

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.39/DEL/2024
(Assessment Year: 2018-19)**

Kumaon Exports Pvt. Ltd.,
F-26, G.N. 6, Khasara No.41/5/1 and 28/5/2,
Sadatpur Karawal Nagar,
Delhi – 110 094.

vs. DCIT, Circle 14 (2),
Delhi.

(PAN : AAACK3655L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anil Jain, Advocate
REVENUE BY : Ms. Rishpal Bedi, CIT DR

Date of Hearing : 26.09.2024
Date of Order : 05.12.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax Appeals-3, Chennai (hereinafter referred to 'Ld. CIT (A)') dated 13.12.2023 for Assessment Year 2018-19.
2. Brief facts of the case are, the assessee has filed its original return of income on 23.10.2018 for Assessment Year 2018-19 and filed Form 10CCB to claim the deduction under section 80IC of the Income-tax Act, 1961 (for short 'the Act') only on 05.11.2018. Subsequently, the assessee

revised its return of income and the assessment under section 143(1) of the Act was completed on the basis of revised return of income without allowing the deduction u/s 80IC of the Act for delayed submission of Form 10CCB.

3. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT(A) and ld. CIT (A), after considering the detailed submissions of the assessee and various case laws relied upon by the assessee, dismissed the appeal filed by the assessee by relying on the decision of the coordinate Bench of the ITAT in the case of Pradeep Kumar Batra vs. DCIT in ITA No.6384/Del/2019 for AY 2017-18 dated 23.10.2020.
4. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-
 - “1. The Ld. CIT (A) has erred in confirming the order of the Assessing Officer in assessing the income at Rs.48371280 as against the returned income of Rs.33790560 thereby confirming the addition of Rs.14580526.
 2. The Ld. CIT (A) has erred in confirming the deduction under section 80IC made by the Ld. Assessing Officer for Rs.14580526/- on account of delay of online filing of Form 10CCB on 5.11.2018 i.e. delay of 5 days while the audit is completed in time and the return was filed on 23.10.2018.
 3. The order of Ld. CIT is against law, facts and circumstances of the case.”
5. At the time of hearing, ld. AR for the assessee submitted that the assessee has filed the return of income on 23.10.2018 and obtained the audit report

before filing the return of income, however filed Form 10CCB on 05.11.2018 which is filed with a delay of five days from the last date of filing the return of income. He submitted that the CPC has completed 143 (1) assessment after considering the revised return of income. He submitted that assessee has submitted Form 10CCB before completion of 143 (1) proceedings. In this regard, he relied on the decision of ACIT vs . Green Dot Health Foods Pvt. Ltd. in ITA No.8414/Del/ 2019 dated 06.02.2023 and submitted that the ITAT, Delhi has relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Contimeters Electrical (P) Ltd. (2009) 178 taxman 422 (Delhi). He further relied on the decision of ITAT, Mumbai in the case of Atlantics Bio Medicals Pvt. Ltd. in ITA No.117/Mum/2022 for AY 2017-18 dated 25.08.2022.

6. On the other hand, ld. DR for the Revenue objected to the submissions of the ld. AR for the assessee and submitted that procedure laid down in the Rules has to be followed. In case of contravention to the well laid down Rules, the assessee cannot get the benefits. In this regard, he relied on the decision of PCIT vs. Wipro Ltd. (2022) 446 ITR 1 (SC) dated 11.07.2022.
7. In the rejoinder, ld. AR for the assessee submitted that the decision relied on by the ld. DR for the Revenue is relating to exemption u/s 10B (8) of the Act whereas the assessee claims deduction u/s 80IC of the Act. There

is a distinction between the exemption and deduction in the Act when the provisions relating to exemption are contained in the Act itself. Therefore, he submitted that there is a considerable distinction to the facts in the present case.

8. Considered the rival submissions and material placed on record. We observed that assessee has obtained audit report in Form 10CCB before filing the return of income, however filed the same only on 05.11.2018. We observed that audit report date prior to the date of filing of return of income, it is a procedural lapse on part of the assessee and it has filed Form 10CCB before its assessment completed u/s 143(1) of the Act. The claim of the assessee u/s 80IC of the Act was denied with the reason that it has filed Form 10CCB after filing the return of income. Even ld. CIT(A) relied on the decision of coordinate Bench in the case of Pradeep Kumar Batra (supra) and we observed that in the facts of the above case, the assessee has filed return of income and filed the audit report on 06.11.2017 and assessee has not approved the same till 12.12.2017. Even though the Accountant has uploaded the same on 06.11.2017. With the above facts on record, the coordinate Bench has rejected the claim of the assessee. However, we also find that in the case of Green Dot Health Foods Pvt. Ltd. (supra), the coordinate Bench has considered the exact

similar case which is on record and allowed the claim by observing 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 10CCS was uploaded by the assessee on the website of the Income-tax Department on 10.11.20 17 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 decision We find that Hon'ble Apex Court in the case of CIT vs. G Knitting Industries (P.) Ltd. (2017) 71 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.”

9. As per the above findings, coordinate Bench has allowed the claim of the assessee for the reason that the assessee has filed Form 10CCB before completion of the 143(1) proceedings.
10. The facts in the present case are exactly similar, therefore, we are inclined to allow the claim of the assessee. Further we observed that ld. DR for

the Revenue relied on the decision of Wipro Ltd. (supra) in which Hon'ble Supreme Court has rejected the claim of the assessee for filing the audit report belatedly against the provisions of the Act u/s 10B of the Act which relates to exemption. While allowing the exemption which allows the assessee to claim the tax benefit as exempt from tax from the total income and also the relevant procedure was already laid down in the Act itself whereas in the given case, the issue relating to deduction not exemption. Therefore, we are inclined to allow the claim of the assessee by relying on the findings of coordinate Bench of the Tribunal in the case of Green Dot Health Foods Pvt. Ltd. (supra).

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

Order pronounced in the open court on this 5th day of November, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 05.12.2024
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**