

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1119/SRT/2024

Assessment Year: (2021-22)

(Hybrid Hearing)

|   |     |                                  |
|---|-----|----------------------------------|
| Orchid Corp.,<br>F-11, Orchid Ventura, Nr. New LP<br>Savani School, Palanpore Canal<br>Road, Surat - 395009 | Vs. | ITO,<br>Ward - 1(1)(1),<br>Surat |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAFFO2395F  |     |                                  |
| (Appellant)   |     | (Respondent)                     |

|                       |                              |
|-----------------------|------------------------------|
| Appellant by          | Shri Suresh K. Kabra, CA     |
| Respondent by         | Shri Ravi Kant Gupta, CIT-DR |
| Date of Hearing       | 31/07/2025                   |
| Date of Pronouncement | 29/10/2025                   |

**आदेश / O R D E R**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 22.08.2024 by the Commissioner of Income-tax (Appeals) [in short 'CIT(A)'] for the assessment year (AY) 2021-22.

2. Grounds of appeal raised by the assessee are as under:

*"1. The Ld. CIT(A)-NFAC has erred and was not jut and proper on the facts of the case and in law in confirming the not allowing of the deduction u/s 80IBA of the Act for filing the ROI delayed by 01 (one) day beyond the due date, resulting into addition of Rs.12,04,09,633/-.*

**2. Prayer**

*2.1 The additions/disallowances may kindly be deleted.*

*2.3 Personal hearing maybe granted.*

*2.3 Any other relief that your honours may deem fit may be granted.*

*3. The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing.”*

3. Brief facts of the case are that assessee filed its return of income for AY 2021-22 on 16.03.2022 declaring total income of Rs.5,49,44,320/-. The assessee filed the return one day after the extended due date of filing, i.e., 15.03.2022. The return was processed u/s 143(1) of the Act on 12.12.2022 wherein disallowance of deduction claimed u/s 80IBA of the Act was made because the return was furnished beyond the due date specified under sub-section (1) of section 139 of the Act. The assessee vide rectification petition dated 23.01.2023 stated that there was a mistake in the said intimation, which was apparent from record within the meaning of section 154 of the Act. The request for rectification u/s 154 of the Act was rejected by the Central Processing Centre (CPC) vide order dated 24.04.2023 because claim of deduction u/s 80IBA was made in the return, which was filed beyond the due date specified under sub-section (1) of section 139 of the Act. The AO – CPC, accordingly, issued demand notice of Rs.3,87,47,550/- by disallowed deduction u/s 80IBA of Rs.12,04,09,632/-.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). During the appellate proceedings, the CIT(A) issued various notices of hearing u/s 250 of the Act. In response, the assessee submitted its reply, which is at pages 3 to 4 of the appellate order. The assessee contended that it satisfies all conditions for claim of deduction u/s 80IBA and that there was only a one-day delay in filing the return and that there was a genuine cause for the delay. The assessee had however, filed the audit report before filing the return of income. The CIT(A)

referred to the decisions of Hon'ble Supreme Court in case of PCIT vs. Wipro Ltd., (2022) 140 taxmann.com 223 (SC) and held that for claiming the benefit u/s 10B(8), both conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature. The CIT(A) held that though the decision was rendered in the context of section 10B(8) of the Act, it is equally applicable for claim of deduction u/s 80IBA of the Act. The provision of section 80AC of the Act is clear and unambiguous. The deductions under Chapter VI-A cannot be allowed, if the assessee does not file a return of income on or before the due date specified in section 139(1) of the Act. The appellant failed to comply with the mandatory provisions of section 80AC and hence, the appellant was not entitled to claim deduction u/s 80IBA of the Act. He upheld the order of AO by relying upon the decision of Hon'ble Supreme Court in case of Wipro Ltd. (supra) and dismissed the grounds.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) submitted paper books including acknowledgement of ITR-5 for AY 2021-22, acknowledgement of filing audit report for AY 2021-22, copy of medical certificate and affidavit of accountant and assessment order. The Id. AR relied upon the decisions in case of PCIT vs. H. P. Housing & Urban Development Authority, 297 Taxman 208 (HP). He submitted that there was only delay of one-day in filing the return of income, which was due to the illness of the accountant. However, the audit report was filed on 15.02.2022, i.e., one month before the extended due date for filing the

return on 15.03.2022. Copy of medical certificate and affidavit of Shri Sandeep Kumar Dhirajlal Borad, accountant has been filed (Pages 3 to 8 of the PB). He submitted that the accountant was under treatment for pneumonia and hence, there was the very insignificant delay only one-day in filing the return of income.

6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He submitted that it is mandatory to file the return of income within the due date u/s 139(1) of the Act. He relied on the decision in case of Wipro Ltd. (supra). He also relied on the decisions in cases of (i) Hyagreeva Hotels & Resorts (P.) Ltd. vs. DCIT, 144 taxmann.com 35 (Bang – Trib.) and (ii) Sri Kailash Modi vs. ITO, 146 taxmann.com 166 (Gauhati – Trib.).

7. We have heard both the parties and perused the material available on record. We have also deliberated upon the decisions relied upon by both sides. There is no dispute that the appellant filed the original return of income on 16.03.2022, i.e., one-day after the extended due date upto 15.03.2022. However, the audit report was filed one month before the due date, which is not in dispute. The Id. AR has relied on the decisions of H. P. Housing & Urban Development Authority (supra) and Laxmanarayan Dev Shrishan Seva Khendra (supra). It is seen that the Hon'ble Himachal Pradesh High Court in case of H. P. Housing (supra) has not referred to the decision of Hon'ble Supreme Court in case of Wipro Ltd. (supra). Hence, facts of the case relied upon are different. On the other hand, the decisions relied upon by the Id. Sr. DR, i.e., Hyagreeva Hotels & Resorts (P.) Ltd.

(supra) and Sri Kailash Modi (supra) supports the case of revenue that where return of income was not filed within the due date, assessee was not eligible for the deduction. However, we are of the view that deduction under Chapter VI-A could be allowed by the AO, if the delay in filing the return is condoned by the competent income-tax authority in terms of provisions of section 119(2)(b) of the Act. The CIT(A) is not the competent authority, which is clear from the language of section 119(2)(b) of the Act. Hence, the CIT(A) could not have condoned the delay in filing the return. The competent income-tax authorities, while considering an application for condonation, must be satisfied that the tax-payer was prevented by a reasonable cause from filing the return in time and the case involves genuine hardships and reasons beyond control of the assessee. Supporting document is required to substantiate the claim for the condonation of delay. The competent Income-tax authorities have been notified by the CBDT in its notification depending on the quantum and the delay involved. In the instant case, the delay was only one-day and it was due to medical exigency of the accountant of the appellant. As stated earlier, the CIT(A) is not an authority to condone such delay, even if it was a minor one. The appellant may, however, make an application for condonation of delay before the competent income-tax authority u/s 119(2)(b) of the Act, who may consider it based on the application of the assessee and the supporting documents. If the delay is condoned, the AO shall examine whether all the conditions required for claiming deduction u/s 80IBA of the Act are fulfilled

and allow deduction as per law. The ground is, accordingly, allowed for statistical purposes as per the terms indicated above.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in terms of Rule 34 of ITAT Rules, 1963 on 29/10/2025  
in the open court.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

Surat

**दिनांक/** Date: 29/10/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat