

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.199/PUN/2025
Assessment Year : 2019-20

ITO, Bodhi Towers, Pune	Vs.	Kumar Builders Project Pune Pvt. Ltd. 2409, East Street, Camp, Pune 411001
		PAN: AAHCK4705E
(Appellant)		(Respondent)

Assessee by : Shri Nikhil S Pathak
Department by : Shri Ramnath P Murkunde
Date of hearing : 05-06-2025
Date of pronouncement : 11-06-2025

ORDER

PER R.K. PANDA, VP :

This appeal filed by the Revenue is directed against the order dated 27.11.2024 of the Ld. Addl / JCIT(A), Gurugram relating to assessment year 2019-20.

2. Facts of the case, in brief, are that the assessee is a private limited company registered under the Companies Act, 2013 and engaged in business of development of real estate projects. It filed its original return of income on 31.10.2019 declaring a loss of Rs.1,22,14,57,394/- and claimed the TDS credit of Rs.4,02,541/- thereby claiming a refund of Rs.4,02,541/-. The return was revised on 06.03.2020 claiming income tax refund of Rs.2541/- and carry forward loss of Rs.3,95,51,713/-. However, the CPC did not allow the claim of carry forward

business loss of Rs.3,95,51,713/- as claimed in the return on the ground that the original return was filed belatedly i.e. beyond the prescribed date of 31.10.2019.

3. Before the Ld. Addl / JCIT(A) it was submitted that the original return was uploaded on the income tax e-filing website on 31.10.2019 before 00:00 hours. However, due to technical glitches and rush hours, the e-filing was processed and generated the acknowledgement i.e. ITR-V at 00:00:02 hours i.e. by delay of two seconds beyond due date. Due to the above, the date of filing of return has appeared on the acknowledgement as 1st November, 2019. It was submitted that in Form ITR at filing status it shows that the return has been filed within time. However, the CPC has considered the same as filed u/s 139(4) and not u/s 139(1) of the Act, therefore, the said return of income filed by the assessee is not a belated return. It was accordingly argued that the return of income may be treated as within time.

4. Based on the arguments advanced by the assessee, the Ld. Addl / JCIT(A) held that the return of income has been filed in time and therefore the assessee is entitled to claim the benefit of carry forward of loss.

5. Aggrieved with such order of the Ld. Addl / JCIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:

- a. *Whether on facts and circumstances of the case, the Ld. JT.CIT(A) has erred in not appreciating the fact that the CPC has treated the Original return of income itself as defective return.*
- b. *Whether on facts and circumstances of the case, the Ld. JT.CIT(A) has erred in not appreciating that when the original return of income itself has*

been declared as defective, all the consequences of the assessee being treated as non-filer will be attracted and therefore the loss claimed by the assessee will not be carried forward.

c. The appellant craves to leave, add, amend, alter any of the above Questions of Law at the time of hearing of appeal.

6. The Ld. DR submitted that the original return has been filed after the statutory period and is delayed by 02 seconds, therefore, the CPC is fully justified in denying the claim of carry forward loss of business loss.

7. The Ld. Counsel for the assessee on the other hand heavily relied on the order of the Ld. Addl / JCIT(A). Referring to page 24 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the return filed for assessment year 2019-20 on 31.10.2019 and submitted that the acknowledgement shows as the return was filed u/s 139(1). However, the CPC at the end has mentioned that the return was submitted electronically on 01.11.2019 at 00:00:02 hours. He submitted that due to technical glitches and rush hours for which there was a delay of 02 seconds in filing of the return.

8. Referring to the decision of the Ahmedabad Bench of the Tribunal in the case of The Khedbrahma Taluka Primary Teachers Co-op. Credit Society Ltd. vs. ADIT vide ITA No.500/Ahd/2022 for assessment year 2019-20, order dated 17.02.2023, he submitted that in that case the delay of 4 minutes 42 seconds was condoned and held that the CPC is not correct in denying the claim of deduction u/s 80P of the Act to the assessee under 143(1)(a)(v) proceedings (A.Y. 2019-20) on account of delay in filing of the return by 4 minutes and 42 seconds.

9. Referring to the decision of the Mumbai Bench of the Tribunal in the case of DCIT vs. M/s. Palava Dwellers Pvt. Ltd. vide ITA No.2147/MUM/2018 and Lodha Developers Ltd vs. DCIT vide ITA No.2348/MUM/2018, for assessment year 2014-15, order dated 20.02.2020, he submitted that the Tribunal at para 22 of the order has considered the delay of 2 minutes and allowed the claim of the assessee u/s 80IB(10) of the Act by treating the return as filed within due date.

10. Referring to the decision of Kolkata SMC Bench of the Tribunal in the case of M/s. Jeevandarshi Marketing Pvt. Ltd. vs. ITO vide ITA No.509/Kol/2022, for assessment year 2019-20, order dated 28.11.2022, he submitted that the Tribunal in the said decision has held the delay in filing of the return of income by 2 minutes 7 seconds as filed within time on account of technical glitches / malfunctioning in the system / portal of the Income Tax Department for which the assessee cannot be penalized. Relying on various other decisions, he submitted that since the delay in the instant case is only 02 seconds which is due to technical glitches and rush hours in the portal of the income tax department, therefore, the assessee should not be penalized and the Ld. Addl/JCIT(A) was fully justified in allowing the claim of the assessee in carrying forward of business loss.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO/CPC and the Ld. Addl/JCIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute in the instant case is regarding the treatment of return as filed

within time or not due to delay in filing of the return by 02 seconds. It is an admitted fact that the return was uploaded on the income tax e-filing website on 31.10.2019 before 00:00 hours, but the e-filing was processed and generated the acknowledgement i.e. ITR-V on 00:00:02 hours i.e. by delay of two seconds beyond due date. It is the submission of the Ld. Counsel for the assessee that the delay of 02 seconds occurred due to technical glitches and rush hours at the portal of the income tax department for which the assessee cannot be held responsible.

12. We find an identical issue had come up before the Mumbai Bench of the Tribunal in the case of DCIT vs. M/s. Palava Dwellers Pvt. Ltd. and Lodha Developers Ltd vs. DCIT (supra) where the delay in filing of the return was 2 minutes. After considering various decisions, the Tribunal held that the delay of 2 minutes, which was caused due to technical glitch and last hour rush in the website, cannot be held against the assessee and accordingly the Assessing Officer was directed to treat the return filed by the assessee for assessment year 2014-15 as filed in time and consequently to consider the revised return filed by the assessee for the purpose of computing the income of the assessee. The relevant observations of the Tribunal read as under:

“22. We have heard the rival submissions, perused the orders of the authorities below and the decisions relied on. In this case the assessee filed its return of income on the last day of filing of return i.e. on 30.11.2014. However, due to technical glitch and last hour rush on the website the return got uploaded past midnight by 00:02AM on 01.11.2014. Thus, the return was delayed by two minutes. Subsequently the assessee filed revised return of income on 31.03.2016 making some adjustments and also to give effect to the merger of two entities as approved by the Hon'ble Bombay High Court. However, while completing the assessment the Assessing Officer ignored the revised return of income on the ground that the assessee filed original return of income belatedly as the return was filed only at 00:02 AM on 01.12.2014. Accordingly, Assessing Officer

computed income of the assessee by denying the deduction u/s. 80IB(10) of the Act even though the Assessing Officer has quantified allowable deduction u/s. 80IB(10) of the Act, made disallowance u/s. 36(1)(iii) of the Act, disallowance u/s. 14A of the Act, disallowance of business promotion expenses. Apart from these disallowances the Assessing Officer considered even the suomoto adjustments i.e., the disallowance of ₹.4.0572 crores as made by the assessee in its revised return of income for disallowance while computing the income by the Assessing Officer. This shows the Assessing Officer in fact partly acted upon the revised return filed by considering the adjustments as made by the assessee for disallowance in the revised return. The Assessing Officer further conveniently ignored the deductions of ₹.8.165 crores claimed by the assessee in the revised return of income.

23. *As far as the technical glitch and last hour rush and consequently whether the return filed by the assessee with a delay of two minutes can be considered as the return filed in time is concerned, in the case of Bombay Mercantile Co-op. Bank Ltd., v. CBDT [322 ITR 87] the Hon'ble Jurisdictional High Court held as under:*

"8. It is well settled that in matters of condonation of delay a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities."

24. *The Hon'ble Bombay High Court in the case of Cosme Matias Menezes (P.) Ltd. v. CIT [379 ITR 31] observed as under: -*

"9. Reading the said provisions, we find that Section 139 and 239 of the said Act itself allows for filing of the returns and claim of refund within a period of one year from the end of the assessment year i.e. on or before 31.03.2008. The provisions of Section 119(2)(b) of the Act allow the CBDT to admit an application beyond the time prescribed under Section 139 and Section 239 of the said Act. In the present case we find that the Respondents have failed to exercise such powers to condone the delay in filing returns and consequent refund by the Petitioners on irrelevant and extraneous reasons.

10. This Court in the Judgment in the case of M/s. Bombay Mercantile Co-op Bank Ltd vs. The Central Board of Direct Taxes & Others (supra), has observed at para 8 thus:

"8. It is well settled that in matters of condonation of delay a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities."

11. Taking note of the said observations and considering that the delay in the present case is only of one day, we find that the approach of the Respondents in refusing to condone the delay is a pedantic which, if allowed to stand, would result in great hardship to the Petitioners for no fault of the Petitioners. The Petitioners have also produced the hard copy

to show that in fact such return in Form - 1 were filed on 31.03.2008 which was admittedly the last date for filing such returns. This factual aspects have not been disputed by the Respondents. Needless to say, we have not examined the merits of the claim of the Petitioners based on the returns filed by the Petitioners but only considered whether the delay in filing such returns deserves to be condoned. Such returns and the claim of the Petitioners have to be examined by the Respondents on its own merits.”

25. *Hon'ble Delhi High Court in the case of Lodhi Property Co. Ltd. v. Under Secretary (ITA-II) Department of Revenue [323 ITR 441] observed as under: -*

“7. In view of the foregoing, it is absolutely clear that the submissions sought to be raised before us by the learned counsel for the respondent have specifically and categorically been rejected by the Karnataka High Court and the same have been accepted not only by the Board, but also by the Ministry of Law. We notice that a similar view has also been taken by the Bombay High Court in the case of Sitaldas K. Motwani v. Director General of Income-tax (International Taxation): 187 Taxman 44 (Bom). Consequently, agreeing with the Karnataka High Court, we are of the view that the Board has the power under Section 119 (2) to condone the delay in the case of a return which is filed late and where a claim for carry forward of losses is made.

8. Coming back to the facts of the present case, we find that the impugned order under Section 119 passed by the Board is a nonspeaking one. Normally, we would have remanded the matter to the Board to consider the application of the petitioner afresh. However, we find that in the present case, the delay is only of one day and the circumstances have been explained and have not been controverted by the respondents. The fact of the matter is that the petitioner did reach the Central Revenue Building before the closure of the counter on 01.11.2004. It is only because he was sent from one room to the other and had to wait in long queues that he could not present the return at the counter which was receiving the returns prior to 6.00 p.m. on that date. We feel that sufficient cause has been shown by the petitioner for the delay of one day in filing the return. If the delay is not condoned, it would cause genuine hardship to the petitioner. Thus, in the circumstances of this case, instead of remanding the matter back to the CBDT, we direct that the delay of one day in filing of the return be condoned.”

26. *We also noticed that the Hon'ble Madras High Court in the case of CBDT v. Regen Infrastructure & Services (P.) Ltd., [75 taxmann.com 135] condoned delay of one day in uploading the return of income. The facts in this case, the assessee had uploaded its return sometime immediately past midnight on 15.10.2010 i.e. last date of filing return due to floods. The CBDT rejected the application seeking condonation of delay on the ground that there were no floods and hence, the assessee could have easily filed its return in the normal period. The Hon'ble Single judge had come to the conclusion that the ends of justice would be served better by setting aside the order of the CBDT and directed the Assessing Officer to consider*

the return of income filed by the assessee on merits. On these facts the Hon'ble Division Bench of the Madras High Court on a writ appeal held as under:

*“6. It is appropriate to notice that under Section 119(2)(b) of the Income Tax Act, the Central Board Direct Taxes has been empowered "to admit an application or claim for exemption, deduction, refund * any other relief under the Act, after the expiry of the period specified by or under the Act by making such an application or claim and deal with the same on merits in accordance with law." In other words, the statute has conferred discretion in the hands of the Board to admit of any claim which is made beyond the period specified for doing so and when once the discretion is conferred by a statute upon an authority, such a discretion is required to be exercised on sound lines. It is one of the important factors to be considered while dealing with an application seeking condonation of delay as to whether grave and irreparable injury or hardship will be caused to the person concerned and as to whether or not the interests of justice would be served better, in condoning the delay. In the instant case, there is no dispute or denial of the fact that the Return of Income filed by the Respondent/Assessee for the Assessment Year 2010-11, has been uploaded sometime past 00.00 hours on 15.10.2010. One can take judicial notice of the fact that uploading of Return requires not only an effort but also consumes sometime. If the Assessee has encountered certain hardship or difficulty in uploading his return, as alleged by him due to a technical snags in the website of the Income Tax Department due to the last hour rush of filing of Returns, the delay deserves to be condoned.”*

27. We observed that the Delhi Bench of the Tribunal in the case of ITO v. Mantangi Rubber Pvt. Ltd., in ITA.No. 4498/Del/2013 dated 29.05.2015 considered a situation where there was a delay of 46 minutes in uploading the e-return and the Tribunal condoned the delay observing as under: -

“2. Brief facts of the case are that as per AO, e-return of income, declaring Nil income, was filed with acknowledgement no. 982454810111009 on 1-10-2009, after claiming deduction u/s 80IC of Rs. 2,34,41,162/-. The AO denied deduction u/s 80IC on the ground that assessee had not filed the return within specified time u/s 139(1), because as per records the return was filed on 1-10-2009 and not on 30-9-2009. He did not accept the assessee's contention that the return was actually uploaded and filed on the site of the Income-tax department at 12.46AM on 1-10-2009 and thus there was only a technical delay of 46 minutes in filing of return which, in any case, was filed before the commencement of the next working day.

3. Ld. CIT(A) directed the AO to verify the date when the return was uploaded and sent into transmission observing as under:

“The AO is directed to verify the contention of the appellant with the information available with the Directorate of systems regarding this electronic trail of the e-return filed. In case it is found that the return was indeed unloaded with the electronic signature on 30-09-2009,

the stipulated date of filing of the return, then it shall be held as per the principles of Law of Contract that the return was irrevocably set into transmission, the act as per law, on the part of the appellant being complete. In such a case the delay in the acknowledgement being sent, and it being dated 01-10-2009 shall not have any bearing on the case. In the event of being uploading and submission being completed by 30-09-2009 it shall be held that the return was filed on time and all the related benefits shall then be made available to the appellant. The AO is thus directed to obtain the electronic trail of filing of the return from DIT(Systems). If the return was duly uploaded and set into transmission by 30-09- 2009 then the AO is directed to give the benefits of Section 80IC. In case it is seen that the return was duly uploaded and set into transmission solely by 01-10- 2009 then the benefit of section 80IC shall not be available as the mandatory requirement of section 80AC would not have been met.”

4. Being aggrieved with the direction of ld. CIT(A), the department is in appeal before us and has taken following grounds of appeal:

“1. The order of the learned CIT(Appeals) is erroneous and contrary to facts & law.

2. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in holding that if the uploading and submission of e-filed return by the assessee was completed by 30.09.2009 then the assessee will be get the benefit of deduction u/s 80IB.

3. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) erred in deleting the addition the addition without giving AO opportunity for rebut as per rule 46A, as no remand report was called for in respect of verifying the electronic trial of filling the return from DIT (Systems).

4. That the order of the Ld. CIT(A) is erroneous and is not tenable on the facts and in law.

5. That the grounds of Appeal are without prejudice to each other.

6. The appellant craves leave to add, to alter, or amend on the ground of at the appeal raised above at the time of hearing.

5. The assessee has filed cross-objection, taking following grounds:

(1) That the order dated 06-06-2013 passed u/s 250(6) of the Income-tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals) IX, New Delhi is against law and facts on the file

in as much as she was not justified to set aside the assessment and restore the matter back to the file of Ld Assessing Officer.

(2) That the order dated 06-06-2013 passed u/s 250(6) of the Income-tax Act, 1961 by the Learned Commissioner of Income-Tax (Appeals) IX, New Delhi is against law and facts on the file in as much as she was not justified to hold that the benefit of Section 80-IC of the Income-tax Act, 1961 shall not be available as the requirements of Section 80-AC are mandatory whereas the provisions of Section 80-AC are not mandatory but only directory in nature.

6. We have considered the submissions of both the parties and have perused the record of the case. Admittedly, at best the delay is of 46 minutes in filing the e-return. On account of this delay, the acknowledgement bears the date 1-10-2009. There can be several reasons for this small delay including technical reasons. But considering the fact that the return was filed in the intervening night of 30-9-2009 and 1-10-2009, the assessee's claim, if otherwise admissible, cannot be denied on account of this technical delay. In our opinion, it would be travesty of justice if for a technical delay of 46 minutes in filing the return of income, a deduction of Rs. 2,34,41,162/- is denied to assessee.

7. Section 80AC provides that deduction u/s 80IC shall be allowed to assessee if the return is filed on or before the due date specified under sub-section (1) of section 139. However, section 139(4) carves out an exception to the time limit u/s 139(1) for filing the return of income. Therefore, time limit for filing the return of income is neither inflexible nor inelastic. Thus, the provisions of section 80AC are directory and even the Board may, under the provision of section 119, condone the delay in order to avoid undue hardship.

8. In the present case it cannot be said that the delay was, in any manner, mala fide. On the contrary, the assessee was vigilant enough to file the return at the midnight. We, therefore, condone the delay in filing the return.

9. As far as ld. CIT(A)'s direction to the AO is concerned, we find that the assessee itself has clearly stated in its reply reproduced by AO in the assessment order, that the return was uploaded at 12.46 AM on 1-10-2009. Therefore, there was no necessity for restoring the matter to the file of AO for any verification.

10. In view of above discussion, the cross-objection filed by the assessee is allowed and, therefore, the department's appeal has become infructuous. However, since the AO has not examined the assessee's claim u/s 80IC in detail and has rejected the same only on the ground of delay in filing of the return, we restore the matter to the file of AO for examining the assessee's claim u/s 80IC."

28. In view of the above judicial pronouncements and also taking note of the fact that the delay is only of two minutes which was caused due to technical glitch and last hour of rush in the website, we direct the Assessing Officer to treat the original return filed by the assessee for the A.Y. 2014-15 as filed in time and consequently to consider the revised return of income filed by the assessee for the purpose of computing the income of the assessee.

29. Coming to Ground No. 2(a) of grounds of appeal, assessee challenged the order of the Ld.CIT(A) in confirming the disallowance of deduction claimed u/s. 80IB of the Act.

30. Ld. Counsel for the assessee submits that the Assessing Officer though quantified the amount of deduction allowable u/s. 80IB(10) of the Act ignored the deduction u/s. 80IB(10) of the Act for the reason that the original return according to the Assessing Officer was not filed within the time prescribed and therefore assessee is not entitled for the deduction.

31. On the other hand, Ld. DR vehemently supported the orders of the authorities below.

32. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Assessing Officer, we find that in the course of the assessment proceedings the assessee was asked to submit detailed working of claim for deduction u/s.80IB(10) of the Act. The Assessing Officer observed that in the computation submitted by the assessee, assessee has made a claim for deduction of ₹.8,12,78,583/- and whereas in the report submitted under 10CCB the profits eligible for the claim for deduction has been claimed at ₹.7,32,04,923/-. The assessee explained that the claim was made at ₹.8,12,78,583/- inadvertently as this figure was appeared only in the draft computation instead of ₹.7,32,04,923/-. Considering the submissions of the assessee the Assessing Officer computed the excess claim of deduction u/s. 80IB of the Act at ₹.80,73,660/- at Para No. 8 of the assessment order. Further, the Assessing Officer noticed that assessee offered income of ₹.38,18,880/- towards cancellation charges of the apartments in its two projects namely Casabella Gold & Casa Rio. He also noticed that deduction u/s. 80IB of the Act was claimed on these cancellation charges by the assessee. The assessee was asked to explain as to why the said receipts should be considered as profits not eligible for deduction u/s. 80IB of the Act, to which assessee has replied that the said income is directly relating to its eligible projects. Not convinced with the submissions of the assessee the Assessing Officer placing reliance on the decision of the Hon'ble Apex court in the case of Pandian Chemicals Ltd and CIT v. Sterling Foods [104 Taxman 204] treated these charges received on cancellation of flats as miscellaneous income and denied deduction u/s. 80IB(10) of the Act observing that these charges cannot be said to be having direct nexus with the development of housing projects since it is neither part of the cost nor part of the sale receipts. He also observed that once the flat booking is cancelled the said flat is open for sale to some other buyer and sale receipts in respect of that flat would be accounted separately. Thus, the Assessing Officer restricted the claim for deduction allowable u/s. 80IB(10) of the Act to ₹.6,93,86,043/- by reducing the excess claim of ₹.80,73,660/- which is due

to inadvertence of the assessee as admitted and also the cancellation Charges of ₹.38,18,880/- from the total claim made at ₹.8,12,78,353/-. In effect the Assessing Officer allowed the claim for deduction u/s. 80IB(10) of the Act by restricting the same to ₹.6,93,86,043/-. However, this was not allowed as deduction while computing the income as the original return was not filed within time. Since, we have directed the Assessing Officer to consider the original return filed with a delay of two minutes due to technical glitch as the return filed in time, we direct the Assessing Officer to allow the deduction as quantified by him in the Assessment Order at ₹.6,93,86,043/-. Thus, Ground No.2(a) is allowed.”

13. We find the Ahmedabad Bench of the Tribunal in the case of The Khedbrahma Taluka Primary Teachers Co-op. Credit Society Ltd. vs. ADIT (supra) while considering the delay of 4 minutes 42 seconds in uploading the return of income held that the return was filed in time and the CPC is not correct in denying the claim of deduction u/s 80P of the Act to the assessee under 143(1)(a)(v) proceedings. The relevant observations of the Tribunal from para 8 onwards read as under:

“8. We have given our thoughtful consideration and perused the materials available on record. It is an undisputed fact that though the assessee started filing the Return on 31.10.2019, but the same was uploaded in the Income Tax Portal on 01.11.2019 at 00:04:42 minutes. The same is considered as a belated return filed u/s. 139(4) of the Act and thereby the claim of deduction u/s. 80P was denied to the assessee.

8.1. The issue for consideration before us is that whether once the Return of Income is filed beyond the prescribed date u/s. 139(1) of the Act, can the deduction u/s. 80P of the Act be denied to the assessee, by way of adjustment u/s. 143(1) of the Act. On going through the statutory provisions, we found that 80AC of the Act provides that no such deduction under section 80P of the Act shall be allowed to an assessee unless he furnishes a return of his income on or before the due date specified u/s. 139(1) of the Act w.e.f. Assessment Year 2018-19 onwards. However, section 143(1)(a)(v) of the Act provides that disallowance of deduction claimed under any of the provisions of Chapter VI-A under the heading “C-Deductions in respect of certain incomes” (which includes deduction under section 80P of the Act), can be made if the Return is filed beyond the due date specified under sub-section (1) of Section 139. This amendment has been introduced w.e.f. 01.04.2021 and does not apply to the impugned assessment year involved herein namely Assessment Year 2019-20.

8.2. Accordingly in our considered view denial of claim of deduction u/s. 80P of the Act would not come within the purview of prima facie adjustment under section 143(1)(a)(v) of the Act. Thus the case laws relied by the Ld. CIT(A) in its order is clearly distinguishable to the facts of the present case and the same are not applicable.

8.3. Further the Co-ordinate Bench of the Chennai Tribunal in the case of Tenovia Solutions Pvt. Ltd. (cited supra) has considered the technical delay in uploading the Returns of Income for 12 minutes and 31 seconds, whether the assessee was denied the benefit of carry forward losses was set aside the matter back to the file of the Ld. CIT(A) after following the Hon'ble Madras High Court judgment in the case of Regen Infrastructure & Services (P.) Ltd. Vs. CBDT (68 Taxmann.com 93) as follows:

3. Upon careful consideration of factual matrix, we find that Ld. CIT(A) has denied the otherwise eligible claim on mere technicalities completely ignoring the plight of the assessee. It could be seen that the assessee tried to upload the return for 21 hours on 31.10.2019 and ultimately got successful in filing the return of income past midnight and accordingly, the delay of 12 minutes and 31 second occurred due to which the return of income was tagged as belated return. We fail to understand as to how the assessee could be termed as defaulter in such a case and what the assessee would have gained by filing the return of income with such a minor delay. It is also not the case of the revenue that the assessee is not entitled for carry forward of losses.

4. On the given facts, the decision of Hon'ble Madras High Court in Regen Infrastructure & Services (P.) Ltd. V/s CBDT (68 Taxmann.com 93) as affirmed by division bench (75 Taxmann.com 135) is squarely applicable to the facts of the case. The Hon'ble Court, under similar circumstances, condoned the delay of one day and held that the petitioner had successfully explained the delay in filing the return on 16.10.2010 instead of 15.10.2010. Further, it is not the case of the respondents that the petitioner is not entitled to claim the carry forward loss under Section 139(3) of the Act. When the petitioner is entitled to claim the carry forward loss under Section 139(3) of the Income Tax Act, it cannot be stated that the delay in filing the return had occurred deliberately or on account of culpable negligence or on account of mala-fides. Further, the petitioner does not stand to benefit by resorting to delay. In fact, they run a serious risk. Moreover, when the petitioner had satisfactorily explained the delay in filing the said return, the approach of the first respondent should be justice oriented so as to advance the cause of justice. In this case, when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner. The division bench, while confirming this decision, further held that one should take judicial notice of the fact that uploading of Return requires not only an effort but also consumes sometimes. If the assessee has encountered certain hardship or difficulty in uploading his return, due to a technical-snap in the website of the Income-tax Department due to the last hour rush of filing of returns, the delay deserves to be condoned. In the present case before us, the assessee stands on a much better footing.

5. Therefore, on the facts and circumstances of the case, we set aside the impugned order and restore the matter back to the file of Ld. CIT(A) to verify the fact that there was only a minor delay of 12 minutes and 31 seconds in filing of return of income as pleaded by the assessee. If so, the return filed by the assessee would be considered as a return filed u/s. 139(1) and the benefit of carry-forward of losses would be allowed in accordance with law.

8.4. Respectfully following the above rulings, we hold the CPC Centre is not correct in denying the claim of deduction u/s. 80P of the Act to the assessee under 143(1)(a)(v) proceedings for this Assessment Year 2019-10. Hence the intimation made by the CPC Centre and tax demand raised thereon are hereby quashed. Thus the grounds raised by the assessee are hereby allowed.”

14. Similar view has been taken in various other decision relied on by the Ld. Counsel for the assessee. Since in the instant case, admittedly the return was filed prior to midnight of 31.10.2019 but the acknowledgement was generated after the midnight with a delay of 02 seconds, therefore, respectfully following the decisions cited (supra), we hold that there is no error in the order of the Ld. Addl / JCIT(A) directing the Assessing Officer to treat the original return filed with a delay of 02 seconds as filed in time u/s 139(1) of the Act. The grounds raised by the Revenue are accordingly dismissed.

15. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 11th June, 2025.

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 11th June, 2025
GCVSR

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

- 1. अपीलार्थी / The Appellant;
- 2. प्रत्यर्थी / The Respondent
- 3. The concerned Pr.CIT, Pune
- 4. DR, ITAT, ‘A’ Bench, Pune
- 5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	05.06.2025		Sr. PS/PS
2	Draft placed before author	09.06.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			