

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 2185/Mum/2023 (A.Y. 2022-23)

Mustansir Muhammad Dalvi Flat No. 101, 2 <sup>nd</sup> Floor Sector-11, New Panvel Maharashtra-410 206.  PAN : ABEPD2308R (Appellant)	Vs.	ITO, Ward-2 3 <sup>rd</sup> Floor, Trifed Tower, Opp Khanda Colony, New Panvel Maharashtra- 410206. (Respondent)
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Assessee by	Shri V.G. Ginde
Department by	Smt. Mahita Nair
Date of Hearing	05.10.2023
Date of Pronouncement	05.10.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 23-04-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2022-23. The assessee is aggrieved by the decision of Ld CIT(A) in holding that the assessee is not entitled to compute tax on his total income u/s 115BAC of the Act. In the alternative, the assessee is praying that the AO may be directed to allow all eligible deductions under the Act, if his main prayer is not accepted.

2. The facts relating to the above said issues are discussed in brief. The assessee is an individual and is an architect by profession. He has declared income from salaries, profession, capital gains and other sources for the year under consideration. He filed his return of income for the year under consideration by computing tax u/s 115BAC of the Act. However, the same was rejected by CPC while processing return u/s 143(1) of the Act and accordingly, the tax was computed under Normal rates.

3. The reason for the above said action of CPC needs elaboration. Sec. 115BAC of the Act was introduced from Asst. Year 2021-22. It provides an option to the assessee, who is an individual or HUF, to compute tax at the rates mentioned in that section, which is lower than the tax payable under normal rates. However, the assessee is required to exercise option to avail benefit of sec.115BAC of the Act on or before the due date prescribed for filing return of income u/s 139(1) of the Act. Once an assessee exercises above said option, then he is not entitled to deductions mentioned in sub.sec (2) of sec. 115BAC of the Act. For assessee having income from business or profession, the option so exercised shall continue for subsequent years also. Such kind of assessee can withdraw option only once.

4. The assessee filed return of income for the immediately preceding year,, i.e., AY 2021-22 without opting for scheme provided u/s 115BAC of the Act. Subsequently, he filed revised return of income for AY 2021-22 opting for the scheme prescribed u/s 115BAC of the Act. However, the same was rejected by CPC and accordingly total income was computed by CPC for AY 2021-22 under regular rate of tax.

5. Before processing of return for AY 2021-22, the assessee had filed return of income of the year under consideration, viz., AY 2022-23 computing tax u/s 115BAC of the Act. Accordingly, the assessee did not claim any deduction mentioned in sub. Sec. (2) of sec.115BAC of the Act. According to Ld A.R, the assessee was under bonafide belief that his application for exercising option in AY 2021-22 would be accepted. Since the option of the assessee was rejected in the assessment year 2021-22, the CPC processed return of income of the year under consideration, viz., AY 2022-23 by computing tax under normal rates. Since the assessee did not claim any deduction mentioned in sec.115BAC(2) of the Act, the same were not allowed.

6. In the meantime, the assessee challenged the intimation issued u/s 143(1) of the Act in AY 2021-22 contending that the option exercised by the assessee in the revised return should be accepted and the income tax should be computed at the rates prescribed u/s 115BAC of the Act. The Ld CIT(A) rejected the above said claim. He, however, directed the AO to allow all the eligible deductions claimed in the return of income.

7. The assessee also filed appeal challenging the intimation issued u/s 143(1) of the Act for the year under consideration, viz., AY 2022-23 before Ld CIT(A). The first appellate authority did not accept the claim of the assessee and accordingly dismissed the appeal. In this year, the Ld CIT(A) did not give any direction to allow eligible deductions. Aggrieved, the assessee has filed this appeal.

8. The Ld A.R narrated above facts and submitted that the assessee was under bonafide belief that the option exercised by him through revised return in AY 2021-22 would be accepted and the same shall be continued for AY 2022-23. Hence he filed return of income for this year by computing tax u/s 115BAC of the Act. Accordingly, he pleaded that the claim of the assessee should be accepted under the peculiar facts of this case. In the alternative, the Ld A.R submitted that all the eligible deductions should be allowed to the assessee if the assessee was denied the benefit of sec.115BAC of the Act.

9. We heard Ld D.R and perused the record. We notice that the assessee has accepted the decision rendered by Ld CIT(A) in AY 2021-22 in rejecting the claim for computation of tax u/s 115BAC of the Act. Thus, as on the date, the assessee should be considered as not having filed any option u/s 115BAC of the Act in AY 2021-22. Hence the question of continuation of option for the year under consideration will not arise. It is also a fact that the assessee has not filed any option form in the current year, i.e., AY 2022-23. Hence tax on his total income is required to be computed under normal rates

only. Hence the order of Ld CIT(A) on this point does not require any interference.

10. We noticed earlier that the assessee did not claim any eligible deductions in terms of sec.115BAC(2) of the Act, since he was under bonafide belief that he will be allowed benefit of sec.115BAC in the current year also. Since, he has been denied benefit of that section, in the interest of natural justice, we are of the view that the assessee's alternative contention to allow all eligible deductions should be allowed. Accordingly, we admit the claim of the assessee to allow all eligible deductions.

11. Accordingly, we direct the assessee to furnish computation of total income under normal provisions of the Act by claiming all eligible deductions to the assessing officer. We also direct the assessing officer to compute the total income of the assessee by allowing all eligible deductions claimed by the assessee after examining the same and compute tax under normal rates.

12. Needless to mention, the assessee should be provided with adequate opportunity of being heard.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in on 05.10.2023.

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 05/10/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.

6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai