

## **Section 80-IB(10) relief to be allowed only when return is filed on or before due date given under section 139(1)**

**Summary – The Mumbai ITAT in a recent case of Siroya Developers., (the Assessee) held that Deduction under section 80-IB can be allowed only when return is filed on or before due date specified under section 139(1); if return is filed belatedly assessee will not entitled to such deduction**

### **Facts**

- During the course of assessment proceedings, it was noted by the Assessing Officer that the due date for filing of return under section 139(1) was 30-9-2009 whereas the assessee filed its return on 14-10-2010 under section 139(4). It was held by him that since the return was filed under section 139(1), the assessee was not eligible for deduction under section 80-IB(10).
- Before the Commissioner (Appeals) the assessee explained that there was delay in filing of return of income by 379 days on account of the reasons beyond the control of the assessee as the accountant of the assessee had met with an accident and got hospitalised. However, the return was filed within extended time limit permitted under the law as prescribed in section 139(4). But, the Commissioner (Appeals) did not agree with the submissions of the assessee and held that no reasonable cause has been explained and duly supported by the assessee along with the requisite evidences. The Commissioner (Appeals) refused to interfere in the order of the Assessing Officer on this issue and therefore, benefit of deduction was denied for not filing the return of income under section 139(1).

### **Held**

- To avail the benefit of deduction under section 80-IB, the assessee is required to file return within the due date as prescribed under section 139(1). It is noted that section 139(4) was existing when section 80AC was brought on the statute and thus, the legislature was conscious of this fact that return could be filed within the extended time as prescribed under section 139(4), but the legislature chose to grant the benefit of deduction only when the return was filed under section 139(1). If the intention was to grant the benefit of deduction, even in those cases when the return was filed under section 139(4), then the same would have been mentioned by the legislature in section 80AC that return is filed under section 139(1) or within the time extended by section 139(4). It appears that the whole objective of bringing section 80AC was to encourage the assessees to file the return within time as stipulated under section 139(1) and to discourage them from late filing of return.
- Benefit of aforesaid deductions should not be allowed in the cases where return is not filed within the specified time limit as prescribed in section 139(1). The whole idea of bringing this piece of legislation on the statute was to streamline and bring efficiency in the system of filing of returns,

issuing refunds and carrying out assessment proceedings, *etc.* in an efficient and time bound manner. This obligation has been cast upon the assessee by the legislature for a valid purpose.

- The assessee has failed to fulfil the condition of filing of return under section 139(1) and, therefore, the assessee was not eligible for the benefit of deduction under section 80-IB(10) in view of clear provisions of section 80AC.