

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2173/M/2021  
Assessment Year: 2017-18**

M/s. S.K. Ventures, 1, Ground Floor, Block No.A-25/150, Madhuban Hotel Road, Ulhasnagar, Maharashtra- 421 003 <b>PAN: AADAS2607K</b>	Vs.	DCIT, Central Processing Centre, Income Tax Department, Bangalore -560 100
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Devendra Jain, A.R.  
Revenue by : Shri Avinash Baburao Karpe, Sr. A.R.

Date of Hearing : 03 . 01 . 2024  
Date of Pronouncement : 05 . 01 . 2024

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

At the very outset registry by raising a defect memo brought to the notice of the Bench that this appeal is time barred by 21 days. However, during the course of argument the Ld. A.R. for the appellant M/s. S.K. Ventures (hereinafter referred to as 'the assessee') explained that the period of delay of 21 days from 08.11.2021 to 29.11.2021 is duly condoned by the Hon'ble Supreme Court due to Covid-19 pandemic vide order dated January

10, 2022 passed in miscellaneous application No.21 of 2022, 665 of 2021 & Suo Motu Writ Petition (C) No.3 of 2020.

2. We are inclined to agree with the contentions raised by the assessee and hence the period of delay in filing the appeal is duly condoned by the order (supra) passed by the Hon'ble Supreme Court. Hence, the appeal is treated having been filed within limitation.

3. The assessee by filing the present appeal, sought to set aside the impugned order dated 09.09.2021 passed by passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2017-18 on the grounds inter alia that :-

***“In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the impugned action of Ld. DCIT, CPC in disallowing deduction of Rs.1,08,48,406/- u/s. 80-IB without considering the factual and legal matrix of the case.”***

4. Briefly stated facts necessary for adjudication of the issues at hand are: assessee is into the business of real estate i.e. construction and sale of immovable property which is approved by the authority for the purpose of claiming deduction @ 100% of the profit from the housing project under section 80IB of the Income Tax Act, 1961 (for short 'the Act'). So the assessee claimed deduction @ 100% from the housing project for the year under consideration but due to some technical glitches the assessee failed to furnish report in form 3CB and form 10CCB respectively within due date of filing the return of income, but ultimately uploaded the same on 07.11.2017. Assessee declared total income at Rs.Nil after claiming 100% deduction of profit under section 80IB to the extent

of Rs.108,48,406/-. Consequently, a notice proposing adjustment of Rs.143(1)A of the Act was uploaded on e-portal by disallowing the entire deduction claimed by the assessee for want of report in the form 10CCB after due date.

5. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved, assessee has come up before the Tribunal by way of filing present appeal.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. The Ld. CIT(A) has dismissed the appeal by returning following findings:

*“6.3 CA's certificates Statements/Form 10CCB is to be filed with in the due date in order to claim the deduction under this section. The appellant himself in the statement of facts (as quoted in para 3 above) has accepted that the same was delayed. The AO has thus correctly denied the deduction claimed u/s 80 IB since the return of income was filed beyond the due date. The appeal is accordingly dismissed.”*

8. The Ld. A.R. for the assessee challenging the impugned order passed by the Ld. CIT(A) contended that the assessee had duly e-filed the return of income on 07.11.2017 but audit report with form 3CB was not uploaded on 07.11.2017 due to some technical glitches rather it was uploaded on 08.11.2017 at 00 hrs.

9. We have perused the audit report under section 44AB of the Act with form 3CB available at page 1, 2 & 3 of the paper book

along with return of income. Similarly, we have also perused the audit report filed by the assessee under section 80-I(7)/80-IA(7)/80-IB/80-IC/80-IAC/80-IE along with form 10CCB available at page 5 to 9 of the paper book brought on record by the assessee. These documents have not been brought on record by the assessee before the Ld. CIT(A).

11. Since the uploading of the audit report with form No.3CB and form No.10CCB could not be uploaded due to technical hitch as e-filing was newly introduced the assessee cannot be punished for that, if he is otherwise eligible to get the benefit under section 80-IB. Now the assessee has duly explained the facts, so the new evidence brought on record by the assessee is remitted back to the AO to verify and allow the deduction claimed by the assessee under section 80-IB, if admissible under law, after providing opportunity of being heard to the assessee.

12. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 05.01.2024.**

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 05.01.2024.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai

The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.