



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.1509/PUN/2024

निर्धारण वर्ष / Assessment Year: 2021-22

Burst Healthcare Private Limited, A-1, S.No.16/1, Silver Oak, Wadgaon Sheri, Pune – 411014. PAN: AAZCS4168D	V s	The Assistant Director of Income Tax, CPC, Bengaluru.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Sandeep P Sathe – JCIT(DR)
Date of hearing	10/12/2024
Date of pronouncement	19/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)ADDL./JCIT(A)-3,
Delhi for Assessment Year 2021-22 dated 30.06.2024 passed
u/sec.250 of the Income tax Act, 1961. The Assessee has raised
the following grounds of appeal :

*“1. The Learned Commissioner of Income Tax (Appeals) dismissed
the appeal on the grounds that the appellant failed to respond to two*



notices issued under section 250 of the Income Tax Act. The appellant contends that no intimation of these notices was received via email or any other communication from the Income Tax Department. Consequently, the appellant was unaware of the notices and thus unable to respond. The rejection of the appeal on this basis is therefore unjustified. The Learned Commissioner of Income Tax (Appeals) is requested to refer to Clause 7 of the notice issued under section 250, which is reproduced as follows: 7. If no submissions/information/documents is/are received within the stipulated time period, it will be presumed that you have nothing to say in this matter. The Department may proceed ahead based on material available on record From the above, it is evident that if the appellant has not responded to the notices, the Learned Commissioner of Income Tax (Appeals) should have proceeded based on the material available on record, including the statement of facts, grounds of appeal, and all supporting documents submitted by the appellant. The Learned Commissioner of Income Tax (Appeals) failed to consider this material and unjustifiably rejected the appeal outright.

*2. "Unjust Disallowance of Deduction under Section 80-IAC**": The learned AO erred in disallowing the deduction under section 80-IAC amounting to Rs.30,40,564/- on the basis that Form 10CCB was not filed within the prescribed time under section 139(1), despite the Appellant obtaining the audit report in Form 10CCB and attempting to file it multiple times due to technical glitches on the e-filing portal.*

**Technical Glitch Beyond Control of Appellant* The disallowance of the deduction is unjust as the delay in filing Form 10CCB was due to technical issues on the e-filing portal, which were beyond the control of the Appellant. The Appellant made several attempts to resolve the issue with the Grievance Cell but was unsuccessful due to the unavailability of proper technical support, exacerbated by the COVID-19 pandemic.*

*3. "Adherence to Extended Due Dates**":*

The Appellant filed the return of income on 09-02-2022, well before the extended due date of 15-03-2022 due to COVID-19. The Appellant also attempted to file Form 10CCB within this period but faced technical difficulties. The disallowance of the deduction under section 80-IAC due to the delay in filing Form 10CCB is therefore unwarranted and against the principles of natural justice. "Previous Years' Allowance of Deduction: The Appellant had claimed and was allowed the deduction under section 80-IAC for AY 2019-20 and AY 2020-21. The consistent allowance of this deduction in previous years establishes the eligibility of the Appellant for the said deduction.



**Procedural Lapse Should Not Deny Substantive Benefit* The belated filing of Form 10CCB, if any, is a procedural lapse and should not be a ground for denying the substantive benefit of deduction under section 80-IAC. The Hon'ble Tribunal has consistently held that procedural lapses should not defeat substantial rights.*

**Non-Consideration of Grievance by CPC: The CPC did not properly consider the technical issues and the grievances raised by the Appellant, resulting in the unwarranted disallowance of the deduction under section 80-IAC. The CPC's failure to address the technical problems and the Appellant's grievances is unjust and should be rectified. **Non-Speaking Order by CIT(A)* The CIT(A) passed a non-speaking order without addressing the various grounds of appeal and the merits of the case. The CIT(A) failed to consider the detailed submissions and documentary evidence provided by the Appellant, violating the principles of natural Justice and Section 250(6) of the Act. *Legal Precedents Ignored* The CIT(A) ignored various judicial precedents that emphasize the importance of addressing the issues on merit and not dismissing appeals for procedural lapses. The Hon'ble Bombay High Court in CIT vs. Premkumar Arjundas Luthra HUF (2017) 297 CTR 614 (Bom.) held that the CIT(A) cannot dismiss an appeal for non-prosecution.*

1. *"CIT vs. Premkumar Arjundas Luthra HUF (2017) 297 CTR 614 (Bom.)***

The Hon'ble Bombay High Court held that the CIT(A) does not have the power to dismiss an appeal for non-prosecution and must decide the appeal on merits, considering all the relevant facts and evidence.

2. *"Bitkuber Investments Private Limited vs. DCIT [2023] 156 taxmann.com 384 (Karnataka)***

The Karnataka High Court held that procedural lapses should not defeat substantive claims if the delay or default was due to factors beyond the control of the assessee, and the relevant materials were eventually provided.

3. *"Tata Teleservices vs. DCIT (2018)***

The court emphasized that technical issues on the e-filing portal cannot be a ground for disallowing legitimate claims if the assessee had made bona fide efforts to comply with the requirements within the stipulated time.

4. *"Lar sen& Toubro vs. ACIT (326 ITR 514)**:*



The case underlined that the AO must take into account the substantive compliance and genuine difficulties faced by the assessee, especially during exceptional circumstances like technical glitches or pandemics.

*5. "Jones Lang Lasalle Property Consultants vs. DCIT (TDS) (2022) ITR 40 (Delhi HC)***

The Delhi High Court ruled that procedural delays should not result in denial of substantive tax benefits, especially when the delay was due to systemic issues in the department's e-filing infrastructure.

Prayer

In light of the above grounds, facts, and relevant case laws, the Appellant humbly prays that the Hon'ble Tribunal:

- 1. Quash the intimation under section 143(1)(a) passed by the AO, disallowing the deduction under section 80-IAC.*
- 2. Direct the AO to grant the deduction under section 80-IAC as claimed by the Appellant.*
- 3. Pass any other order as the Hon'ble Tribunal may deem fit in the interest of justice."*

Submission of Id.AR :

2. At the outset of hearing, no one appeared on behalf of the assessee. No adjournment letter was filed. On earlier hearing i.e.19.09.2024, 15.10.2024, 14.11.2024 none appeared for the assessee and no adjournments were filed.

Submission of Id.DR :

3. The Id.DR for the Revenue relied on the order of the Assessing Officer.

**Findings & Analysis :**

4. We have heard ld.DR for the Revenue and perused the records. In this case, assessee's claim under section 80IAC has been denied by an order under section 143(1) dated 11.10.2023 for the reason of non-filing of Form 10CCB within the specified time. In this case, assessee had filed an appeal before the ld.CIT(A) which was dismissed by ld.CIT(A) vide order 30.06.2024. There was a delay of 434 days in filing appeal before the ld.CIT(A). Hence, ld.CIT(A) dismissed the appeal on account of delay in filing appeal. We have perused the statement of fact filed by the assessee and it appears that assessee was pursuing alternate remedy in the form of rectification application before the Assessing Officer. Assessee has mentioned this reason in Form No.35 also. In our opinion, there was sufficient reason for not filing appeal within time. Therefore, in these facts and circumstances of the case, we deem it appropriate to set-aside the order of ld.CIT(A) to ld.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the ld.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.



5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 19th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th Dec, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.