

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 232/Mum/2023 (A.Y.2020-21)

ACIT-1(1) (1)

579, Aayakar Bhavan,
M. K. Road
Mumbai-400020

..... Appellant

Vs.

M/s. ABEC Exhibitions & Conferences Pvt Ltd.

530, Laxmi Plaza,
Laxmi Industrial Estate,
New Link Road, Andheri (W)
Mumbai-400 053

PAN: AALCA6534B

..... Respondent

CO No. 31/Mum/2023 (A.Y.2020-21)

Arising out of

ITA No. 232/Mum/2023 (A.Y.2020-21)

M/s. ABEC Exhibitions & Conferences Pvt Ltd.

530, Laxmi Plaza,
Laxmi Industrial Estate,
New Link Road, Andheri (W)
Mumbai-400 053

PAN: AALCA6534B

..... Appellant

Vs.

ACIT-1(1) (1)

579, Aayakar Bhavan,
M. K. Road
Mumbai-400020

..... Respondent

Revenue by : Shri Manoj Kumar Sinha, Sr. AR
Respondent by : Shri Paresh T. Dodhiya

Date of hearing : 05/04/2023
Date of pronouncement : 15/05/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short 'NFAC') dated 12.11.2022 u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2020-21. The Revenue has raised the following grounds of appeal:

"1. "Whether on facts of the case, the assessee has satisfied the condition (1) in para 3 of CBDT Circular no.6 of 2022?"

2. Whether the assessee is eligible as per law to avail the benefit of taxation u/s. 115BAA of the Act in view of the fact that the return of income has not been filed us. 139(1) of the Act rather it has been filed u/s 139(4) of the Act?"

"3. Whether on facts of the case and in law Ld.CIT(A) is justified to condone the delay in filing of ROI and direct the AO to grant benefits of section 115BAA of the Act in disregard of the CBDT Circular no. 6 of 2022?"

4. *"The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ACIT-1(1)(1), Mumbai be restored."*

5. *"The appellant craves leave to amend or alter any grounds or add a new ground which may necessary."*

Assessee raised following grounds:

"1. On the facts and in the circumstances of the case and in law, the Learned Income Tax Officer while passing order u/s 143(1) erred in not giving effect to provisions of Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020 with respect to relaxations given to mitigate the hardships caused during the Covid pandemic period, whereit has extended the due date to file Form 101C upto 31 03 2021.

2. On the facts and in the circumstances of the case and in law, the Learned Income Tax Officer while passing order u/s 143(1) erred in not treating this lapse of filing delayed Form 10IC as technical lapse and not condone the delay treating it as technical lapse when the substantive law confers a benefit to Assessee.

3. On the facts and in the circumstances of the case and in law, the Learned Income Tax Officerwhile passing order w's 143(1) erred in levying higher rate of taxes @30% which is higherthan the normal applicable rate of 25% applicable to assesses whose turnover is less than 400 crore.

4. The respondent craves, leave to add or amend or alter all or any of the ground of appeal."

The appeal for A.Y. 2020-21 filed by the revenue on 23-01-2023 against the order passed by the Ld. CIT(A) u/s. 250 which was communicated on 22.11.2022. In this case last date of filing the appeal was 11-01-2023. Resultantly there is a delay of 13 days. This fact of delay revenue had accepted in form no. 36 also vide column 11 along with the application to condone the delay. The delay was caused because of not receiving authorisation memo in time and some technical glitches in ITBA system in filing the appeal in time. Looking at the situation above which is beyond the control of the AO, we found it to be a reasonable cause and condone the delay of 13 days and admit the appeal for hearing on merits.

1. Brief facts of the case are that the assessee filed its return of income for A.Y 2020-21 on 23-03-2021 declaring total income of Rs 18,78,26,580/- after filing form 10IC (Exercising Option to pay Tax at lower rate as per provision of Section 115BBA for the A.Y). The return was processed u/s. 143(1) on 24-12-2022 without allowing the benefit of form 10IC and determined tax payable @30% (as against concessional rate of 22%). Against the order passed u/s 143(1) assessee filed an appeal before Ld. CIT (A) on 21-01-2022.

2. Ld.CIT (A) delivered the order on 12-11-2022 and directed the AO to condone the delay in filing the form 10IC. (The extended due date for filing the original return and form 10IC was 15-02-2021. Hence, there is a delay of 36 days in filing the form 10IC). Ld.CIT (A) had passed the order specifically taking cognizance of essence of Circular No. 6/2022 dated 17.03.2022 to help the assessee in genuine hardship to the domestic companies in exercising the option u/s. 115BBA.

3. In between the abovementioned developments, assessee's case was selected for scrutiny u/s 143(3). For which order was passed on 19-02-2022 in which the assessing officer allowed the benefit of Section 115BBA while computing the tax.

4. Aggrieved with the order of Ld.CIT (A) dated 12.11.2022 revenue is in appeal before us, and assessee also filed cross-objection (C.O) against the appeal of department.

5. We have gone through the order u/s. 143(1), order u/s. 250, order and computation sheet u/s. 143(3), submission of the assessee, circular, paper-book and the case law relied upon by the assessee.

6. In cognizance of the documents /orders mentioned above we found that the grievance of the assessee by virtue of intimation issued u/s. 143(1) (against which assessee approached Ld.CIT (A)) was taken care of while framing assessment order u/s. 143(3) r.w.s. 144B of the Act. It is observed that departmental appeal is against the order of Ld.CIT (A) u/s. 250 dated 12-11-2022. Whereas, AO himself accepted the preposition of tax offered by the assessee in its ITR vide order dated 19-02-2022. So in the given matrix of facts, we found neither revenue nor assessee has any grievance which we can adjudicate. It is further observed that in the given set of facts when AO himself accepted the preposition of tax offered by assessee, the appeal filed before us against the order of Ld.CIT (A) is a futile exercise. In the result appeal of the department and CO of the assessee against the appeal are dismissed as infructuous.

7. In the result both appeal and CO are dismissed.

Order pronounced in the open court on 15th day of May, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 15/05/2023

Mahesh R. Sonavane

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai