

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.578/Bang/2022 : Asst.Year 2020-2021

M/s.Ujjivan Small Finance Bank Limited, Grape Garden No.27, 18 th Main, 6 th Block, Karamangala 3 rd A Cross Bengaluru - 560 095. PAN : AABCU9603R.	v.	The Assistant Director of Income-tax, CPC, Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.S.Ananthan, CA
Respondent by : Sri.Bijoy Kumar Panda, CIT-DR

Date of Hearing : 23.08.2022	Date of Pronouncement : 23.08.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 02.06.2022. The relevant assessment year is 2020-2021.

2. The grounds raised read as follows:-

"1. The order of the learned CIT(A) is bad in law and against the facts of the case.

2. The learned CIT(A) erred in law in confirming the action of the Assessing Officer denying the benefit u/s 115BAA of the Income tax Act, 1961.

2.1 The learned CIT(A) erred in holding that the Appellant did not fulfill the conditions of the CBDT Circular No.06/2022 dated 17.03.2022.

2.2 The learned CIT(A) failed to appreciate the fact that in the original return also the Appellant had clearly mentioned

the fact of exercising the option u/s 115BAA.

2.3 The learned CIT(A) erred in denying the substantial benefit based on technical grounds.

3. The learned CIT(A) failed to appreciate the fact that the intimation passed u/s 143(1) is void ab initio and is liable to be quashed.

3.1 The learned CIT(A) erred in not adjudicating the ground in this regard.

For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon.Tribunal may be pleased to allow the grounds of the Appellant.”

3. The brief facts of the case are as follows:

The assessee is a small finance bank. For the assessment year 2020-2021, the return of income was filed on 21.12.2022 declaring total income of Rs.481,18,55,840 (return of income was filed within the due date u/s 139(1) of the I.T.Act, since CBDT had extended the due date to 15.02.2021 vide Notification No.93/2020 dated 31.12.2020). The assessee subsequently filed revised return on 30.03.2021 declaring total income of Rs.481,22,57,300. The assessee had opted for the new tax regime u/s 115BAA of the I.T.Act. This fact is mentioned in the relevant column in ITR-6 filed in the original as well as revised return of income. The assessee did not file Form No.10-IC electronically within the due date. However, it was claimed it has filed the same physically on 18.11.2021. Subsequent to the Board Circular No.06/2022 dated 17.03.2022, the assessee furnished Form No.10-IC electronically on 06.04.2022.

4. The return of income filed by the assessee was processed u/s 143(1)(a) of the I.T.Act and intimation dated 23.12.2021 was received by the assessee. In the said intimation, deduction of Rs.35,94,77,201 claimed by the assessee u/s 80JJAA of the I.T.Act was denied. Further, the assessee was taxed at the normal rate and the benefit u/s 115BAA of the I.T.Act was denied. Further, interest u/s 234A, 234B and 234C of the I.T.Act was also charged. In addition to the above, penalty u/s 234F of the I.T.Act for delay in filing the return of income was also imposed.

5. Aggrieved by the intimation dated 23.12.2021, the assessee filed appeal before the first appellate authority. The CIT(A) passed the impugned order on 02.06.2022. The CIT(A) allowed the appeal of the assessee in part. The CIT(A) allowed the ground relating to deduction claimed u/s 80JJAA of the I.T.Act. However, the CIT(A) denied the benefit u/s 115BAA of the I.T.Act by holding that the assessee did not fulfill the condition 3(i) of the Board Circular No.06/2022 dated 17.03.2022. The CIT(A) dismissed the ground relating to section 234A, 234B and 234C of the I.T.Act by holding that the same are consequential in nature. He allowed ground relating to the penalty u/s 234F of the I.T.Act.

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR reiterated the submissions made before the first appellate authority.

7. The learned Departmental Representative, on the other hand, supported the order of the CIT(A).

8. We have heard rival submissions and perused the material on record. The tax rate as per section 115BAA of the I.T.Act is 22% instead of 30% tax rate under the normal provision. The CPC in the intimation u/s 143(1) of the I.T.Act, denied the benefit of section 115BAA of the I.T.Act for the reason that requisite Form 10-IC could not be uploaded in the ITD system within the statutory time limit. Admittedly, the Form 10-IC has been electronically filed on 06.04.2022. The assessee before the CIT(A), relied on the CBDT Circular No.06/2022 dated 17.03.2022 for condoning the delay in filing Form 10-IC electronically in respect of assessment year 2020-2021. The CIT(A), however, held that the conditions laid down as per para 3(i) of the said Circular is not met by the assessee. The relevant finding of the CIT(A) in this regard reads as follows:-

“The Appellant has also relied on CBDT Circular No.06/2022 dated 17/03/2022 condoning the delay in furnishing Form 10-IC electronically in reference to A.Y.2020-21. However, the conditions laid down at para 3(i) of the said circular is not met by the Appellant. As per para 3, three conditions are to be met simultaneously to be covered under the said circular. One of such condition at 3(i) refers to return being filed u/s 139(1) of the Act. The Appellant has filed revised return u/s 139(5) of the Act. Therefore, the benefits provided under the said circular cannot be availed by the Appellant.”

9. The CBDT vide its Circular No.06/2022 (supra) had extended the time limit for filing Form 10-IC electronically on

or before 30.06.2022 or 3 months from the end of the month in which the Circular was issued, whichever is later. The conditions that has stipulated in the CBDT Circular No.06/2022, are as follows:-

“The delay in filing of Form 10-IC as per Rule 21AE of the Rules for the previous year relevant to A.Y.2020-21 is condoned in cases where the following conditions are satisfied:

(i) The return of income for AY 2020-21 has been filed on or before the due date specified under section 139(1) of the Act;

(ii) The assessee company has opted for taxation u/s 115BAA of the Act in (e) of “Filing Status” in “Part A-GEN” of the Form of Return of income ITR-6 and

(iii) Form 10-IC is filed electronically on or before 30.06.2022 or 3 months from the end of the month in which this Circular is issued, whichever is later.”

10. The CIT(A) had denied the benefit of lower tax rate u/s 115BAA of the I.T.Act for the reason that the assessee has not filed the return of income on or before the due date specified u/s 139(1) of the I.T.Act. In this context, we notice that the assessee has filed the return within the due date specified u/s 139(1) of the I.T.Act, i.e., on 31.12.2022. Copy of the acknowledgment for filing the return of income u/s 139(1) of the I.T.Act and the ITR-6 are enclosed at pages 108 and 109 of the appeal memo. The fact that the assessee has filed revised return subsequently cannot deny the fact that the assessee has not filed the return u/s 139(1) of the I.T.Act. Since the CIT(A) has erred in holding that the assessee has not filed the return u/s 139(1) of the I.T.Act and denied the

benefit u/s 115BAA of the I.T.Act, we reverse the decision of the CIT(A) on this point. Therefore, hold that the assessee is entitled to the benefit of section 115BAA of the I.T.Act. It is ordered accordingly.

11. As regards ground 3, the assessee did not press the ground, hence, the same is dismissed.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 23rd day of August, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 23rd August, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore