

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 316/SRT/2022 (AY: 2020-21)
(Hearing in Virtual Court)

KGY Glass Industries (P) Ltd., Plot No. 827, GIDC, Sachin, Surat-394230. PAN: AAECK 0946 J	Vs.	Asstt. Director of Income Tax, CPC, Bengaluru.
APPELLANT		RESPONDEDNT

Assessee by	Shri Kiran K Shah, CA
Department by	Shri Ashok B. Koli, CIT-DR
Date of hearing	27/02/2023
Date of pronouncement	11/05/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, (NFAC), Delhi/Commissioner of Income Tax (Appeals) [in short the Id. CIT(A)] dated 11/10/2022 for the Assessment Year (AY) 2020-21. The assessee has raised following grounds of appeal:-

- "1. The Id. CIT(A) grossly erred in confirming the order passed u/s 143(1) of the Act and thereby rejected the plea to be taxed u/s 115BAA of the Act instead of 115JB of the Act as discussed in para 5 of the CIT(A) order.*
- 2. The appellant reserves right to add, alter and withdraw of any grounds of appeal."*

2. Brief facts of the case are that the assessee is in the business of textile filed its return of income for the A.Y.2020-21 on 15/01/2021 declaring

NIL income. The assessee while filing return of income opted to be taxed as per provisions of Section 115BAA of the Income Tax Act, 1961 (in short, the Act). The return of income was processed by the Central Processing Centre, Bengaluru, (CPC) on 20/12/2021 and taxed the income of assessee as per Section 115JB of the Act for the reasons that the assessee has not filed Form No. 10-IC at the time of filing of return of income. Such form was filed in physical manner before the jurisdictional Assessing Officer on 29/06/2022.

3. Aggrieved by the action of CPC in taxing the assessee by invoking provisions of Section 115JB of the Act, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed its submission. The submission of assessee is recorded in para 3 of order of Id. CIT(A). In the submission, the assessee stated that they are in the business of textile. The assessee company while filing return of income opted to be taxed as per provisions of Section 115BAA of the Act. The CPC processed the return of income and intimation was issued on 20/12/2021 wherein the assessee was taxed under Section 115JB of the Act as per provisions of Minimum Alternative Tax (MAT). The assessee could not file Form 10-IC due to technical problem on the IT Portal at the relevant time, however, option was selected in e-return. During the relevant period, the time period for filing Form 10-IC was extended up to 30/06/2022. The assessee filed such Form

before the Assessing Officer on 29/06/2022. Copy of such Form was furnished before the Id. CIT(A). The assessee also furnished CBDT Circular dated 17/03/2022 for extending the time period of filing Form 10-IC for A.Y. 2020-21.

4. The Id. CIT(A) after considering the submission of assessee, upheld the action of Assessing Officer by holding that the assessee has not filed Form 10-IC electronically, so the benefit of CBDT Circular cannot be claimed by the assessee. The return of income was processed by the CPC, Bengaluru under Section 143(1). The Form was filed in physical form before the jurisdictional Assessing Officer which was not permissible and was not available in system for processing by the CPC so there is no mistake in the order of CPC. Aggrieved by the order of Id. CIT(A), the assessee has filed present appeal before this Tribunal.
5. We have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits that while filing the return of income electronically, the assessee opted to be taxed under Section 115BAA of the Act being a domestic company. The assessee could not upload/filed Form 10-IC online due to technical problem in the portal, however, the assessee fulfilled all the

requisite conditions to be taxed under Section 115BAA of the Act. It was the first year of application of Section 115BAA of the Act, to avoid technical reasons for non-uploading and for such hardship, the CBDT issued Circular No. 6/22 dated 17/03/2022 for extending time period for filing Form 10-IC up to 30.06.2022. The condition of Circular was that the return of income was to be filed on or before due date specified under Section 139(1) of the Act and Form 10-IC be filed electronically on or before 30/06/2022 or three months from the end of month in which CBDT Circular is issued. The assessee filed its return of income before issuance of aforesaid Circular. Only lapse is on the part of assessee that they could not upload Form 10-IC on ITBA system. The Id. AR of the assessee submits that in a similar nature of cases wherein audit report or other forms are filed out of time, in such cases due to procedural lapse, various High Courts and benches of Tribunal, assesseees were held eligible for deduction as per relevant provision of the Act. To support such submission, the Id. AR of the assessee has relied on the following case laws:

- (i) Zenith Processing Mills Vs CIT 219 ITR 721 (Guj)
- (ii) CIT Vs Gujarat Oil & Allied Industries (1993) 201 ITR 325 (Guj)]
- (iii) Gujarat Paguthan Energy Corporation (P) Ltd. Vs DcIT 225 Taxman 70 (Guj)
- (iv) CIT Vs Web Commerce India (P) Ltd. (2009) 318 ITR 135 (Delhi)

(v) CIT Vs Kaira District Co-operative Milk Producers Union Ltd. (1979) 116 ITR 319.

(vi) CIT Vs Sakal Relief Fund (2017) 81 taxmann.com 396 (Bom)

(vii) CIT Vs National Taj Traders (1980) 121 ITR 535 (SC)

(viii) Goodyear India Ltd. Vs State of Haryana & Ors. (1991) 188 ITR 403 (SC)

6. On the other hand, the Id. CIT-DR for the revenue submits that the assessee has not fulfilled the requisite condition for availing the benefit of Section 115BAA of the Act. The assessee has not uploaded Form 10-IC before or at the time of filing of return of income within time period prescribed under Section 139(1) of the Act. Even as per CBDT Circular dated 17/03/2022, the assessee has not uploaded such form before 30/06/2022. Thus, the order of Id CIT(A) is as per law.
7. We have considered the submissions of both the parties and gone through the orders of the lower authorities. There is no dispute that the assessee is a domestic company engaged in the business of textile and eligible to avail the benefit to be taxed under Section 115BAA of the Act, provided the assessee fulfilled the requisite condition for availing such benefit. The only objection of lower authorities are that the assessee has not filed Form 10-IC electronically before due date for filing return of income under Section 139(1) of the Act. The case of assessee is that Form 10-IC could not be uploaded on ITBA Portal due to technical error and it was the first year of availing such benefit.

The assessee furnished such Form 10-IC on 29/01/2022, copy of acknowledgment of furnishing Form is filed on page No. 14 and 15 of the paper book. The only question for our consideration is whether non-filing of Form 10-IC on ITBA Portal is fatal to the assessee or not in availing the benefit of section 115BAA.

8. We find that the Hon'ble Jurisdictional High Court in Gujarat Paguthan Energy Corporation (P) Ltd. Vs DCIT (supra) while considering the eligibility of deduction of Section 80-IA of the Act, wherein the assessee is required to furnish audit report before due date of filing return of income, and such audit report was filed during assessment proceedings, the assessee was held to be eligible for deduction under Section 80-IA of the Act. Further, Hon'ble Delhi High Court in CIT Vs Web Commerce (India) (P) Ltd. (2009) 318 ITR 135/178 Taxman 310 (Delhi) also held that once audit report is filed before framing of assessment, the provisions of Section 80-IA (7) would be complied as furnishing of such report at the time of filing of return is directory in nature and not mandatory. Considering the similar principle that the assessee furnished Form 10-IC before the order of Id. CIT(A). It is settled principles under law that appeal is a continuation of assessment proceedings and the Id. CIT(A) has co-terminus power as of Assessing Officer, therefore, the Id. CIT(A) was required to consider the report in Form 10-IC. In view of the above factual and

legal discussion, the ground of appeal raised by the assessee is restored back to the file of assessing officer to consider the report in Form-10IC and allow relief to the assessee, if the assessee fulfil all other requisite condition as per law. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

9. In the result, this appeal of assessee is allowed for statistical purpose.

Order pronounced on 11/05/2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 11/05/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat