

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.807/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2021-22)

Sri City Private Ltd Chennai PAN:AAJCS8887M (Appellant)	Vs.	Dy. CIT Central Circle 2(1) Hyderabad (Respondent)
निर्धारित द्वारा / Assessee by: Shri Abhishek Murali, CA		
राजस्व द्वारा / Revenue by: Shri K.N. Suresh Babu, DR		
सुनवाई की तारीख / Date of hearing: 07/11/2024		
घोषणा की तारीख / Pronouncement: 12/11/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 10/07/2024 of the learned CIT (A)-/Addl/JCIT(A)-2, Gurugram, relating to A.Y.2021-22.

2. The brief facts of the case are that the appellant company filed its return of income for the A.Y 2021-22 on 11/01/2022 on or before the extended due date of filing return of income on 15/02/2022, declaring total income of Rs.20,17,63,290/-. The appellant company in its return of income claimed deduction u/s 80IA of the I.T. Act, 1961 for the profits earned by it out of power generation from its solar power plant

and filed the audit report in Form-10CCB as required under section 80IA of the Act,. It has also claimed deduction u/s 80-IAB of the I.T. Act, 1961 for the profits earned by it out of the business of developer of special economic zone. However, it did not file the audit report in Form-10CCB as required u/s 80IAB of the Act. Further, the appellant has filed 2nd audit report in Form-10CCB for claiming deduction u/s 80IAB of the Act, on 25/06/2022. The Assessing Officer, CPC processed the return of income filed by the assessee and issued intimation u/s 143(1) of the Act, on 13/11/2022 and denied deduction claimed u/s 80IAB of the Act, for belated filing of the audit report in Form-10CCB, beyond the due date of filing return of income u/s 139(1) of the I.T. Act, 1961.

3. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The learned CIT (A) for the reasons stated in their appellate order dated 10/07/2024 rejected the explanation of the assessee and sustained the additions made by the Assessing Officer towards disallowance of deduction claimed u/s 80IAB for belated filing audit report in Form-10CCB, in respect of deduction claimed u/s 80IAB of the Act,.

4. Being aggrieved, the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the learned CIT (A) erred in upholding disallowance of deduction claimed u/s 80IAB of the Act, towards profits derived from development of Special Economic Zone, even though the appellant

has filed relevant audit report as required u/s 80IAB of the Act on 25/06/2022 which is much before the Assessing Officer passed assessment order u/s 143(1) of the Act. The learned Counsel for the assessee referring to the grievance letter addressed to CPC Bengaluru submitted that the appellant was unable to file 2nd Form-10CCB due to technical glitches in I.T. Portal and the same has been informed to the CPC on 22/06/2022. Thereafter, the appellant has filed 2nd Form-10CCB on 25/06/2022 which was available before the Assessing Officer when he passed order u/s 143(1) of the Act. Since filing of the audit report is directory in nature but not mandatory, the Assessing Officer should have considered the audit report filed by the assessee even though beyond the due date specified under the Act, but before the Assessing Officer passed assessment order u/s 143(1) of the Act,. Therefore, he submitted that the additions made by the Assessing Officer towards disallowance of deduction claimed u/s 80IAB should be deleted.

4. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the filing of separate audit report for deduction claimed u/s 80IA and 80IAB is mandatory. Further, there is no dispute with regard to the fact that the appellant has filed audit report in Form-10CCB for claiming deduction u/s 80IAB of the Act, on 25/06/2022 which is beyond the due date of filing the return of income for the impugned A.Y. Therefore, the Assessing Officer has rightly rejected the claim u/s 80IAB of the Act, and thus, their order should be upheld.

5. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. In order to claim deduction u/s 80IAB, the assessee needs to file audit report in Form-10CCB along with return of income filed u/s 139(1) of the I.T. Act, 1961. In present case, the appellant claimed deduction u/s 80IA and 80IAB of the Act. In so far as deduction claimed u/s 80IA of the Act is concerned, the assessee has filed Form-10CCB along with return of income filed on 11/01/2022 which is well within the extended due date of filing of the return of income for the impugned A.Y i.e. on 15/02/2022. However, the appellant could not file form 10CCB in respect of deduction claimed u/s 80IAB of the Act, towards profits derived from SEZ along with return of income and the reasons given by the appellant for not filing the said audit report is there was technical glitches in the Income Tax Portal because of this, the appellant could not upload 2nd Form-10CCB. To support his argument, the appellant referred a grievance letter addressed to the Assessing Officer, CPC, Bengaluru on 22/06/2022. The appellant further took support from certain judicial precedents including the decision of the Hon'ble Madras High Court in the case of CIT vs. Arunachalam reported in (1994) 208 ITR 481 and the decision of the Hon'ble Delhi High Court in the case of CIT v. Contimeters Electricals (P.) Ltd (2009) 317 ITR 249.

6. We find that the Hon'ble Madras High Court held that filing of audit report is directory in nature and if such audit report is filed on or before the Assessing Officer passed the assessment order u/s 143(1) or u/s 143(3) of the I.T. Act, 1961, then the

Assessing Officer should consider the audit report for the purpose of allowing the benefit of deduction under the provisions of the Act. In the present case, it is not a case of the Assessing Officer that the appellant has not filed the relevant audit report in Form 10CCB for claiming deduction u/s 80IA and 80IAB of the Act. In fact, the assessee has promptly filed form 10CCB on or before the due date for filing return of income in respect of deduction claimed u/s 80IA of the Act. But, could not file Form 10CCB in respect of deduction claimed u/s 80IAB of the Act, and the reasons given by the appellant for not filing said form, there is some technical glitches in the IT Portal. In our considered view, it is a fact that in a time, there are lot of technical glitches in the IT Portal for filing return of income or any other document which has been reported to the concerned authorities by the taxpayers. Going by the conduct of the assessee in filing audit report in respect of deduction claimed u/s 80IA of the Act, and also considering the reasons given by the assessee, that there are certain technical glitches and because of this, it could not upload 2nd audit report in Form 10CCB, in our considered view, the Assessing Officer ought to have considered the audit report filed by the assessee on 25/06/2022 for claiming deduction u/s 80IA of the Act, because the said audit report was very much available to the Assessing Officer, when he passed the order u/s 143(1) of the Act. In our considered view, as per ratio laid down by various High Courts including the Hon'ble Madras High Court in the case of CIT vs. Arunachalam (Supra), it was held that filing of audit report is directory in nature but not mandatory and further if such audit report is filed on or before the Assessing Officer passed the assessment order, then the same needs to be considered for

allowing deduction or exemption under the provisions of the Act. Since, the appellant has filed the audit report in Form 10CCB before the Assessing Officer passed order u/s 143(1) of the Act, in our considered view, the claim by the assessee u/s 80IAB of the Act needs to be allowed. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to allow deduction claimed u/s 80IAB of the Act.

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

Order pronounced in the Open Court on 12th November, 2024.

Sd/-

Sd/-

(VIJAY PAL RAO) VICE-PRESIDENT	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 12th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri City Private Ltd, No.85, Kutcheri Road, Mylapore, Chennai
2	Dy.CIT, Central Circle 2(1) Hyderabad
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order