

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 78/Kol/2022  
Assessment Year: 2019-20

M/s. Surendra Steels Private Limited Charu Market SRCB Road Fancy Bazar Guwahati (Assam) - 781001 PAN : AAICS6451J	Vs	Deputy Commissioner of Income Tax, Central Circle- 2(3), Kolkata
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Devesh Poddar, A/R
Revenue by :		Smt. Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 18/05/2022  
घोषणा की तारीख /Date of Pronouncement : 20/05/2022

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The present appeal is directed at the instance of the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Kolkata - 20, [hereinafter the "Id. CIT(A)"], dt. 10/12/2021, passed u/s 250 of the Income Tax Act, 1961 (in short "the Act") for the Assessment Year 2019-20.

2. Though the assessee has taken six grounds of appeal but its grievance revolves around a single issue, namely, that the Id. CIT(A) has erred in upholding the disallowance of deduction amounting to Rs.3,92,08,790/- claimed u/s 80IC of the Act.

3. Brief facts of the case are that the assessee filed its return of income for the year under consideration on 30/10/2019 declaring total income of Rs.11,06,63,550/-. This return was proposed to be processed u/s 143(1) of

the Act and the first proposal to make adjustment was intimated to the assessee vide notice dt. 20/03/2020. According to the assessee, it has not filed Form No. 10CCB in support of its claim of deduction u/s 80IC of the Act, along with the return. However, it was submitted that the claim of deduction u/s 80IC was duly reflect in the tax audit report in Form 3CD and that Form 10CCB was uploaded by the assessee on 06/02/2020 but the computerized system did not accept the reply of the assessee and made an adjustment in the assessment made as incorrect claim u/s 143(1)(a)(ii) of the Act.

4. Dissatisfied with the adjustment, the assessee carried the matter in appeal before the Id. First Appellate Authority.

5. The Id. First Appellate Authority has upheld the adjustment by observing as under:-

*"I have carefully considered the facts of the case and submission of the appellant. Perusal of the adjustments memo shows that adjustment has been made for the following reason:*

*"In Schedule VI-A under Part-C deduction in respect of certain income in SI. No. 2.j deduction is claimed u/s.801C/801E without filing the corresponding schedule 80/C /801E/Form 10BBC OR Form 10 CCB has not been e-filed within the due date."*

*Perusal of Form No.10CCB shows that assessee has not filled up the relevant columns of the audit report in respect of eligible business u/s.801C. Further, this audit report has been obtained and uploaded on 06.02.2020. The case laws cited by the assessee in support of its contentions that audit report can be submitted any time before the finalization of assessment, can be distinguished on facts. In the case laws cited by the assessee, audit report was obtained within due date of filing return. However it was not submitted along with the return. It was submitted later during the assessment proceedings. Under these circumstances, the Courts have held that deduction u/s.80IB/801C can be allowed. However, in appellant's case, audit report in Form No.10CCB was obtained after the due date. Hence, assessee's case is distinguishable on facts. Further, the relevant columns of the audit report have not been filled up. Under these circumstances, the adjustments made by the CPC are justified. Hence, addition of Rs.3,92,08,970/- is confirmed."*

6. The Id. Counsel for the assessee, at the outset on the strength of the decisions rendered by the Hon'ble Madhya Pradesh High Court in the case of *CIT vs. Panama Chemical Works* reported in 292 ITR 147, submitted that the non-submission of Form 10CCB along with the return is a mere irregularity which is not fatal to the claim of deduction u/s 80IC of the Act. In other words, this is an irregularity which is curable in nature. He further relied upon the judgment of the Hon'ble Supreme Court in the case of *CIT vs. G M Knitting Industries Pvt. Ltd.* 376 ITR 456. He also relied upon the decisions of the ITAT Kolkata Bench in the case of *M/s. Reckitt Benckiser (India) Ltd.* order dt. 14/09/2018 and decision of the ITAT Delhi Bench in the case of *M/s. Lancer Food Products vs. ITO* dated 04/09/2017.

On the strength of these decisions it was submitted before us that there is no lapse at the end of the assessee substantively because Form 10CCB was submitted before the adjustment was made by the Assessing Officer.

7. On the other hand, the Id. Sr. D/R submitted that firstly the assessee did obtain the audit report in Form 10CCB within the time limit prescribed and consequentially the Id. First Appellate Authority has specifically observed that from this report it is not discernible as to how deduction has been worked out by the assessee, therefore, adjustment has rightly been made.

8. We have duly considered rival contentions and perused the material available on record. To our mind there are two issues involved. First being the procedural irregularity and second the legitimate quantification for disallowance. If the adjustment has been made on the basis of first defect i.e., for procedural irregularity then according to the decisions referred by

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the Id. Counsel for the assessee, this irregularity is not fatal enough to deny the claim of deduction u/s 80IC of the Act. More so, when in response to the first proposed adjustment, the assessee has reiterated submission of Form 10CCB. As far as the arguments raised by the Id. D/R is concerned, if a disallowance is to be made after filing of Form 10CCB, then it is a debatable issue and the same is not permissible u/s 143(1) in a *prima facie* adjustment and the assessee should have been given a notice for that. In other words, if a disallowance is required to be established by arguments and long drawn process of reasoning on points, which there may conceivably be two opinions about, then the case should have been selected for scrutiny assessment. In view of the above discussion, we delete the disallowance of deduction u/s 80IC of the Act, made by the Assessing Officer and upheld by the Id. CIT(A) and allow the appeal of the assessee.

9. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 20<sup>th</sup> May, 2022 at Kolkata.**

*Sd/-*

**(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

*Sd/-*

**(RAJPAL YADAV)  
VICE-PRESIDENT**

Kolkata, Dated 20/05/2022

*SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,Kolkata/DR,ITAT, Kolkata
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata