

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.1983/Del/2023
Assessment Year: 2021-22

MST Technologies Limited, 78A, Sector-5, IMT Manesar, Gurgaon-122050 PAN No.AAKCM7564N	Manufacturing Private	Vs.	ITO Ward- 3 (1) Gurgaon
(APPELLANT)			(RESPONDENT)

Appellant by	Sh. Ved Jain, Advocate Ms. Uma Upadhyay, CA
Respondent by	Sh.Ajay Kumar Arora, Sr. DR

Date of hearing:	12/02/2024
Date of Pronouncement:	15/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 25.05.2023 by NFAC, Delhi pertaining to A.Y. 2021-22.

2. The grievance of the assessee read as under :-

1. *On the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals), Income Tax Department (hereinafter referred to as CIT(A), ITD) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, CIT(A), ITD has erred both on facts and in law in confirming the action of the ADIT, CPC in rejecting the application filed by the assessee under section 154 for rectification of the intimation order passed under section 143(1) of the Income Tax Act*
3. *On the facts and circumstances of the case, CIT(A), ITD has erred both on facts and in law in confirming the action of the ADIT, CPC in denying the benefit of the option of lower rate of tax exercised by the assessee under section 115BA of the Income Tax Act and creating the demand of Rs. 4,09,900/- (Including Tax of Rs. 3,42,487/- and interest of Rs. 67,413/-)*
4. *On the facts and circumstances of the case, CIT(A), ITD has erred both on facts and in law in confirming the above action of the ADIT, CPC despite the fact that assessee has complied with all the conditions specified under sub-section (2) to section 115BA of the Income Tax Act (hereinafter referred to as "Act")*
5. *On the facts and circumstances of the case, CIT(A), ITD has erred both on facts and in law in confirming the above action of the ADIT, CPC despite the fact that assessee has exercised th option in the prescribed manner on or before the due date specified under section 139(1) f furnishing the first of the returns of income in view of the provisions of section 115BA(4) of t Act.*

That the appellant craves leave to add, amend or alter any of the grounds of appeal.

3. The sum and substance of the grievance of the assessee is that the assessee filed its return of income and claimed tax rate of 25% applicable to the assessee as per the provisions of section 115BA of the Act.

4. This claim was denied by the CPC/CIT(A) for the simple reason that the assessee has not filed form 10IB for the assessment year under consideration.

5. The claim of the assessee is that the specified form 10IB is required to be filed only in the first year and not in the subsequent years and since the assessee had filed form 10IB in the first year there was no requirement to file the same for the subsequent year.

6. We have given a thoughtful consideration to the quarrel the instructions for filing out form ITR-6 is explained by the CBDT. The relevant instructions for the quarrel under the consideration read as under :-

<p>Whether assessee has opted for taxation under section 115BA/115BAA/115BAB</p>	<p>In case you are a 'domestic company' please specify the following by selection the applicable dropdown:-</p>
---	---

(a) Whether you have opted for charging of tax @ 25% on total income computed as per provisions of section 115BA; (b) whether you have opted for charging of tax @22% on total income computed as per provisions of section 115BAA;

(c) whether you have opted for charging of tax @15% on total income computed as per provisions of section 115BAB;

(d) Select option "none of the above" in case you are not opting for any the sections specified above

Note

1. If you are selecting section 115BA/115BAA/115BAB, please ensure you have filed the corresponding forms on or before the due date of filing the return

	<p>u/s 139(1) i.e. Form 10IB (section 115BA), Form 10IC (section 115BAA) & Form 10ID (section 115BAB)</p> <p>2. The above forms are required to be filed only in the first year when concessional rate of taxation is opted for the first time.</p> <p>3. As per section 115BAB (1st Proviso). taxpayer cannot claim deductions & expenditures in respect of income not incidental to manufacturing/production. For example, in case of income from house property no deduction will be allowed u/s 24(a) "standard Deduction" & u/s 24(b) "Interest paid"</p>
--	--

7. Note -2 above makes it clear that the form is to be filed only in the first year when concessional rate of taxation is opted for the first time.

8. This is further clarified by the following instructions :-

<p>Whether assessee has opted for taxation under section 115BA/115BAA/115BAB</p>	<p>In case you are a 'domestic company', please specify the following by selecting the applicable dropdown :-</p> <p>(a) whether you have opted for charging of tax @ 25% on total income computed as provisions of section 115BA; per</p> <p>(b) whether you have opted for charging of tax @ 22% on total income computed as per provisions of section 115BAA;</p> <p>(c) whether you have opted for charging of tax @ 15% on total income computed as provisions of section 115BAB; per</p> <p>(d) Select option "none of the above "in case you are not opting for any the sections specified above</p> <p>Note</p>
---	---

1. If you are selecting section 115BA/115BAA/115BAB, please ensure you have filed the corresponding forms on or before the due date of filing the return u/s 139(1) i.e. Form 101B (section 115BA), Form 101C (section 115BAA) & Form 101D (section 115BAB)

2. The above forms are required to be filed only in the first year when concessional rate of taxation is opted for the first time.

3. As per section 115BAB (1st Proviso), tax pay cannot claim deductions & expenditures respect of income not incidental manufacturing/production. For example, in case of income from house property no deduction will be allowed u/s 24(a) "standard Deduct & u/s 24(b) "Interest paid"

9. In the light of the aforementioned instructions we do not find any merit in the orders of the authorities below. We accordingly direct the AO to levy tax rate @ 25% as applicable in the case of the assessee. The appeal is accordingly allowed.

Order pronounced in the open court on 15.02.2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:- .02.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI