

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Shri TR Senthil Kumar, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA Nos. 781 & 782/Ahd/2024  
Assessment Years 2014-15 & 2015-16**

Bennet Pharmaceutical Ltd. B-608, Manubhai Tower, Sayajigunj, Vadodara-390020 PAN: AACCB8447R <b>(Appellant)</b>	Vs	The Deputy CIT, Central Circle-1(1)(1), Vadodara  <b>(Respondent)</b>
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**Assessee by: Shri Surendra Modiani, A.R.  
Revenue by: Shri Rignesh Das, Sr. D.R.**

Date of hearing : 19-12-2024  
Date of pronouncement : 07-02-2025

**आदेश/ORDER**

**PER : TR SENTHIL KUMAR , JUDICIAL MEMBER:-**

These appeals are filed by the assessee as against the separate appellate orders both dated 01-11-2023 passed by the Commissioner of Income Tax, (Appeals), National Faceless Appeal Centre, Delhi arising out of the assessment orders passed u/s. 143(3) and 154 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") relating to the assessment year 2014-15 & 2015-16.

2. The registry has noted that there is a delay of 110 days in filing the above appeals by the assessee. The assessee by a way of notarized affidavit stated that the assessee has not received the appellate orders through email or through physical mode. The assessee company came to know about the appellate orders when they checked the Income Tax Portal online. It is thereafter the assessee filed the above appeals with a delay of 110 days. In support of its claim, the assessee placed on record screenshot of the official email inbox, wherein various emails received on 01-11-2023 but no emails from Income Tax Department. Thus, we are convinced with the explanation offered by the assessee and the delay of 110 days in filing the above appeals are hereby condoned.

3. The brief facts of the case is that the assessee is a company engaged in the business of manufacturing of pharmaceutical products and few manufacturing units located in free trade zones notified by the CBDT. The profits and gains derived from eligible units is deductible from total income u/s. 80IC of the Act. For the assessment year 2015-16, assessee filed its Return of Income on 01-11-2015 declaring total income of Rs. 1,18,54,610/- after claiming deduction u/s. 80IC of Rs. 50,69,421/-. The return was processed u/s. 143(1) vide intimation dated 06-08-2016 wherein the deduction u/s. 80C was denied on the ground that the Return of Income was not filed u/s. 139(1) of the Act and demanded a tax of Rs. 20,21,650/-. Aggrieved against the intimation, the assessee filed a rectification petition, the jurisdictional Assessing Officer

rejected the application that the assessee filed the Return of Income made not u/s. 139(1) of the Act

4. Aggrieved against that order, the assessee filed an appeal before NFAC, the same was dismissed on the ground of amendment in Rule 12(2) which mandated the assessee to file Form 10CCB electronically came with retrospective effect from 01-04-2013 and was inserted by the Income Tax (17<sup>th</sup> Amendment) Rules 2013. Since the assessee has not filed the return as per section 139(1) of the Act, therefore as per section 80AC of the Act, the benefit u/s. 80IC is not available to the assessee, thereby dismissed the appeal filed by the assessee.

5. Aggrieved against the appellate order, the assessee is in appeal before us raising following grounds of appeal:-

*“1) The learned assessing officer has disallowed Deduction u/s 80IC of 50,69,421/-of AY 2015-16.*

*Your Appellant submits that the same is not justified and therefore be deleted.*

*Your Appellant craves leave to add to, alter, to amend or to delete any or all the grounds of appeal.”*

6. The ld. counsel appearing for the assessee submitted that the due date for filing the return of income for the assessment year 2015-16 u/s. 139(1) is 30-10-2015 and the uploading of return in the IT portal are as follows:-

Date and Time of successful submission	Tax Compliance by Assessee	Acknowledged by CPC
31.10.2015 at 11.23 PM	The Assessee has added CA for e_filing of Form No. 3CA (Tax Audit Report u/s 44 AB with Annexures)	Confirmation on E-mail received from IT Portal on 31.10.2015 at 11:23 PM
01.11.2015 at 12.07 AM	CA, the Tax Auditor, could upload Form No. 3CA on IT Portal for approval by the assessee	Confirmation received on E-mail from E_filing Portal to assessee on 01.11.2015 at 12:07 AM
01-11-2015 at 12.09 AM	The assessee approved Form No. 3CA filed by the Tax Auditor	Confirmation received on E-mail from the E_filing Portal to assessee on 01.11.2015 at 12:09 AM
01-11-2015 at 12.37 AM	After submission of the Tax Audit Report and approval thereof, the assessee was required to e_file Return of Income giving details of the tax audit submitted in the Return of Income. Return of Income was successfully filed.	Confirmation received on E-mail from the E_filing portal of income tax on 01.11.2015 at 12:37 AM

Thus, ld. counsel submitted though the audit report was uploaded at 11.23 pm on 31-10-2015 for some technical reasons the return has been uploaded at 12.37 am on 01-11-2015 which is considered as a belated return by the Assessing Officer and denied the benefit of deduction u/s. 80IC of the Act. Whereas the assessee company is claiming deduction u/s. 80IC in respect of profits and gains from the eligible business units from the assessment year 2010-11 onwards on the same were allowed by the Department. Just on technical grounds when the Return was filed on 01-11-2015 that too few minutes later on the end of the due date of filing on 31-10-2015, the assessee cannot be denied the claim of deduction u/s. 80IC of the Act. The delay was caused by repeatedly delinking, the slow process, interruption by the system on the e-filing portal during the e-process of filing on the due date. The delay was neither abnormal nor unintentional nor beyond the control of the

assessee and is caused mainly on account of technical glitches thereby the assessee should not be denied the benefit of deduction u/s. 80IC of the Act.

6.1 Ld. Counsel further submitted that in a similar circumstances, Bombay Tribunal in the case of DCIT vs. Palava Dwellings Pvt. Ltd. and Lodha Developers Ltd. in ITA No. 2147/Mum/2018 ITA No. 2348/Mum/2018 vide order dated 20-02-2020 held that the delay of 46 minutes after the due date in filing the return has been condoned. Similarly, the Delhi Bench of this Tribunal in the case of Canadian Speciality Vinyls vs. ITO in ITO 7612/Del/2016 vide order dated 02-06-2023 allowed the claim of deduction u/s. 80IC where the return of income filed belatedly. Thus, the ld. counsel prayed the delay of few minutes in filing Return of Income be condoned, due to genuine technical hardship while uploading the income tax return and the benefit u/s. 80IC be allowed.

7. The ld. Sr. D.R. appearing for the Revenue could not place on record any contra decisions, however he supported the orders passed by lower authorities and requested to uphold the same.

8. We have given our thoughtful consideration and perused the materials available on record. Admittedly, there is a delay of 37 minutes in filing the e-return by the assessee on account of delay, therefore, the ITR acknowledgment bears the date as 01-11-2015. In our considered opinion, it would be travesty of justice, if a

technical delay of 37 minutes in filing return of income, and consequently the deduction of Rs. 50,69,421/- was denied to the assessee.

8.1 The Hon'ble Bombay High Court in the case of Cosme Matias Menezes (P.) Ltd. vs. CIT [379 ITR 31] held as follows:

"It is well settled that in matters of condonation of 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."

8.2 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. The facts in this case, the assessee had uploaded its return sometime immediately past midnight on 15.10.2010 i.e. last date of filing return.

8.3 Similarly Co-ordinate Bench of Delhi Tribunal in the case of Canadian Speciality Vinyls v. Income Tax Officer in ITA No. 7612/Del/2016 vide order dated 02-06-2023 (Del-Trib.) 2023 ITL 4182 held as follows:

*'In the present case, however, the return of income of the assessee for AY 2015-16 was filed beyond the prescribed time limit u/s 139(1) of the Act. For that the ld.CIT(A) has recorded a categorical finding that the assessee was prevented by sufficient cause in filing the return within the prescribed time limit perhaps due to illness of executive partner of assessee. Even in a situation the return of income of the assessee for AY 2015-16 is treated as belated return beyond the prescribed time limit provided u/s 139(1) of the Act, then also, as per the judgement of the Hon'ble Supreme Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), which was followed by the coordinate Bench of the ITAT, Pune in the case of Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha (supra), the assessee is very well entitled to claim deduction u/s 80IC of the Act. Therefore, we reach a logical conclusion that the assessee is entitled to get deduction u/s. 80IC of the Act, as the claiming such deduction, which is part of Chapter VI-A of the Act, in the return of income filed within prescribed time limit is not mandatory but directory. Therefore ground no. 3 & 4 of assessee are allowed and Assessing Officer is directed to allow claim of assessee u/s. 80IC of the Act.'*

9. Respectfully following the judicial precedents, we have no hesitation in granting the claim of deduction u/s. 80IC of the Act to the assessee. However, since A.O. has not examined the assessee's claim u/s. 80IC in detail, but merely rejected on technical ground, we restore the matter to the file of Jurisdictional Assessing Officer for examining the claim u/s. 80IC of the Act on merits and allow the same in accordance with law, by giving proper opportunity of hearing to the assessee.

10. In the result, the appeal filed by **the assessee in ITA No. 782/Ahd/2024 is allowed for statistical purposes.**

**ITA No. 781/Ahd/2024 A.Y. 2014-15**

11. The grounds raised by the assessee are follows:

*"1. The Learned Assessing Officer has disallowed payment of Employee's Contribution towards PF/ESIC of Rs. 17,70,356/- of AY 2014-15.*

*Your Appellant submits that same is not justified and therefore be deleted.*

*2) The learned assessing officer has disallowed deduction under section 80IC of Rs. 1,42,04,776/- of AY 2014-15.*

*Your Appellant submits that the same is not justified and therefore be deleted."*

12. At the outset, the ld. Counsel for the assessee is not pressed ground no. 1 namely late payment of employees contribution towards PF/ESIC. Recording the same, Ground no. 1 is dismissed. Ground No. 2 is denial to deduction u/s. 80IC of the Act of Rs.

1,42,04,776/- on the ground that Form 10CCB was not filed electronically.

12.1 This issue is also no more res-integra following the Supreme Court judgement in the case of CIT vs. GM Industries Pvt. Ltd. (2015) 376 ITR 456 which is followed by the Co-ordinate Bench of this Tribunal in the case of Aprameya Engineering Ltd. vs. ITO ITA No. 456/Ahd/2024 dated 11-06-2024 wherein it is held as follows:-

*“8.1. The Hon'ble Gujarat High Court in the case of Zenith Processing Mills v CIT reported in 219 ITR 721 (Guj.) held that provision of section 80J(6A) of the Act to extent it requires furnishing of auditor's report in prescribed form along with return, is directory in nature and not mandatory. Further, it was held that the assessee can be permitted to produce such a report at later stage when question of disallowance arises during course of assessment proceedings. In the instant case, the Ld. A.O. as well as the Ld. CIT(A) has denied benefit of concessional tax rate u/s 115BAA of the Act on account of an inadvertent error on the part of the assessee in not e-filing Form 10 IC before due date prescribed. We are, therefore, of the view that there is sufficient compliance if the Form 10 IC has been filed during the course of assessment proceeding, since there is no material objective to be achieved by the assessee in not e-filing the same, once the intent was very well declared in Form 3CD.*

*8.2. Considering the principle of beneficial interpretation, the procedural requirements should not override substantive benefits. The Courts have taken a lenient view on procedural lapses when substantive benefits are involved. SC ruling in the case of CIT v. G.M. Knitting Industries (P.) Ltd. reported in (2015) 376 ITR 456 emphasized that the making of a claim of deduction is mandatory, but timing is directory. Even if the claim is made during the assessment proceedings, such a claim is to be allowed.*

*8.3. After considering the submissions, the judicial precedents cited and the specific facts of the case, we are of the opinion the delay in filing Form 10-IC, though a procedural requirement, should not invalidate the assessee's substantive right to the benefit of section 115BAA of the Act.*

*8.4. The CBDT's Circulars extending the due dates for filing such forms in earlier years indicate a recognition of such procedural difficulties. These Circulars indicate a degree of administrative flexibility and a recognition that procedural lapses should not necessarily lead to the denial of substantive benefits. Moreover, denying the benefit based solely on this lapse would be against the principles of equity and justice, especially when there is no dispute regarding the assessee's eligibility for the lower tax rate."*

13. Respectfully following the above judicial precedents, Ground no. 2 raised by the assessee is hereby allowed and the Jurisdictional Assessing Officer is directed to examine the claim u/s. 80IC of the Act on merits and allow the same in accordance with law by giving opportunity of hearing to the assessee.

14. In the result, the appeal filed by the assessee in ITA No. 781/Ahd/2024 is allowed for statistical purposes.

15. In the combined result, **the appeals filed by the assessee are partly allowed for statistical purposes.**

Order pronounced in the open court on 07-02-2025

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(TR SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 07/02/2025**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद