in submission of Form 10CCB, without considering the possibility that the case of the assessee might be covered by the provisions of section 119(2)(b) whereby the Addl. / JCIT(A) is not the prescribed authority for condonation of delay in terms of relevant CBDT Circular 9/2015 [F.NO.312/22/2015-OT], dated 9-6-2015?
5. Whether on the facts and on the circumstances of the case and in law, Ld. Addl. / JCIT(A) was justified in condoning delay in submission of Form 10CCB on the ground that the delay is 'slight' of 1 hour and 22 minutes, ignoring that there is no settled SOP / policy formulated by the Board clarifying up to what delay time may be condoned and that such ad hoc condonation brings complications and arbitrariness not only in

implementation of public policy in general but also in implementation of specified timelines in particular?

6. Whether on the facts and on the circumstances of the case and in law, Ld. Addl. / JCIT(A) was justified in condoning delay in submission of Form 10CCB in violation of the principles laid down by apex court in Commissioner of Customs (Import), Mumbai v. Dilip Kumar & company [2018] 95 taxman 327 (SC), especially that Exemption notification should be interpreted strictly"?

3. The brief facts of the case are that the assessee herein is a company, has filed its original return of income (ROI) u/s 139(1) of the Act dated 24.11.2022 declaring total income of Rs. 18,63,39,800/-. Subsequently, the ROI was processed u/s 143(1), wherein assessee's claim for deduction u/s 80IA amounting to Rs. 31,92,60,329/- was disallowed by the revenue, accordingly, the total income of the assessee was enhanced and determined at Rs. 50,56,00,130/-. Also, the TDS credit claimed by the assessee for Rs. 16,811/- was denied.

4. Aggrieved by the aforesaid disallowances, assessee preferred an appeal before the Ld. Addl. / JCIT(A), Madurai, wherein appeal of the assessee was partly allowed by the Ld. Addl. / JCIT(A), observing as under:

**4. Decision:**

**4.1 Condonation of delay in filing Form 10CCB & Deduction claimed u/s 80IA:**

*The facts of the case have been analysed and the appellant's submission have been considered. The due date for filing form 10CCB was 31.10.2022.*

*But the appellant filed Form 10CCB at 01.22 a.m. on 01.11.2022 which makes a slight delay of one hour and 22 minutes. As per the statement in form 35 filed by the appellant, the delay was due to technical glitches that prevailed in the Income Tax portal on the night of 31.10.2022 at the time of filing of form 10CCB. At this juncture, it is also relevant to note that due to the technical glitches in the Income Tax Portal on 31.10.2022, the due date for filing of Tax Audit report was extended by 7 days, i.e., till 7th November, 2022. Hence, the appellant's reasons for delayed filing of Form 10CCB due to technical glitch in Income Tax portal appears to be genuine, and therefore appellants request for condonation of delay warrants to be condoned. Accordingly, the delay in filing Form 10CCB by one day (more specifically one hour and 22 minutes) on grounds of technical glitch in the Income Tax portal is hereby condoned. Therefore, considering the technical glitch in the departmental portal on 31.10.2022 night and the fact that the due date for filing of Tax Audit report was also extended till 7<sup>th</sup> November, 2022, and also since appellant has now fulfilled meeting the mandatory requirement of filing of Form 10CCB after condonation, the assessing officer is hereby directed to allow the deduction u/s 80IA amounting to Rs. 31,92,60,329/-. Accordingly, this issue is allowed in favour of appellant.*

#### **4.2 Short Credit of TDS:**

*The CPC had not allowed TDS credit of Rs. 16,811/- while passing of intimation order u/s 143(1). In this context, the appellant had contended that the TDS credit for Rs. 16,811/- is available in Form 26AS and has also submitted the Form 26AS as evidence. The appellant's contention is verifiable from Form 26AS. It is therefore, hereby directed that assessing officer shall verify the Form 26AS for availability of TDS credit claimed by the appellant for Rs.16,811/- and accordingly after the verification allow/disallow the TDS credit claimed by the appellant in conformity with the Form 26AS. Accordingly, this ground of appeal is partly allowed subject to verification for availability of TDS Credit.*

**4.3: Levy of interest u/s 234B/234C: Charging of interest u/s 234B/234C is consequential and is therefore decided accordingly.**

**4.4: As a result, the Appeal of the Appellant is therefore partly Allowed.**

5. As the disallowance made through intimation u/s 143(1), in which the deduction u/s 80IA claimed by the assessee was denied on account of delay in filing of Form 10CCB, which was assailed in the appeal and has been allowed by the Ld. Addl./JCIT(A), NFAC condoning the delay of 1 Hour 22 Minutes in filing of the impugned statutory Form.

6. The revenue being aggrieved with such decision of Ld. Addl./JCIT(A), NFAC has carried the matter before us, which is under consideration.

7. At the beginning of the hearing, Ld. CIT-DR, Shri S. L. Anuragi on behalf of the revenue have submitted, referring to the facts and circumstances of the present case, that the Addl./JCIT(A),NFAC was not justified in allowing the deduction u/s 80IA by condoning the delay in filing of Form 10CCB, whereas Ld. AO (CPC) has rightly made the disallowance as per the provisions of the Act. It was the submission that the allowance of deduction u/s 80IA was granted on the plea of the assessee that the delay in filing of Form 10CCB was due to technical glitches prevailed in the Income Tax Portal on the night of 31.10.2022 at the time of filing of Form 10CCB. Ld. Addl./JCIT(A), NFAC had summarily accepted the contention of the assessee

as per their statement of facts furnished in Form 35, ignoring that no evidence whatsoever has been adduced by the assessee in support, such as ticket raised in ITBA or screen shot of the error or e-mail sent to concerned authority or screen shot of the dialogue box / message appearing on screen declining the uploading of Form 10CCB.

8. It is further submitted that Ld. Addl./ JCIT(A) have condoned the delay in submission of Form 10CCB believing the contention and explanation offered by the assessee that delay was occasioned due to technical glitches in the Income Tax Portal on 31.10.2022. Ld CIT-DR, further contradicting the contentions of the assessee that the income tax portal was not functioning properly and for that reason only due date of filing of Tax Audit Report was extended by 7 days till 7<sup>th</sup> November 2022 vide CBDT circular 20/2022, but such extension granted has nothing to do with the filing of Form 10CCB, therefore, such explanation cannot be helpful or applicable in the case of present assessee. Ld. CIT-DR further referring to the grounds of appeal have submitted that the condonation of delay allowed by the Ld. Addl./JCIT(A) was not justified, as the provisions of Act u/s 119(2)(b), the Addl./JCIT(A) is not empowered thus, he was not the prescribed authority for allowing the condonation of delay in terms of relevant CBDT Circular 9/2015 dated 09.06.2015.

9. Ld. CIT-DR also questioned the justification *qua* condonation delay in filing of Form 10CCB on the ground that the delay is 1 hour 22 Minutes was considered as 'slight' delay, whereas there is no settled SOP/ Policy formulated by the Board or prescribed in the law, clarifying up to how much time, the delay involved may be condoned and that such an ad-hoc condonation brings complications and arbitrariness not only in implementation of public policy in general but also in implementation of specified timelines in particular. Ld. CIT-DR placed his reliance on the case of **Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company [2018] 95 taxmann.com 327 (SC)**, wherein Hon'ble Apex Court has strictly accorded that "exemption notification should be interpreted strictly"?

10. Based on aforesaid submissions, it was the prayer of Ld. CIT-DR that the power to condone the delay was not conferred upon the Ld. Addl./JCIT(A) in terms of CBDT, Circular 9/2015 dated 09.06.2015, therefore such action of Ld. Addl./JCIT(A) was without valid jurisdiction, thus, the action of Ld. Addl./JCIT(A) was illegal and liable to be set aside. For the sake of clarity, copy of CBDT Circular No. 9/2015 is furnished before us, the same is extracted as under:

*SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX  
AUTHORITIES INSTRUCTIONS TO SUBORDINATE AUTHORITIES -  
CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF  
CARRY FORWARD LOSSES UNDER SECTION 119(2)(b)*

*CIRCULAR 9/2015 [F.NO.312/22/2015-OT], DATED 9-6-2015*

*In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income-tax Act, (the Act) the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.*

*2. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs. 10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs. 10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs. 50 lakhs shall be considered by the Board.*

*3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.*

*4. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.*

*5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to Following conditions:*

*i. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.*

ii. *The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.*

6. *A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsJT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:*

i. *The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.*

ii. *No interest will be admissible on belated claim of refunds.*

iii. *The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.*

7. *In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.*

8. *This circular will cover all such applications/claims for condonation of delay under section 119(2xb) which are pending as on the date of issue of the Circular.*

9. *The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board.*

11. Ld. CIT-DR further placed his reliance on the order of ITAT, Delhi in the case of **Pradeep Kumar Batra, New Delhi vs Dcit -CPC, New Delhi on 23 October, 2020** wherein on the similar issue ITAT, Delhi has held as under:

8. *We have carefully considered the rival contention and perused the orders of the lower authorities. We have also perused the communication of the proposed adjustment u/s 143 (l)(a) of the income tax act issued by the central processing centre, Bangalore on 24/9/2018 wherein it is intimated to assessee that there is an incorrect claim Under Chapter VIA of the income tax act of Rs. 271,654 for non-filing of the audit report u/s 80 IB in form number 10CCB within due date of the filing of the return of income. The facts clearly shows that the due date of filing of the return of income was 7/11/2017 whereas the assessee filed his return of income on 6 November 2017 however according to his own version he uploaded that form on 6/11/2017 the income tax return and all other attachments however found number 10CCB was accepted by the assessee only on 12 December 2017 which is much beyond the due date of the filing of the return of income i.e. 7/11/2017. Therefore, it is apparent that as on the due date of filing of the return assessee did not file audit report in form number 10 CCB for claiming deduction u/s 8IB (11B), therefore we do not find any infirmity in denying deduction to the assessee. The provisions of rule 12 (2) of the income tax rules 1962 are also very clear in this regard. Assessee is also aware about the same because it is filed the audit report on 6/11/2017 but did not care to accept the same till 12 December 2017. Therefore, even without any intimation the assessee approved the form 10 CCB uploaded by the accountant on 6/11/2017 on 12th/12/2017. **Therefore, it is not the correct explanation of the assessee that assessee was unaware about the procedure of filing of the audit report. According to us, after introduction of the electronic filing of the return of income as well as all other documents, there is no debate available that even if the audit report is filed before the assessment is made, same is acceptable and the deduction cannot be denied to the assessee. When selection of the cases for further scrutiny, processing of the return of income, claim of the refunds of the assessee or all determined based on the return filed by the assessee and when the provisions of the law and the relevant rules strictly provides that all necessary documents must be filed and approved along with the return of income or prior to that, subsequent filing of any document cannot be considered for processing of the return and intimation u/s 143 (1A) of the act. The several judgments relied upon by the assessee do not pertain to the era of the electronic filing of the return/documents and therefore same does not apply to the facts of the present case.***

12. Backed by aforesaid submissions and case laws, it was the request of the revenue that the deduction u/s 80(IA) was rightly denied to the assessee by the Ld. AO(CPC) following the prescribed procedure and mandate of law, therefore, such disallowance made u/s 143(1) should be upheld.

13. Contradicting the aforesaid submission, of the revenue, Ld. Authorised Representative, Shri R. B. Doshi, CA (in short "Ld. AR"), on behalf of the assessee have submitted that assessee was under obligation to file Tax Audit Report u/s 80IA(7) in Form 10CCB. In order to fulfil with such compliance, the assessee had tried to upload the said report before the prescribed time limitation on 31.10.2022 i.e. before 12:00 in the mid night, however due to certain technical glitches in the IT Portal, Form 10CCB could not be uploaded within the available time. In continuation, assessee again attempted to upload the same electronically on 01.11.2022 at 12.25 am, but remain unsuccessful, screen shot showing date and time of such facts was placed before us at page no. 123 of PB, the same is extracted hereunder.

123  
11/1/22, 12:25 AM

Income Tax Portal, Government of India E-Verification Page

e-Filing Anywhere Anytime  
Income Tax Department, Government of India

2 8 : 3 1

DEEPAK GARG  
Tax Professional (CA)

Call Us  
English  
Grievances

e-File Pending Actions Help Search time 2 8 : 3 1

Dashboard > Income-tax Forms > Form 10CCB

## Audit report under section 80-I(7) /80-IA(7) /80-IB /80-IC /80-IAC/ 80-IE [Form No. 10CCB]

Audit report under section 80-I(7) /80-IA(7) /80-IB /80-IC /80-IAC/ 80-IE. This form is in compliance with rule 18BBB.

**Submission failed!**

Response form server:  
Please fix the following issues and try to submit again:

Re-Submit


Go To Dashboard

Feedback Website Policies Site Map Browser Support Accessibility Statement CoBrowse Help

This site is best viewed in 1024 \* 768 resolution with latest version of Chrome, Firefox, Safari and Internet Explorer. Last reviewed and updated on: 1-Nov-2022

Copyright © Income Tax Department, Ministry of Finance, Government of India. All Rights Reserved.

https://eportal.incometax.gov.in/iec/ostools/ntsp/eshowform/audit-forms-4F10CCB



14. Another attempt was made again on 01.11.2022 at 1.19 AM, this time page kept on loading, but report could not be uploaded. Screen shot showing date and time of this fact has also placed before us at page no. 124 of PB, the same is extracted hereunder.

11/1/22, 1:19 AM

Income Tax Portal, Government of India DGC Verification Page

e-Filing Anywhere Anytime  
 Income Tax Department, Government of India

28:27

DEEPAK GARG  
 Tax Professional (CA)

Dashboard e-File Pending Actions My Returns Help

Dashboard > Income-tax Forms > Form 10CCB

**Data Sign**

\* Indicates mandatory fields:

Provider \* Certificate \*

ePass V 2.0- DEEPAK GARG's SafeScript sub-CA for RCAI  
 2283169780140030(ePass2003) Tax Professional Class3 2014 ID

Provider Password \*

12345678

Sign >

Loading

Cancel

**Need Help?**

- [Click here to download emsigner utility](#)
- [Click here for instructions on installing emsigner utility](#)

Feedback Website Policies Site Map Browser Support Accessibility Statement CoBrowse Help

This site is best viewed in 1024 \* 768 resolution with latest version of Chrome, Firefox, Safari and Internet Explorer. Last reviewed and updated on: 1-Nov-2022

Copyright © Income Tax Department, Ministry of Finance, Government of India. All Rights Reserved

11/1/22, 1:22 AM

Income Tax Portal, Government of India E-Verification Page

e-Filing Anywhere Anytime  
Income Tax Department, Government of India

8 2 9 : 2 8

DEEPAK GARG  
Tax Professional (CA)

Dashboard

Dashboard > Income-tax Forms > Form 10CCB

## Audit report under section 80-I(7) /80-IA(7) /80-IB /80-IC /80-IAC/ 80-IE [Form No. 10CCB]

Audit report under section 80-I(7) /80-IA(7) /80-IB /80-IC /80-IAC/ 80-IE. This form is in compliance with rule 188BB.

**Submitted successfully to Tax Payer!**

Transaction ID: ITF000110207208 ARN No: 768830830011122

An email confirming the successful submission of your form has been sent to mycars1@yahoo.co.in and ca.audhir@yahoo.co.in and SMS has been sent to Mobile number: 98XXXXXX31 and 99XXXXXX28.

[Go To Dashboard](#)

Feedback Website Policies Site Map Browser Support Accessibility Statement CoBrowse Help

India.gov.in This site is best viewed in 1024 \* 768 resolution with latest version of Chrome, Firefox, Safari, and Internet Explorer. Last reviewed and updated on 1-Nov-2022

Copyright © Income Tax Department, Ministry of Finance, Government of India. All Rights Reserved

127

## Acknowledgement Receipt of Income Tax Forms (Other Than Income Tax Return)



e-Filing Acknowledgement Number / Quarterly Statement Receipt Number  
768874600011122

Date of e-Filing  
01-Nov-2022

Name	: SHRI SHYAM ISPAT (INDIA) PRIVATE LIMITED
PAN/TAN	: AADCS5057R
Address	: SINGHAL HOUSE - 10,SECTOR 1, SHANKAR NAGAR,Raipur,Ravigram S.O,RAIPUR,Chhattisgarh,INDIA,492001
Form No.	: Form 10CCB
Form Description	: Audit report under sections 80-I(7)/ 80-IA(7)/ 80-IB/ 80-IC/80-IAC/80-IE
Assessment Year	: 2022-23
Financial Year	: -
Month	: -
Quarter	: -
Filing Type	: Original
Capacity	: Chartered Accountant
Verified By	: 402568

(This is a computer generated Acknowledgement Receipt and needs no signature)

15. Finally, in next attempt assessee succeed and the report was uploaded on 01.11.2022 at 01.22 AM, screen shot showing date and time is placed at page no. 125 and acknowledgement at page no. 127, the same is also enclosed in the paper book for the sake of clarity, written submission is also placed by the Ld. AR, the same is also extracted as under:

**Shri Shyam Ispat (India) Pvt. Ltd.**  
**AY 2022/23**  
**ITA No. 380/RPR/2023 (Department)**

**Ground no.1 to 6**

**Submission of the assessee**

1. Assessee required to obtain Transfer Pricing audit report u/s 92E (in Form no. 3CEB) and therefore, due date of filing return was 30. 11.2022 as per sec. 139(1) Explanation 2 (aa).
2. Transfer Pricing report u/s 92E in Form no. 3CEB obtained on 31.10.2022 and uploaded also on 31.10.2022 at 11.42 pm (PN 122 of PB), acknowledgement at PN 128 of PB.
3. MAT report in Form no. 29B also could be uploaded on 01.11.2022, acknowledgment at PN 120 of PB.
4. Tax audit report in Form no. 3CA uploaded on 31.10.2022, filing date at PN 132 of PB-
5. Return of income filed on 24.11.2022, acknowledgment at PN 126 of PB. Within the time allowed u/s 139(1) read with Explanation 2(aa).
6. Audit report u/s 801A(7) in Form no.10CCB.
  - i) Due to technical glitch, report could not be uploaded on 31.10.2022 till 12 in midnight.
  - ii) Attempt made to uploaded electronically on 01.11.2022 at 12.25 am, but failed, screen shot showing date & time at PN 123 of PB.
  - iii) Attempt made again on 01.11.2022 at 1.19 am, but page kept on loading but report could not be uploaded. Screen shot showing date & time at PN 124 of PB.

(iv) Finally report uploaded on 01 . 1 1 .2022 at 01 :22 am, screen shot showing date & time at PN 125 of PB, acknowledgment at PN 127 of PB.

7. Main submission

i) Filing of audit report is directory requirement and so even if it is filed belatedly, deduction could not have been denied.

ii) Audit report filed before filing of I. T. return.

iii) Without prejudice, delay in filing of audit report was attributable to technical glitch.

8. Filing of audit report is directory requirement

Reliance on summary of case laws separately attached herewith.

9. Substantial Compliance made; delay due to technical glitch

(i) Transfer Pricing Audit report u/s 92E filed on 31.10.2022 at 11 :42 PM.

(ii) Tax audit report uploaded on 31.10.2022.

(iii) MAT report uploaded on 01.1 1.2022.

(iv) Return filed on 24.1 1.2022, within time allowed u/s 139(1).

(v) Audit report u/s 80IA(7) also filed before filing of ITR.

(vi) UDIN for all audit reports generated on 31.10.2022, PN 1 15 of PB.

(vii) Due date of filing various audit reports (30.09.2022) extended to 07.10.2022 vide Circular no. 19/2022 dt. 30.09.2022 extended to 07.10.2022 due to technical glitch.

10. Insignificant delay condoned in DCIT vs M/S Palava Dwellers P. Ltd. in ITA no. 2147/Mum/2018 dated 20.02.2020, para no. 14, 17 & 28.

16. Ld. AR further submitted a statement showing relevant date and time for filing of various documents with the department to substantiate that the assessee is a law-abiding company and the appellant assessee, who had filed almost all the mandatory forms with the department, except a few, where the unintentional delay in filing was caused due to technical glitches on the


website of department, the statement furnished before us showing some details is extracted as under:

A1

Deputy Commissioner vs. Shri Shyam Ispat (India) Private Limited  
PAN – AADCS5057R  
A.Y. – 2022-23  
Appeal No. ITA 380/RPR/2023

Statement showing the relevant dates and times of filing various documents

Particulars	Due Date	Filing Date	Relevant Sections and Rules regulating the due dates	Remarks	Page no. of Paper Book
Return of Income	30.11.2022	24.11.2022	Section 139 (1) Explanation 2	Within due date on 24.11.2022	126
Form 3CD		31.10.2022	Section 44AB	Within due date on 31.10.2022	-
Form 10CCB		01.11.2022	Section 80-IA(7) r.w.s 44AB r.w.r 18BBB	Slight delay of only 1 hour 22 minutes i.e., on 01.11.2022 at 01.22 AM due to technical glitch	127
Form 3CEB -		31.10.2022	Section 92E r.w.s 92F and 139(1) r.w.r 10E	Within due date on 31.10.2022	128
Form 29B		01.11.2022	Section 115JB(4) r.w.s 44AB r.w.r 40B	Slight delay of only 39 minutes i.e., on 01.11.2022 at 12.39 AM due to technical glitch	129



17. Ld. AR further submitted that Audit Report though was filed belatedly, it was just a directory requirement. It was filed before the filing of return and when the returned was processed u/s 143(1), the Tax Audit Report was very much in existence on the departments record and available to access by the Ld. AO(CPC). It was the submission that without prejudice, delay in filing of audit report in Form No. 10CCB was attributable to technical glitches and therefore, the assessee shall not be penalised on account of such unintentional delay, beyond the control and without any mala-fide intent of the assessee.

18. Ld. AR further to substantiate the contentions of the assessee have placed his reliance on various case laws as under:

1. ACIT vs Celerity Power LLP (2019) 174 ITD 433 (Mum.)

*During the course of assessment proceedings, assessee raised the claim of deduction u/s 80IA, which was disallowed by the AO observing that assessee failed to file audit report in Form no. 10CCB along with its return of income. The CIT(A) allowed the deduction. Vide para 22, it was held by the Tribunal that filing of an audit report is procedural and directory in nature and the same could also be validly filed by an assessee at the appellate stage. It noted that similar view has been laid down in the following cases also:-*

- i) CIT vs Medicaps Ltd. (2010) 323 ITR 554 (para 22).*
- ii) CIT vs Gujarat Oil & Allied Industries (1993) 201 ITR 325 (Guj.) wherein the Tribunal had held that filing of audit report is procedural & directory and the same can be filed at the appellate stage also.*
- iii) CIT vs Jaideep Industries (1989) 180 ITR 81 (P&H).*

2. DCIT vs Manilal Dayalii & co., ITA no. 62/RPR/2019

*AO disallowed deduction u/s 80-1B for non-filing of Form IOCCB along with return of income. Audit report in Form IOCCB was filed during reassessment proceeding. Ld. CIT(A) held that the filing of an 'audit report' was merely in the nature of a procedural and a directory requirement and the same could validly be filed in the course of the appellate proceedings. Revenue aggrieved by the order, appealed before ITAT. Hon'ble Tribunal held that filing of an 'audit report' as prescribed in Form No. 10CCB by the assessee is merely a procedural or a directory requirement, therefore, the same could validly be filed by the assessee at the appellate stage.*

3. CIT vs Ramani Realtors (P.) Ltd. (2015) 229 Taxman 283 (Mad.), PN 202 to 204 of PB.

*Tribunal allowed deduction even when assessee did not file audit report in Form 10CCB along with return of income nor was it filed before the date of completion of assessment. It was held by Hon'ble High Court that filing of the audit report along with return is only directory and not mandatory.*

4. CIT vs Ramco International (2011) 332 ITR 306 (P & H), PN 171 & 172 of PB

*The assessee claimed deduction u/s 80IB. Form 10CCB was filed during assessment proceedings. On appeal, Id. CIT(A) and ITAT upheld the claim of the assessee. It was held by Hon'ble High Court that the Tribunal has considered this issue and found that claim of the assessee as per Form 10CCB filed during the assessment proceedings was admissible.*

5. *CIT vs Medicaps Ltd. (2010) 323 ITR 554, PN 148 to 150 of PB*

*AO denied the benefit u/s 80-IA on the ground that the audit report was not filed and the conditions of sec. 80IA(2) were not satisfied. ITAT held that fulfilment of conditions mentioned u/s 80IA(2) were not disputed before Tribunal and that proper books of accounts were maintained, audited and audit report in prescribed Form was filed. On issue of audit report being filed at the appellate stage, Tribunal held that filing of audit report is procedural and directory in nature and the same can be filed at the appellant stage. It was held by Hon'ble High Court that the Tribunal has not committed any error of law in holding respondent entitled to the benefits of deduction u/s 80IA(2) of the act.*

6. *Sutures India (P.) Ltd. vs CIT (2021) 431 ITR 0332 (Karn), PN 208 to 212 of PB*

*Ld. CIT(A) invoked provisions u/s 263 and disallowed the deduction allowed by AO u/s 80IA on the ground that assessee did not file Form 10CCB as required u/s 80IA(7) along with return of income. Form 10CCB was filed along with written submissions before Id. CIT (A). It was held by Hon'ble High Court that the Bench of this court in CIT vs Ace Multitaxes System (P.) Ltd. (2009) 317 ITR 207 has taken a view that assessee is entitled to deduction u/s 80-IA even if the audit report is filed at the appellant stage.*

7. *Sanskriti KMV School vs Asst. CIT(E) (2021) 190 ITD 29 (Chd.Trib.)*

*AO denied exemption u/s 10(23C)(vi) on the ground that Form 10BB was not filed along with return of income as prescribed in proviso of 10(23C)(vi) and was later filed during assessment proceeding. It was held by Hon'ble Tribunal that in the light of the facts and position of law as argued which stands unrebutted, exemption was allowable.*

8. *CIT vs Contimeters Electricals P. Ltd. (2009) 317 ITR 249 (Del.),*

*The assessee did not file audit report in Form no. 10CCB for claiming deduction u/s 80IA(7) along with the return of income. **The Tribunal took the view that provisions of sec. 80IA(7) with regard to filing of audit report along with the return were not mandatory and were merely***

*directory. In coming to such conclusion, the Tribunal referred to the decision of Gujarat High Court in CIT vs Gujarat Oil & Allied Industries. It was held vide para 5 that there are similar decisions rendered by other High Courts. Hon'ble High Court concluded that the Tribunal has arrived at correct conclusion that the requirement of filing audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of assessment, requirement of sec. 801A(7) would be met.*

19. Regarding delay in filing of statutory return with the department on account of technical glitches, Ld. AR placed his reliance on the order of Coordinate Bench of ITAT, Mumbai in the case of **DCIT vs. Palava Dwellers Pvt. Ltd. & Anr. Dated 20.02.2020**, wherein the delay caused due to technical glitch and last hour rushed on the website was decided in favour of the assessee with the directions to Ld. AO to treat the return filed with delay as return filed in time. The observations of the Mumbai Tribunal in the aforesaid case are culled out to interpret the issue in the present case:

14. Briefly stated the facts are that, the assessee is a Builder and engaged in the business of construction and development of real estate projects. During the assessment year under consideration assessee executed various projects and many of them were still under construction. The assessee filed its return of income electronically on 30.11.2014 midnight. However due to technical glitch and rush hours there was a delay of two minutes in return getting uploaded and due to which the date of filing of return appeared on the acknowledgment as 01<sup>st</sup> December 2014. In its return of income, the assessee declared income of ₹.206,93,75,430/- under normal provisions of the Act and book profits at ₹.290,37,59,620/- u/s. 115JB of the Act. Subsequently, the assessee filed revised return of income on 31.03.2016 declaring income at ₹.196,14,10,368/- under normal provisions of the Act for giving effect to the order of the Hon'ble Bombay High Court which approved the merger of Mahavir Build Estate Limited and Galaxy Premises Private Limited with the assessee w.e.f. 01<sup>st</sup> April, 2013 and also to rectify certain clerical errors.

17. *Ld. Counsel Shri Rajan Vora appearing for the assessee submitted that assessee filed its return of income on last date for filing of return of income for the AY 2014-15 i.e. on 30.11.2014. However, due to technical glitch and last hour rush on the website, the return got uploaded by 00.02 AM on 01.12.2014 with a delay of two minutes. The said return was revised subsequently on 31.03.2016 declaring total income of ₹.196,14,10,368. The return was revised to give effect to merger of Mahavir Build Estate Limited and Galaxy Premises Private Limited with the Assessee company and to rectify certain clerical errors. Ld. Counsel for the assessee submitted that the Assessing Officer rejected revised return filed by the assessee on the ground that the original return was not filed within the due date prescribed under section 139(1) of the Act. However, Assessing Officer while making assessment, has considered the additional disallowances made by the Assessee in the revise return at ₹.4.05 crores and has rejected/ignored the additional deduction/expenses of ₹.8.17 crores claimed by the Assessee. Referring to Page No. 57 of the Paper book which is the copy of acknowledgment received from the Income-tax Department, Ld. Counsel for the assessee further submits that assessee could not upload the return of income till late on the night of 30.11.2014 i.e. the due date for filing return of income for the subject A.Y. 2014-15, and the return got uploaded at 00.02 AM on 01.12.2014 due to which the acknowledgement in the system of Tax Authorities was reflecting date of filing of the return of income as 01.12.2014 instead of 30.11.2014. Ld. Counsel for the assessee further submitted that the delay in filing of original return by two minutes cannot be considered as malafide considering the fact that delay was on account of technical glitches and delay was by only two minutes. In this regard reliance was placed on the following decisions:*

- *ITO vs Mantangi Rubber Pvt Ltd (Delhi ITAT) (ITA No. 4498/Del/2013) dated 29 May 2015.*
- *Bombay Mercantile Co-op Bank [322 ITR 87] (Bombay High Court)*
- *Cosme Matias Menezes Pvt. Ltd., [379 ITR 31] (Bombay High Court)*
- *Lodhi Property Co. Ltd [323 ITR 441] (Delhi High Court)*
- *CBDT vs Regen Infrastructure (Writ Appeal No. 1314 of 2016) dated 01.11.2016.*
- *Himuda v. ACIT in ITA.No. 480, 481 & 972/CHD/2012 dated 10.05.2019*

28. *In view of the above judicial pronouncements and also taking note of the fact that the delay is only of two minutes which was caused due to technical glitch and last hour of rush in the website, we direct the Assessing Officer to treat the original return filed by the assessee for the A.Y. 2014-15 as filed in time and*

*consequently to consider the revised return of income filed by the assessee for the purpose of computing the income of the assessee.*

20. Ld. AR further drew our attention to page no. 101 & 116 of the PB, with the explanation that the UDIN No. "22402568BBPGLD8566", to be mentioned on Form 10CCB was generated by the Auditor of the company at 23:47:44 after submitting the document successfully on the website of the Institute of Chartered Accountants of India (ICAI), such fact establishes that Form 10CCB was duly prepared and successfully submitted for generation of UDIN No. & simultaneously, the assessee had initiated its efforts to upload the same on the Income Tax Portal, there was no reason or cause for which the assessee would have any benefit in delaying the filing of a document which was finalized and already submitted on the portal of ICAI. The technical glitches and might be the last minute rush on the website was the only reason which had prevented the assessee to file the Audit Report in Form 10CCB within the stipulated time frame. It was the submission that the delay in filing of Audit Report was not on account of assessee's lackadaisical conduct or casual approach, even it can not be attributed to failure on the part of assessee as the assessee was continuingly trying to upload the audit report which is evident from the various screenshots and evidence from the website of Income Tax furnished before us. It is also submitted that apart from Form 10CCB and Form 29B all the remaining compliances like filing of return u/s 139(1), Form 3CD, Form 3CEB are duly filed by the assessee within

the due dates instructed under the statutes. Under such facts and circumstances, it was the prayer of Id. AR that the Form 10CCB filed by the assessee should be considered as it was filed validly within the stipulated time and the deduction u/s 80IA shall be allowed to the assessee. Ld. AR further submitted that Ld. Addl./JCIT(A) have rightly understood the issue, have appreciated that the technical glitches on income tax portal had actually occurred in those days and, therefore, certain extensions were also granted by the CBDT. Backed by aforesaid submissions, it was the prayer that Ld. Addl/JCIT(A) has rightly and judiciously decided the issue, therefore, the order of First Appellate Authority allowing the claim of assessee for deduction u/s 80IA deserves to be upheld.

21. We have considered the rival submissions, perused the material available on record and the relevant case laws furnished before us for our consideration. Under the factual matrix of the present case, the sole issue assailed by the department is that the assessee is not eligible for claim of deduction u/s 80IA as the prescribed statutory Form 10CCB which was to be filed on or before 31.10.2022 was actually filed at 01:22 AM on 01.11.2022. The requisite Form was filed on delay of 1 Hour 22 Minutes which debars the assessee from its eligibility to claim the deduction u/s 80IA. It was the also the allegation by revenue that the delay occurred could not be substantiated by the assessee with any cogent evidence such as ticket raised in ITBA or

screenshot of the error or any email to the concerned authorities. It is further agitated that the Addl/JCIT(A) does not have the powers to condone the delay in filing of Form 10CCB, therefore, there was a violation of principle laid down by Hon'ble Apex Court in the case of **Dilip Kumar & Company (supra)** that "Exemption notifications should be interpreted strictly". First, we shall be dealing with the issue regarding technical glitch and over burden due to last minute rush on the website of Income Tax Department. On perusal of the copies of screenshots submitted before us, it is transpired that the assessee was consistently trying to upload Form 10CCB on the website of the department, after few unsuccessful attempts, it finally got success to file the Form 10CCB at 01:22 on 01.11.2022. Undisputedly, the delay happened at the same time there was no allegation that requisite compliance *qua* eligibility to claim deduction u/s 80IA could not be fulfilled by the assessee. Since CBDT had granted extension to the assesseees on account of technical glitches on the Income Tax Portal on 31.10.2022, may be for some other compliances say filing of Tax Audit Report, however, the fact that the Income Tax portal was facing technical issues and malfunctions cannot be ruled out. The errors on the portal which blocked the assessee to file the requisite form which was readily prepared and furnished before the ICAI and UDIN No. was also generated, it can not be said that the delay occasioned was due to inefficiency of the assessee for which the assessee should be appropriately penalized. We may herein refer to the judgment by Hon'ble Bombay High Court in the case of **Bombay Mercantile Cooperative Bank Ltd. vs. CBDT [322 ITR 87]**, wherein it is categorically observed that:

*“It is well settled that in matters of condonation in delay a highly pedantic approach should be eschewed, and a justice oriented approach should be adopted, and a party should not be made to suffer on account of technicalities.”*

22. Similar issue was decided by Hon'ble Bombay High Court in the case of **Cosme Matias Menezes (P) Ltd. v. CIT [379 ITR 31]**, wherein it is held that:

*11. Taking note of the said observations and considering that the delay in the present case is only of one day, we find that the approach of the Respondents in refusing to condone the delay is a pedantic which, if allowed to stand, would result in great hardship to the Petitioners for no fault of the Petitioners. The Petitioners have also produced the hard copy to show that in fact such return in Form - 1 were filed on 31.03.2008 which was admittedly the last date for filing such returns. These factual aspects have not been disputed by the Respondents. Needless to say, we have not examined the merits of the claim of the Petitioners based on the returns filed by the Petitioners but only considered whether the delay in filing such returns deserves to be condoned. Such returns and the claim of the Petitioners have to be examined by the Respondents on its own merits.”*

23. Hon'ble Delhi High Court in the case of **Lodhi Property Co. Ltd. v. Under Secretary (ITA-II) Department of Revenue [323 ITR 441]** observed as under: -

*“7. In view of the foregoing, it is absolutely clear that the submissions sought to be raised before us by the learned counsel for the respondent have specifically and categorically been rejected by the Karnataka High Court and the same have been accepted not only by the Board, but also by the Ministry of Law. We notice that a similar view has also been taken by the Bombay High Court in the case of Sitaldas K. Motwani v. Director General of Income-tax (International Taxation): 187 Taxman 44 (Bom). Consequently, agreeing with the Karnataka High Court, we are of the view that the Board has the power under Section 119 (2) to condone the delay in the case of a return which is filed late and where a claim for carry forward of losses is made.*

*8. Coming back to the facts of the present case, we find that the impugned order under Section 119 passed by the Board is a*

*nonspeaking one. Normally, we would have remanded the matter to the Board to consider the application of the petitioner afresh. However, we find that in the present case, the delay is only of one day and the circumstances have been explained and have not been controverted by the respondents. The fact of the matter is that the petitioner did reach the Central Revenue Building before the closure of the counter on 01.11.2004. It is only because he was sent from one room to the other and had to wait in long queues that he could not present the return at the counter which was receiving the returns prior to 6.00 p.m. on that date. We feel that sufficient cause has been shown by the petitioner for the delay of one day in filing the return. If the delay is not condoned, it would cause genuine hardship to the petitioner. Thus, in the circumstances of this case, instead of remanding the matter back to the CBDT, we direct that the delay of one day in filing of the return be condoned.”*

24. Hon'ble Madras High Court in the case of **CBDT v. Regen Infrastructure & Services (P.) Ltd., [75 taxmann.com 135]** condoned delay of one day in uploading the return of income. Hon'ble Division Bench of the Madras High Court on a writ appeal held as under:

*“6. It is appropriate to notice that under Section 119(2)(b) of the Income Tax Act, the Central Board Direct Taxes has been empowered "to admit an application or claim for exemption, deduction, refund \* any other relief under the Act, after the expiry of the period specified by or under the Act by making such an application or claim and deal with the same on merits in accordance with law." In other words, the statute has conferred discretion in the hands of the Board to admit of any claim which is made beyond the period specified for doing so and when once the discretion is conferred by a statute upon an authority, such a discretion is required to be exercised on sound lines. It is one of the important factors to be considered while dealing with an application seeking condonation of delay as to whether grave and irreparable injury or hardship will be caused to the person concerned and as to whether or not the interests of justice would be served better, in condoning the delay. In the instant case, there is no dispute or denial of the fact that the Return of Income filed by the Respondent/Assessee for the Assessment Year 2010-11, has been uploaded sometime past 00.00 hours on 15.10.2010. One can take judicial notice of the fact that uploading of Return requires not only an effort but also consumes sometime. If the Assessee has encountered certain hardship or difficulty in uploading his return, as alleged by him due to a technical snags in the website of the Income Tax Department due to the last hour rush of filing of Returns, the delay deserves to be condoned.”*

25. Considering the aforesaid judicial pronouncements, the delay involved in the present case for 1 Hour 22 Minutes caused even after continuous efforts of the assessee to upload the Form on the web portal of the income tax department, it cannot be construed that there was some discrepancies or failure on the part of the assessee, therefore, we are of the considered view that the Form 10CCB filed by the assessee shall be treated as filed within the prescribed time with no delay. It is pertinent to mention that the prescribed Form was filed and available before the Ld. AO(CPC) when the return of the assessee was processed u/s 143(1) of the Act, the department was very much in possession of Form 10CCB while the intimation was issued. Since, it is decided that delay in filing of Form 10CCB in present case was occasioned due to technical issues on the portal of income tax department for which the assessee cannot be held liable, therefore, the case laws relied upon by the revenue *qua* implementation of exemption notifications is irrelevant. CBDT's Circular 9/2015 regarding delay in filing refund claim and claim for carry forward losses u/s 119(2)(b) is also of no help as the delay was caused because of malfunction in the income tax website. Case law of Pradeep Kumar Batra (supra) relied upon by the department is also distinguishable on facts wherein the claim of deduction u/s 80IB(11B) was denied because the Form 10CCB was accepted by the assessee much beyond the due date of filing of return, whereas in the present case the prescribed form

was filed only with a delay of 1 Hour 22 Minutes also much before the due date of filing of the return.

26. In view of aforesaid observations, facts and circumstances, we hold that the assessee has substantiated that the Form 10CCB was attempted to be filed within the stipulated time, however, due to the reasons beyond control of the assessee i.e., technical glitches on the web portal of the department, the Form could not be filed in time but was uploaded with a slight delay of 1 Hour 22 Minute. As the delay was not attributed or occurred due to any negligence or inaction on the part of assessee, therefore, in the interest of justice also the assessee shall not be saddled with any penal action. As per judicial pronouncement of Hon'ble Bombay High Court in the case of **Bombay Mercantile Cooperative Bank Ltd. (supra)**, it is imperative on us to avoid pedantic approach in the case of condonation of delay, also we are supposed to adopt a justice-oriented approach, and wherever justifiable reasons for delay are demonstrated the party should not be made to suffer on account of technicalities. We, therefore, are of the considered view that the Ld. Addl/JCIT(A) had rightly adjudicated the issue in favor of the assessee, which in our opinion does not suffer with any infirmity to be interfered with, consequently we uphold the decision of the Ld. Addl/JCIT(A). Resultantly, the grounds of appeal raised by the revenue in the present appeal are rejected in terms of our aforesaid observations.

27. In view of aforesaid observations, the present appeal of the department being deprived of any substance and devoid of merits stands **dismissed**.

Order pronounced in the open court on 23/08/2024.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 23/08/2024

Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. The Pr. CIT -1, Raipur, (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**  
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur