

No penalty if claim of sec. 80-IB deduction was based on audit report issued by tax auditor: ITAT

INCOME TAX : Where assessee claimed deduction under section 80-IB at rate of 100 per cent in respect of its new unit, since assessee's claim was based on auditor's report and earlier year claim made from basis of audit report of Form 10CCB had not been disturbed, there could not be a case of furnishing of inaccurate particulars and, accordingly, penalty levied under section 271(1)(c) was to be deleted

Section 80-IB of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructural development undertakings (Setting up of new unit) - Assessment year 2004-05 - Assessee claimed deduction under section 80-IB in respect of new unit at 100 per cent - Assessing Officer in assessment order restricted claim to 30 per cent on ground that new unit was nothing but extension of existing unit, since assessee had stated that it may not be able to substantiate with bills and vouchers but in audit report for assessment year 2001-02 it had stated that only 8.33 per cent of machinery was commonly used and mostly it was new plant and machinery - Whether therefore, it could not be claimed that assessee had furnished any inaccurate particulars of income when claim was based on audit report - Held, yes - Whether thus, for purpose of levying penalty under section 271(1)(c) finding given in quantum proceedings could not be conclusive for purpose of penalty proceedings, because assessee's claim was based on auditor's report and earlier year claim made from basis of audit report of 10CCB had not been disturbed - Held, yes - Whether thus, there could not be case of furnishing of inaccurate particulars and accordingly, penalty levied by Assessing Officer was to be deleted - Held, yes [Para 9] [In favour of assessee]

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<https://www.taxmann.com/research/direct-tax-laws/top-story/101010000000346084/no-penalty-if-claim-of-sec-80-ib-deduction-was-based-on-audit-report-issued-by-tax-auditor-itat-caselaws>

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