

Sec. 80-IB relief not available if ITR wasn't filed within the due date prescribed u/s 139(1): Calcutta HC

Summary – The High Court of Calcutta in a recent case of Suolificio Linea Italia (India) (P.) Ltd., (the Assessee) held that where assessee failed to file return within period prescribed under section 139(1), its claim for deduction under section 80-IB could not be allowed even though return had been filed at a belated stage in term of section 139(4)

Facts

- In appellate proceedings, question came up for consideration was whether the benefit conferred under section 80-IB could be declined on the ground that the assessee did not file its return for the relevant assessment year within the period prescribed under section 139(1).

Held

- Section 80-IB allows certain deductions if an industry is established in a backward area. Such deductions are allowed for a period of ten years. A condition for obtaining the benefit of such deductions is that the return for the relevant year should be filed within the time prescribed under section 139(1) of the Act. Such condition is imposed by section 80AC and the wording of the material part is couched in a negative fashion: '...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.' In other words, an embargo is imposed by section 80AC on the conferment of the benefit under section 80-IB. The condition also specifically refers to section 139(1) and not to section 139 as a whole.
- According to assessee, a joint venture company was established and some of the directors or shareholders of the joint venture company were not resident in India. As a result, the annual accounts for the joint venture company could not be completed within the stipulated time and an application was made before the relevant Registrar of Companies for extension of the time to complete the finalisation of the accounts and the acceptance thereof at a deferred annual general meeting. Pursuant to the Registrar's orders, the accounts were finalised in November of the relevant year and the annual general meeting was also held.
- In terms of section 139(4), the returns were filed at a belated stage but upon complying with the requirements of such provision.
- The appellant claims that once the returns are filed and they are taken on record, the condition stipulated in section 80AC would be deemed to have been complied with.
- When the governing provision expressly mandates that no such deductions shall be allowed unless the assessee filed his returns of income 'on or before the due dates specified under' section 139(1)

of the Act, there is no question of referring to the extended period permitted under section 139(4) to seek the benefit. Indeed, if the embargo were not as strict as is evident from the relevant provision, the entirety of section 139 would have been mentioned in the relevant expression in section 80AC which would have included within its sweep the extended period under sub-section (4) thereof. But in such provision referring only to sub-section (1) of section 139, the reference to the other provisions of section 139 must be understood to have been excluded.

- In the result, assessee's appeal is dismissed.