

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER
I.T.A. No. 04 & 05/Ran/2024 (Assessment Year-2018-19 & 2019-20)
(Virtual Hearing)

Surya Realcon Private Limited, 106LA, Rameshwar Bhawan, Saraidhela, Dhanbad-828127 (Jharkhand) PAN No. AANCS 0573 L	Vs.	DCIT, Circle-1, Dhanbad.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Devesh Poddar, Adv.
Department represented by	Shri Khubchand T. Pandya, Sr.DR
Date of hearing	07/05/2025
Date of pronouncement	07/05/2025

ORDER

PER: BENCH

1. These appeals by the assessee are directed against the separate orders of the National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals), [in short, the Id. CIT(A)] both dated 28/07/2023 for the Assessment Year (AY) 2018-19 and 2019-20 respectively. Both these appeals have similar facts and grounds, therefore, with the consent of parties, both these appeals were clubbed and heard together and are decided by this common order. For appreciation of facts, we take ITA No. 04/Ran/2024 for the A.Y. 2018-19 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

- "1. That CPC Bengaluru while processing the Return u/s 143(1)(a), Rs 27,45,349/- has been disallowed on account of claim u/s 801B for non-filing the Return in due date.
2. That the return was filed on 31.03.2019, due date was 30.09.2018. That the order u/s 143(1)(a) is being enclosed. Please refer to the Annexure.
3. That the return has been filed delayed due to continuous treatment of the Director who looks after the income tax return.

4. *That it is worthwhile to mention that the Audit has been completed well within time and the Report has been uploaded also. (Copy of Form 3CA enclosed)*
 5. *That due to serious illness of one of the directors the return could not be filed. (Copy of Doctor's Certificate enclosed). The situation was beyond of his control.*
 6. *That there is no mala fide intention behind it.*
 7. *That there is reasonable cause for non -filing the return in due time.*
 8. *That merely on the ground that return has been filed belatedly the exempt U/s 801B cannot be denied.*
 9. *That it is the incentive provision has to be interpreted in manner as to advance the object of economic activities in the country & notice to deny the claims over technical grounds.*
 10. *That the return filed u/s 139(4) is to be treated as sufficient compliance in this provision of the act was expounded that subsection (1) & subsection (4) of section 139 have to be read together.*
 11. *That the due date of filing of return was 30.09.2018 and the return is filed on 31.03.2019 due to valid reasons.*
 12. *That we had preferred an appeal before CIT(A) where the Learned appellate authority has rejected our submission without provided any valid reasons for their rejection.*
 13. *That the Learned Appellate authority has failed to understand that the filing of return on or before due date u/s 139(1) for the purpose of claiming deduction u/s 801B is directory & not mandatory at all.*
 14. *That for claiming deduction U/s 80113, furnishing of return on or before due date u/s 139(1) is directory and not mandatory and, therefore, relief shall be granted by the appellate authority in case, there was genuine and valid reason for the delay in filing of return.*
 15. *That there was genuine and valid reason for the delay in filing of return and moreover these provisions are directory and not mandatory.*
 16. *That the claim of the assessee cannot be denied on technicalities when the assessee is legally otherwise entitled for deduction.*
 17. *That the Act does not prohibit relief when genuine hardship is faced.*
 18. *That the assessee was prevented by a reasonable cause as attributed by it in furnishing its return of income belatedly.*
 19. *That it is clear that the provision contained in s. 80AC as regards the time limit for filing the return of income is directory but not mandatory in view of the aforesaid provisions of the Act permitting relaxation of the time limit for filing the return. It is to be distinctly understood that such relaxation is statutory in nature (as it is allowed by the Statute itself) and not administrative in character.*
 20. *Kindly allow the deduction of Rs 27.45349/- U/s 801B for the AY 2018-19.*
 21. *That the other grounds of appeal along with the supported case laws will be produced at the time of hearing."*
2. We find from perusal of record that there are delay of 173 days each in filing of both these appeals of the assessee before the Tribunal. Impugned order was passed by the Id. CIT(A) on 28/07/2023, however, these appeals are filed on

09/01/2024. The assessee has filed application for condonation of delay in the form of affidavit mentioning the fact that one of the Director of assessee company namely Sumit Kumar Singh was continuous ill from 18/09/2023 to 08/12/2023. Due to his illness, he could not file these appeals before the Tribunal on time. The situation is beyond his control. The assessee stated that the delay in filing appeals are neither intentional nor deliberate. The delay is not inordinate. The assessee has good case on merit would suffer prejudice if delay is not condoned in its case and the appeals are not adjudicated on merit.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr.DR) for the revenue submits that there are delay of 173 days in both these appeals and no proper explanation was submitted by the assessee. No document or evidence was filed by the assessee for ailment of director of the company.
4. We have considered the submissions of both the parties on the plea of condonation of delay, we find that the impugned order was passed on 28/07/2023, however, the present appeals are filed on 09/01/2024, the registry has calculated delay of 173 days each in filing both the appeals. As recorded above, the assessee submitted that due to medical treatment taken by the one of the Director of the assessee company, he could not file appeals within the time limit. Considering the fact that the delay is not inordinate and seems to be not intentional, therefore, delay of 173 days in filing both these appeals are condoned. Now adverting to the merit of the case.
5. Facts of the case in brief are that the CPC, Bangalore while processing the return under Section 143(1A) of the Income Tax Act, 1961 (in short, the Act) has not been allowed deduction under Section 80IB of the Act amounting to

₹ 27,45,349/- on the ground that the return was not filed under Section 139(1) of the Act and was a belated return and therefore, the assessee was not entitled to claim deduction under Section 80IB of the Act.

6. Aggrieved by the order of CPC, Bangalore, the assessee filed appeal before the Id. CIT(A), who vide the impugned order, has held "that the CPC Bangalore did not lack jurisdiction to make the disallowance in question with respect to claim of deduction under Section 80IB of the Act for the A.Y. 2018-19. As the relevant provisions for disallowing the claim of deduction under Section 80IB of the Act in case of belated return were already in the statute, the CPC Bangalore was empowered to make disallowance with respect to claim of deduction under Section 80IB of the Act on the ground of belated return.

7. Aggrieved by the order of Id. CIT(A), this appeal has been preferred by the assessee before us. Through its submission before this Bench, the Id. AR of the appellant has submitted as under:

"1. That the sole issue involved in both these instant appeals is the disallowance made by CPC for the deduction claimed U/s 801B on the ground that the ITR was filed beyond the time period, as specified U/s 139(1).

2. That it is not in dispute that in AY 2018-19 the ITR was filed on 31/03/2019 as against the due date U/s 139(1) being 31/10/2018 and in AY 2019-20, the ITR was filed on 22/01/2020 as against the due date being 31/10/2019.

3. That CPC while processing the ITR U/s 143(1) disallowed the deduction claimed U/s 801B for Rs. 27,45,349/- in AY 2018-19 and Rs. 38,55,101/- in AY 2019-20. That as stated above, the sole ground for disallowance was that the ITR has been filed beyond the due date U/s 139(1).

4. That the issue which needs to be considered is that Whether the ITR filed within the time period U/s 139(4) be held as valid ITR in terms of section 139(1). For the above, we rely upon the following case laws:-

Hon'ble Bombay High Court in the case of Trustee of Tulsidas Gopaiji Charitable and Chaleshwar Temple Trust Vs CIT (207 ITR 368) (Bom)(HC) has held as under:-

On a careful reading of [section 139](#) of the Act, we are of the clear opinion that sub-sections (1) and (4) of [section 139](#) have to be read together and on such a reading, the inevitable conclusion is that a return made within the time specified in sub-section (4) has to be considered as having been made within the time prescribed in sub-section (1) or sub-section (2) of [section 139](#) of the Act. In other words, if a return is filed within the time specified in sub-section (4) of [section 139](#) of the Act and the option contemplated by the Explanation to [section 11\(1\)](#) is exercised in writing along with such return, the requirements of the Explanation to [section 11\(1\)](#) would stand satisfied."

Hon'ble ITAT Nagpur Bench in the case of Sukhkarta Developers and Builders Vs PCIT (Nagpur) (Trib) 596 & 5971Nag/2016 dated 01/08/2018, on identical issue has held as under:

"12. From the above exposition from the Hon'ble jurisdictional High Court which duly has the mandate from the Hon'ble Apex Court, it transpires that the submission of return within time as specified under sub section (4) of section 139 has to be taken as sufficient compliance for the provision of the Income Tax Act, 1961, as it was expounded that the sub section (1) and sub section (4) of section 139 have to be read together and, hence, it is the inevitable conclusion that a return made within the time specified in sub section (4) has to be considered as having been made within the time prescribed in sub section (1) of the Act.

13. On the touch Stone of the above said exposition, we find that there is no infirmity in the Assessing Officer's order on granting the assessee the deduction u/ s. 801B of the Income Tax Act, 1961. It is not the case that the returns were filed beyond the time limit for sub section 139(4)."

Hon'ble ITAT Nagpur Bench in the case of Sunil Vishambaharnath Tiwari Vs ITO in ITA No. 240/Nag/2015 dated 20/12/2021, on identical issue has held as under:-

We are of the view that the provision of filing of return of income U/s 139(1) are directory in nature and return filed U/s 139(4) of the Act is to be treated as sufficient compliance. Even the identical issue has already been decided by the Coordinate Bench of this Tribunal in the case of Sukhkarta Developers and Builders Vs PCIT (supra) wherein it was categorically held that claim of the assessee cannot be disallowed U/s 801B of the Act only on the ground that the return of income was filed beyond the period stipulated U/s 139(l) of the Act in view of provisions of Section 80AC of the Act as the same is beyond the scope of Section 139(1) of the Act. The submission of return within time as specified under subsection (4) of Section 139 has to be taken as sufficient compliance in the provisions of the Act as it was expounded that sub-section (1) and subsection (4) of Section 139 have to be read together. Thus, keeping in view the above settled provisions of law, we reach to an inevitable conclusion that the return of income so filed by the assessee in the present case within the time specified in sub-section (4) of Section 139 of the Act has to be considered as filed within the time prescribed in sub-section (1) of Section 139 of the Act. Thus, on this ground, no disallowance U/s 801B of the Act was warranted. Thus, the assessee succeeds on this account.

Hon'ble ITAT Mumbai Bench in the case of ITO Vs Uma Developers in ITA No. 77181Mum/2014 dated 10/08/2016 and further in the case of Late Hussein Ismail Dawoodani Vs DCIT in ITA 194/Mum/2017 dated 27/11/2018 has held as below:-

16. "After having gone through the facts of present case and after perusing the submissions of both the parties we found that identical issue has already been decided by the Coordinate Bench of the Tribunal in the case of Uma Developers (supra) wherein it was categorically held that the claim of the assessee cannot be disallowed under section 801B(10) of the Act only on the ground that the return of income was filed beyond the period stipulated under section 139(l) of the Act in view of the provisions of Section 80AC of the Act as the same is beyond the scope of Section 139(1) of the Act the submission of return within time as specified under sub section (4) of section 139 has to be taken as sufficient compliance for the provision of the Income Tax Act, 1961, as it was expounded that the sub section (1) and sub section (4) of section 139 have to be read together."

5. That thus quoting the above, we submit that the disallowance of claim U/s SOIB made by the CPC on the sole ground that the ITR was filed beyond the limitation period as per section 139(1) but within 139(4) is unjustified and fit to be deleted.
6. That lastly, though we contend that there was a reasonable cause for delay in filing of the ITR i.e. the key person (director) of the assessee company was suffering for a major disease and as such, the ITR could not be verified and filed on time, we submit that it is a settled position that if a disallowance is required to be established by arguments and long drawn process of reasoning on points or if the issue is debatable, which there may conceivably be two opinions about, then the case should have been selected for scrutiny assessment.
8. On the other hand, the Id. Sr.DR for the revenue relied on the orders of the lower authorities. The revenue has also filed a written submission dated 01/05/2025 in response to the written submission filed by the appellant which is given as under:

"In the instant case, the assessee has filed its return of income after due date specified u/s 139(1) for the relevant years. The details are as under:

Asst. Year	Due Date specified u/s 139(1)	Extended due date	Date of filing of return of income	Date of processing/ order u/s 143(1)	Claim of deduction u/s 80IBA not allowed.
2018-19	30.09.2018	31.10.2018	31.03.2019	26.12.2019	27,45,349
2019-20	30.09.2019	31.10.2019	22.01.2020	03.06.2020	38,55,101

CPC has processed the above returns and claim of deduction u/s 80IBA in Schedule VIA was disallowed as the return of income was filed after due date. CPC has disallowed the above

incorrect claim u/s 143(1)(a) of the I.T. Act, 1961 for the A.Y. 2018-19 and A.Y. 2019-20. Aggrieved with order u/s 143(1), the assessee preferred an appeal before CIT(A).

The grounds of appeal of the assessee was "That the return filed u/s 139(4) is to be treated as sufficient compliance in this provision of the Act was expounded that subsection (1) & subsection (4) of section 139 have to be read together. No disallowance U/s 80IB was warranted specially when assessee had filed audit report well within time."

The Id. CIT(A) has dismissed the both appeals of the assessee for the A.Y. 2018-19 & 2019-20. The Ld. CIT(A) has mentioned the provision of section 80AC and 143(1)(a)(v) which is as under:

Section 80AC

Prior to its amendment vide Finance Act, 2018, section 80AC as inserted by the Finance Act, 2006 w.e.f. 01.04.2006 and later on amended by the Finance Act, 2007 w.e.f. 01.04.2008 read as under:

80AC: Deduction not to be allowed unless return furnished- Where in computing the commencing on the 1st day of April 2006 or any subsequent assessment year, any deduction is admissible Section 80-IA or section 80-IB or section 80-IC or section 80-ID or section 80-IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.

After amendment vide Finance Act, 2018 w.e.f. 01.04.2018, the section 80AC of the Act stood as under:

80AC: Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after

(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes",

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.

Section 143(1)(a)(v)

Prior to its amendment vide Finance Act, 2021, section 143(1)(a)(v) as inserted by the Finance Act, 2016 w.e.f. 01.04.2017 read as under:

"143(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the returns is furnished beyond the due date specified under sub-section (1) of section 139;

After amendment vide Finance Act, 2021 w.e.f. 01.04.2021, section 143(1)(a)(v) of the Act stood as under: "143(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139;

A plain reading of the above makes it clear that CPC, Bangalore did not lack jurisdiction to make the disallowance in question with respect to claim of deduction u/s 80-IB for the A.Y. 2018-19 & 2019-20. As the relevant provisions for disallowing the claim of deduction u/s 80-IB in case of a belated return were already in the statute, CPC was empowered to make disallowance with respect to claim of deduction u/s 80-IB of the I.T. Act, 1961 on the ground of belated return.

The case laws referred by the assessee of Hon'ble ITAT Nagpur Bench in the case of Sunil Vishambaharnath Tiwari Vs ITO in ITA No. 240/Nag/2015 dated 20/12/2021. The Hon'ble ITAT held that

"Thus, as per the facts of the present case, although, the assessee has filed the audit report in time but belated filed return of income, therefore, after considering the legal proposition as framed down in the aforementioned orders/judgments by different judicial authorities, we are of the view that the provision of filing of return of income U/s 139(1) are directory in nature and return filed U/s 139(4) of the Act is to be treated as sufficient compliance. Even the identical issue has already been decided by the Coordinate Bench of this Tribunal in the case of Sukhkarta Developers and Builders Vs PCIT (supra) wherein it was categorically held that claim of the assessee cannot be disallowed U/s 80IB of the Act only on the ground that the return of income was filed beyond the period stipulated U/s 139(1) of the Act in view of provisions of Section 80AC of the Act as the same is beyond the scope of Section 139(1) of the Act. The submission of return within time as specified under sub-section (4) of Section 139 has

to be taken as sufficient compliance in the provisions of the Act as it was expounded that sub-section (1) and sub-section (4) of Section 139 have to be read together. Thus, keeping in view the above settled provisions of law, we reach to an inevitable conclusion that the return of income so filed by the assessee in the present case within the time specified in sub-section (4) of Section 139 of the Act has to be considered as filed within the time prescribed in sub-section (1) of Section 139 of the Act. Thus, on this ground, no disallowance U/s 80IB of the Act was warranted. Thus, the assessee succeeds on this account.

In the above case, the facts were that the assessee has filed the audit report in time but belated filed return of income, whereas in the case of the assessee Surya Realcon Pvt. Ltd., the audit report was also not filed in time. As per e-filing portal, the Audit report for A.Y. 2019-20 was filed on 20/01/2020 after the due date prescribed for filing audit report. Further, as per e-filing portal the Audit report for A.Y. 2018-19 has not been filed. Thus, the above case law referred by the appellant is distinguished from the facts of the present case of Surya Realcon Pvt. Ltd.

Further, other case laws referred by the appellant of the Hon'ble Judicial authorities either becomes distinguishable being of a much earlier period when most of the amendments to the sections reproduced above were yet to come into existence or distinguished from the facts of the present case.

The contention of the appellant that the ITR could not be filed before the due date for filing of return due to key person (director) of the assessee company was suffering from diseases is not acceptable due to mandatory provisions of the law. Here timely filing of ITR is mandatory statutory requirement as far as compliance to section 80AC read with section 143(1)(a)(v) is concerned. Thus, the contention of the appellant should not be accepted. CPC has rightly disallowed the claim of deduction u/s 80-IB due to late filing of return of income."

9. We have considered the rival submissions and it is found that there is no dispute that the return of income was filed after the due date, however, the Hon'ble Bombay High Court in the case of Trustee of Tulsidas Gopalji Charitable and Chaleshwar temple Trust Vs CIT (supra) has held as under:

"On a careful reading of [section 139](#) of the Act, we are of the clear opinion that sub-sections (1) and (4) of [section 139](#) have to be read together and on such a reading, the inevitable conclusion is that a return made within the time specified in sub-section (4) has to be considered as having been made within the time prescribed in sub-section (1) or sub-section (2) of [section 139](#) of the Act. In other words, if a return is filed within the

time specified in sub-section (4) of [section 139](#) of the Act and the option contemplated by the Explanation to [section 11\(1\)](#) is exercised in writing along with such return, the requirements of the Explanation to [section 11\(1\)](#) would stand satisfied."

The Hon'ble ITAT Nagpur Bench in the case of Sukhkarta Developers and Builders Vs PCIT (supra) and Sunil Vishambaharnath Tiwari Vs ITO (supra) and the ITAT Mumbai Bench in the case of ITO Vs Uma Developers (supra) have already held that the disallowance of claim under Section 80IB made by the CPC on the sole ground that the income tax return was filed beyond limitation period as per Section 139(1) of the Act but within the meaning of Section 139(4) of the Act is unjustified and fit to be deleted. The Id. AR of the assessee in his submission has explained the reason for delay in filing of the return where the Director of the assessee company was suffering from a major disease and thus the case should have been selected under scrutiny and not under processing where the claim of deduction under Section 80IB was summarily disallowed without having been given the opportunity to the appellant to explain its case and also for the reason for delay in filing of the return. We find that since the issue has already been decided by the Hon'ble Bombay High Court and was duly followed by the various coordinate Benches of the ITAT, therefore, we do not find any reason to differ with that. We are also of the view that the appellant should have been given the opportunity of being heard before the claim of deduction under Section 80IB was disallowed. Thus, claim of deduction under Section 80-IB of the Act is allowed. In the result, grounds of appeal raised by the assessee are allowed.

10. In the result, this appeal of the assessee is allowed.

11. Similarly in ITA No.05/Ran/2024 for the A.Y. 2019-20, we find that in this appeal, the assessee has raised similar grounds of appeal except variation of additions/disallowances made by the Assessing Officer. We also find that the facts of the case and the grounds of appeal as raised by the assessee in this appeal are similar to the facts and grounds of appeal as raised in ITA No. 04/Ran/2024 for the A.Y. 2018-19, where we have allowed the appeal of assessee. Therefore, keeping in view the principle of consistency on similar set of facts, this appeal of assessee is also allowed with similar direction. In the result, grounds of appeal are allowed.

12. In the result, both these appeals of assessee are allowed.

Order announced in open court on 07th May, 2025.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 07/05/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi