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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 55/2019, C.M. APPL.3299-3300/2019

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through : Sh. Ashok. K. Manchanda, Sr. Standing Counsel.

versus

ADITYA DUROBUILD PVT. LTD. ..... Respondent

Through : Sh. Ved Jain, Sh. Kislaya Parashar and Ms. Mekhala Benny, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**O R D E R**

**% 23.01.2019**

**C.M. APPL.3299/2019 (for exemption)**

Allowed, subject to all just exceptions.

**C.M. APPL.3299/2019 (for condonation of delay)**

For the reasons mentioned in the application, the delay is condoned. C.M. Appl.3299/2019 is accordingly disposed of.

**ITA 55/2019**

Issue notice. Sh. Ved Jain, Advocate accepts notice.

The only ground urged by the Revenue under Section 260A of the Income Tax Act, 1961 [hereafter "the Act"] is substantially that the assessee could not have claimed deduction under Section 60IB of the Act in view of the bar provided by Section 80AC. The assessee had filed its return on 01.11.2011 for Assessment Year (AY) 2011-12, declaring ₹50,48,310/-. It claimed deduction of ₹2,44,91,385/- under

Section 80IB. This was done after the due date for filing the returns. The return was processed.

Subsequently, in the block assessment proceeding which ensued pursuant to search conducted in the premises, the Assessing Officer (AO) determined that the total tax payable was ₹57,21,877/-. The return of income was accepted by the CIT(A); the CIT(A) noted that the deduction under Section 80IB had been allowed in the previous two assessment years and that the necessary documents were furnished in support of the claim.

The Revenue's appeal to the ITAT was rejected. The Revenue contends that the findings of the ITAT are in error on two aspects: one, that by the mandate of Sections 139(1) read with Section 80AC, the belated claim for deduction under Section 80IB by the assessee in the return in the first instance precluded the relief and consequently that the CIT(A) could not have granted the relief - in an alleged grievance that the assessee had not in fact received the intimation under 143(1).

A consideration of the orders of the lower appellate authorities clearly discloses that even the AO, after considering the grounds urged by the assessee in the return filed by it pursuant to the search and seizure, accepted the deduction claim. In these circumstances, the acceptance of that deduction, however, in the appeal by the CIT(A) – even upon an erroneous presumption that an intimation was not generated to the assessee at the relevant time, is of no consequence.

Furthermore, we notice that all the Revenue authorities – AO as well as the CIT examined the deduction claim on merits and what is more, we also notice that for the previous years as well similar benefits had been granted. Given these circumstances, the Court is of the opinion that no substantial question of law arises. The appeal is accordingly dismissed.

**S. RAVINDRA BHAT, J**

**PRATEEK JALAN, J**

**JANUARY 23, 2019/ajk**