

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.492 & 493/SRT/2023

(AYs 2020-21 & 2021-22)

(Hearing in Physical Court)

Shivam Wellness Pvt. Ltd. Clinic, HG-1, I.T.C. Building, Majura Gate, Ring Road, Surat-395 001 [PAN ABBCS 3673 G]	Vs	ADIT-CPC, Bangalore 1 st Floor, Prestige Alpha, No.48/1, 48/2, Beratengaagrahara, Housr Road, Uttarahalli Road, Bengaluru, Karnataka-560100
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारितीकीओरसे /Assessee by	Shri Rasesh Shah, C.A
राजस्वकीओरसे /Revenue by	Shri Vinod Kumar, Sr-DR
अपीलपंजीकरण/Appeal instituted on	19.07.2023
सुनवाई की तारीख/Date of hearing	22.09.2023
उद्घोषणाकीतारीख/Date of pronouncement	26.09.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld. CIT(A)"] both dated 19.05.2023 for the assessment years 2020-21 & 2021-22 which in turn arose out of assessment orders passed by ADIT-Central Processing Centre (CPC), Bengaluru / Assessing Officer under section 143(1) of Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 18.12.2021 & 13.11.2020. In both the appeals, assessee has raised common grounds, which relates taxing of income of assessee @ 25% instead of tax paid by assessee @ 22% as per Section 115BAA of the Act. Facts for both the years are similar, thus both the appeals were clubbed, heard together and are

decided by common order to avoid conflicting decision. For narration and appreciation of fact, facts in assessment year 2020-21 is treated as “lead” case.

2. Facts in brief are that assessee is a Private Limited Company engaged in business of operating a Hospital. The assessee-company was incorporating in January, 2019 and set up a Hospital. Assessment year 2020-21 was the first year of operation. The assessee-company filed its Return of Income (ROI in short) for assessment year 2020-21 on 11.01.2021 declaring income at Rs.2.76 crores. The assessee while filing its ROI opted for benefit of lower taxation @ 22% as provided in Section 115BAA of the Act. The return of assessee was processed by Centralized Processing Centre (CPC for short) Bengaluru vide intimation under section 143(1) of the Act on 18.12.2021. The CPC while processing the return of assessee calculated / taxed the assessee under normal provision and computed tax liability @ 30% instead of @ 22%, The return of income was accepted without any variation.
3. Aggrieved by the action of assessing officer/ CPC, the assessee filed appeal before Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee in its statement of fact, contended that CPC erroneously computed tax liability @ 30% instead of @ 22% under section 115BAA of the Act, as opted by assessee. No opportunity before computing at different tax rate was given to the assessee. The assessee opted on lower tax rate under section 115BAA of the Act, as clearly evident / reflected on page-1 of return of income itself. No opportunity was given to

assessee before making such adjustment. No reason was given while computing tax liability @ 30%. The assessee further stated that only *prima facie* adjustment can be done while passing intimation under section 143(1). No adjustment in respect of debatable issue can be made in the intimation under section 143(1). The assessee also explained the different tax slabs for domestic company and submitted that assessee fulfilled the conditions for opting Section 115BAA of the Act. The turnover of assessee is less than Rs.400 crores.

4. The assessee in its without prejudiced contention also submitted that, even if certain formalities prescribed in Section 115BAA of the Act is not applied and assessee's liability needs to be computed @ 25% and not @ 30%. Impugned intimation under section 143(1) is erroneous. The assessee again vide its submission dated 03.03.2023 submitted that they opted to avail benefit under section 115BAA, but due to pandemic Covid-19 and related circumstances, Form 10IC could not be filed while filing its return of income. There was no reminder or error prompting in the system to file Form-10IC. The assessee has not filed application for rectification as assessee opted to file appeal.
5. The NFAC/Ld. CIT(A) after considering the details of intimation and submission made by assessee, in para-6.1 of its order noted that assessee in its submission, submitted that assessee opted for benefit of lower taxation @ 22% under section 115BBA. The return of income of assessee was accepted but the CPC *suo motu* computed

tax liability @ 30% in place of @ 22% under section 115BAA. The Ld. CIT(A) noted that assessee also objected that no opportunity allowed prior to issuing assessment. The Ld. CIT(A) hold that he has co-terminus power as that of assessing officer. Accordingly, proper opportunity was provided to the assessee to furnish their submission. The Ld. CIT(A) held that assessee was required to fulfil specific conditions for availing lower tax rate based on turnover, if such contention specified Section 115BAA and such conditions are not fulfilled by not furnishing Form10IC before due date of furnishing return under section 139(1). In return of income, assessee has not stated whether turnover in the previous year 2017-18 is exceeded Rs.400 crores or not. Thus, the assessing officer CPC taken rate @ 30% in the intimation under section 143(1). On such observation, the ld. CIT(A) upheld the action of Assessing Officer.

6. On specific ground with regard to claim lower tax rate, the Ld. CIT(A) in para-7 of its order again accepted that assessee adopted for benefit of lower taxation @ 22% under section 115BAA. It was noted that the assessee accepted that Form10IC has not been furnished on or before specific date under section 139(1) for filing return of income for assessment year 2020-21 for claiming rate of tax as per said provision of Section 115BBA. The assessee has not stated whether total turnover / gross receipt in the previous year, *i.e.*, 2017-18 exceeded Rs.400 crores or not. Therefore, the Assessing Officer has taken tax rate @ 30% applicable for domestic company, having turnover more than Rs.400 crores. On the basis of such

observation, the Ld. CIT(A) held that the contention of assessee cannot be accepted as assessee has not complied the prescribed contention for availing under section 115BBA. However, while considering the alternative without prejudice plea of the assessee, the CIT(A) by reiterating that assessee opted for lower taxation but not complied with the formalities under section 115BAA. The Ld. CIT(A) held that assessee-company needs to be taxed @ 25% and not @ 30% as erroneously computed by CPC / Assessing Officer as the turnover of the assessee-company for assessment year 2018-19 was Rs.nil. Accordingly, NFAC/Ld. CIT(A) directed the CPC / Assessing Officer to ascertain such claim that turnover of assessee for assessment year 2017-18 was less than Rs.400 crores and found correct calculated tax @ 25% on total income of assessee with surcharge. Further, aggrieved, assessee has filed present appeal before the Tribunal.

7. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental-Representative (Ld. Sr-DR) for the Revenue. With the active assistance of Ld. Representative, we have also perused the case record carefully. The Ld. AR for the assessee submits that assessee-company was incorporated on 04.01.2019 and that was the first year of operation of assessee-company. While filing return of income for assessment year 2020-21, the assessee-company declared total income at Rs.2.76 crores. The assessee-company opted benefit of lower taxation @ 22% as per Section 115BAA. The fact that the assessee

claimed benefit of Section 115BAA is duly accepted by Ld. CIT(A) in its order. The Ld. AR for the assessee further submits that at the time of filing return of income by way of electronically, Form 10IC was not uploaded, as there was no option in the ITBA portal. Assessment year 202-21 was the first year for availing benefit of application of Section 115BAA. However, from subsequent year *i.e.*, assessment year 2022-23, the ITBA portal was updated. And at the time of opting the benefit under section 115BAA, there is new column for furnishing the date and acknowledgement No. of filing Form-10IC. The relevant column in ITR as emanated from assessment year 2022-23 only. The Ld. AR for the assessee submits that he has placed on record the acknowledgement of ITR-6 showing opting for taxation under section 115BAA. The assessee has also filed relevant extract of ITR as emanated from assessment year 2022-23. The CPC / Assessing Officer processed ITR without showing show cause notice computed tax liability @ 30% instead of @ 22%. No reason is specified nor any opportunity to represent against such adjustment was given to assessee.

8. The ld AR for the assessee submits that Form 10IC does not contain a meticulous detail, either of activities or various statutory requirement for claiming different kind of benefit, rather it contains for ordinary information about the total turnover less than Rs.400 crores, which is to be signed by the director of the assessee only. The Ld. AR for the assessee submits that at the time of filing of return of income, the Form-10IC as required under Rule 21AE if the IT Rules,

1962 was to be signed by the Director of the assessee-company only and not by the Auditor for the other statutory authority, like Audit Report *etc.* Before Ld. CIT(A), the assessee filed a very detailed submission and objected against taxing @ 30%. The NFAC/Ld. CIT(A) in its order accepted that assessee has opted for taxation under section 115BAA. The Ld. AR for the assessee submits that filing of Form10IC is mere formality for requirement of requisite condition under section 115BAA. The required Form 10IC was readily available with the assessee at the time of filing return of income, that is why the assessee opted for benefit under section 115BAA. The ld AR for the assessee submits that on similar set of facts, this bench in KYG Glass Industries (P) Ltd Vs ACIT in ITA No. 316/Srt/2022 (AY 2020-21), wherein Form-10 IC was not filed before filing return of income, though, filed at the time of first appeal, restored the similar issue to the file of assessing officer to allow relief to the assessee.

9. The ld AR for the assessee further submits that Hon'ble jurisdictional High Court in the case of CIT Vs. Mayur Foundation [2005] 274 ITR 562 (Guj)/[2005] 194 CTR 197 (Guj)[20-12-2004] held that appeal is a continuation of assessment proceedings and the proceeding before Tribunal are mean to correctly tax liability of assessee. It was also held that tribunal is well within its jurisdiction to entertain new ground by which the assessee claim benefit and adjudicate the tax liability of assessee.

10. The Ld. AR for the assessee submitted that these appeals contain a very short prayer as to whether the assessee be taxed @ 25% or @ 22% as prescribed under section 115BAA, so the matter may be remitted back to the file of Assessing Officer with a direction to consider Form-10IC and to allow appropriate relief to the assessee, as the assessee fulfilled all other contentions. The Ld. AR for the assessee submits that though assessee right from the filing of return of income is asserting for taxation than Section 115BAA and raised specific grounds of appeal before First Appellate Authority as well as before Tribunal, even if, in any case, the primary submissions of the assessee is not accepted by Bench, then his submissions may be treated as additional grounds of appeal, and considering the fact that all the fact relating to additional grounds for taxing the assessee at lower rate, is emanated from the order of lower authorities, the relevant issue may be remitted back to the file of Assessing Officer to adjudicate the issue afresh.
11. On the other hand, the Ld. SR DR for the Revenue supported the order of lower authorities. The Sr. DR for the Revenue submits that assessee has not filed requisite Form-10IC at the time of filing return of income or before Ld. CIT(A), which is pre-condition for availing lower taxation @ 22% under section 115BAA. The Ld. Sr-DR for the Revenue submits that the assessee is supposed to follow the prescribed procedure and to make claim as per law. The assessee was requires to file Form-10IC before filing ROI. The Ld. Sr-DR for the Revenue submits that Ld. CIT(A) in exercising its co-terminus

jurisdiction accepted alternative plea of assessee and directed the CPC / Assessing Officer to tax @ 25% as total turnover of assessee was not exceeding Rs.400 crores in previous year.

12. The Ld. Sr-DR for the Revenue by referring the provision of Section 143(1) submits that CPC / Assessing Officer was well within his jurisdiction the process of return and determined the tax, interest and fee on the basis of total income computed under clause-1(a) of same section and there is no ambiguity in the intimation issued by CPC / Assessing Officer. The CPC / Assessing Officer has made adjustment on the basis of material placed while filing return of income and no show cause was required in computing proper tax. As the CPC / Assessing Officer have not made any disallowance or addition except with computing proper tax rate on the basis of return of income filed by the assessee. The assessee has not filed application under section 154 to correct such mistake, if any. The case law relied by Ld. AR for the assessee in the case of Mayur Foundation (supra) is not applicable on the facts of the present case. In other case, relied by the assessee in KYG Glass Industries (P) Ltd (supra), the assessee in that case furnished Form-10IC before Ld. CIT(A) within extended period for filing Form-10IC. However, in the present case, the assessee has not filed such report till the appellate proceedings. The CIT(A) while granting partial relief to assessee has considered all the facts and material placed before him. The Ld. Sr-DR for the Revenue submits that assessee does not deserve any further relief from the Tribunal.

13. We have considered the rival submission of both the parties and perused the records carefully. We have also deliberated on various case law relied by Ld. AR for the assessee. We find that assessee-company was set-up in the year 2019 and it was the first year of assessment. The assessee while filing return of income opted for lower taxation as per the provision of Section 115BAA. Such fact is otherwise not in dispute, as it has been clearly accepted by the ld CIT(A) in his order. The CPC / Assessing Officer while processing return of income calculated tax @ 30% i.e., normal rate of taxation. However, on appeal before Ld. CIT(A) accepting alternative and without prejudice contention directed the CPC / Assessing Officer for financial year 2017-18, if it is less than Rs.400 crores, the tax be calculated @ 25% on the total income earned by assessee. We find that the observation of Ld. CIT(A) is erroneous to that extent if the turnover of assessee for financial year 2017-18 is less than Rs.400 crores, when the assessee itself was set-up in January, 2019. In our view, once the Ld. CIT(A) accepted the fact that assessee opted for the benefit of lower taxation @ 22%, the Ld. CIT(A) was requires to examine the requisite conditions for allowing benefit of section 115BAA, particularly when the Ld. CIT(A) was exercising its coterminous power as recorded in para-6.1 of its order.
14. We find that assessee has placed on record Form 10IC, dated 10.01.2021, which contains ordinary information with regard to name of the company, whether domestic or not, PAN, registered address, date of incorporation, number of units, if option is

exercised under section 115BAA and signature of principal officer. No details as required in audit report is sought in such Form. Considering the fact that appeal is continuous of assessment proceedings and the assessee has filed requisite contention Form-10IC before the Tribunal and keeping in view various decisions of Hon'ble jurisdictional High Court in the case of Mayur Foundation (supra) and co-ordinate Bench of this Tribunal in the case of KGY Glass Industries (P) Ltd. Vs. ACIT in ITA No.316/SRT/2022 dated 11.05.2023, Zenith Processing Mills vs. CIT 219 ITR 721 (Guj), CIT vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325 (Guj) & CIT vs. Web Commerce India (P) Ld. (2009) 318 ITR 135 (Del), *wherein* audit report other forms are filed out of time in such cases due to procedural laps, the assessee was held for eligible for deduction as per relevant provision of the Act. Considering the following same principle, that assessee furnished Form-10IC, before Tribunal, and the assessee fulfil the other requisite conditions, the grounds of appeal raised by assessee is restored back to the file of Assessing Officer to consider the report in Form-10IC and allow relief to assessee. Needless to direct that before passing order afresh, the Assessing Officer shall grant opportunity of being heard to assessee. The assessee is also directed to provide complete details or any other information so desired by Assessing Officer. This ground of assessee's appeal is allowed for statistical purposes.

15. In the result, assessee's appeal No.492/SRT/2023 is allowed for statistical purposes.

16. In **ITA No.No.493/SRT/2023 for AY 2021-22**, the assessee has raised identical grounds of appeal, facts of this assessment year is also similar, as of assessment year 202-21, which we have restored to assessing officer, therefore, following the principles of consistency this appeal is also restored back to the file of assessing officer with similar directions.

17. In the Result, assessee's appeal ITA No.493/SRT/2023 is also allowed for statistical purposes. A copy of instant common order be placed in respective case files.

Order pronounced in the open court on 26/09/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat,

Dated: 26/09/2023

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat,

Dated: 26/09/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// True Copy //

Sr. Private Secretary/Private
Secretary/Assistant Registrar, ITAT, Surat