

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 1010/Kol/2023

Assessment Year: 2020-21

Fastner Commoddeal Private Limited PAN: AABCF 2204 R Appellant	vs	ADIT, CPC, Bengaluru Respondent
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Date of Hearing	13.02.2024
Date of Pronouncement	07.03.2024
For the Assessee	Shri Ranjeet Kumar Garodia, AR
For the Revenue	Shri B.K. Singh, JCIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2020-21 is directed against the order dated 31.07.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'Id. CIT(A)'].

2. Brief facts of the case are that the assessee has filed its return of income for the A.Y. 2020-21 declaring income of Rs. 58,69,56,530/- on which Income tax @ 22% along with surcharge @ 10% and cess @ 4% was paid. The return of income filed by assessee was processed and assessee company has received an intimation u/s 143(1) of the Act under which tax on the total income was calculated @ 25% along with surcharge @ 12%, cess @ 4% and interest thereby raising a total demand of Rs. 2,96,02,670/- without taking cognizance of the fact that appellant had duly opted for benefit of the taxation rate u/s 115BAA of the Act.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where assessee filed its submission which is recorded in para 4 of the order. In the submission, the assessee had stated that assessee company while filing the return of income opted to be taxed as per provisions of section 115BAA of the Act. However, CPC while processing the return of income an intimation was issued on 24.12.2021 wherein assessed the total income of the assessee by calculating @ 25% along with surcharge @ 12%, cess @ 4% and interest thereon raising a total demand of Rs. 2,96,02,670/- without taking cognizance of the fact that appellant had duly opted for benefit of the taxation rate u/s 115BAA of the Act. The assessee prayed before the ld. CIT(A) to allow the claim of the assessee by giving an opportunity to file Form No. 10IC of the Act in order to avail the benefit of lower taxation rate u/s 115BAA of the Act.

4. However, the ld. CIT(A) after considering the submission of the assessee upheld the action of the assessing officer by holding that assessee has not filed Form No. 10IC at the time of filing of return, the ld. CIT(A) also stated in its order that the assessee has failed to submit Form No. 10IC of the Act in terms of the CBDT Circular No. 6 of 2022 dated 17.03.2022 where it is clearly stipulates that one of the condition of delay in filing Form No. 10IC for A.Y. 2020-21 is to be condoned if the said form is e-filed on or before 30.06.2022 or 3 months from the end of the month in which the circular is issued whichever is later. Accordingly, the claim of the assessee was denied by ld. CIT(A) by citing the circular issued by CBDT.

5. Aggrieved by the order of ld. CIT(A), assessee is in appeal before the Tribunal.

6. We have heard the submission of both the parties. The ld. AR of the assessee submits that while filing the return of income electronically, the assessee opted for tax u/s 115BAA of the Act being domestic company. The assessee could not upload/filed Form No. 10IC online due to technical problem in the portal as well as pandemic was prevailed on that point of time. However, assessee has fulfilled all the requisite conditions to be taxed u/s 115BAA of the Act. He further stated that 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 also issued Circular No. 6/22 dated 17.03.2022 for extending time period for filing Form No. 10IC. The condition of Circular was that the return of income was to be filed on or before due date specified u/s 139(1) of the Act and Form 10IC be filed electronically on or before 30.06.2022 or three months from the end of month in which CBDT Circular is issued. The ld. AR stated that the assessee has filed its return of income before issuance of aforesaid circular. The only lapse is on the part of assessee is that they could not upload Form 10IC on ITBA system due to technical glitch on the portal at that point of time when return of income was filed.

7. The ld. AR further submitted that CBDT Circular No. 6/2022 was issued on 17.03.2022 for extending time period for filing Form 10IC after intimation issued by CPC dated 24.12.2021 in the case of assessee. Therefore, the assessee could not take any remedial measure before the appropriate authority. Since intimation was already issued by rejecting the claim of assessee. The ld. 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, assessee has entitled for deduction as per provision of the Act. To support such submission, the ld. 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).”*

8. On the other hand, ld. Sr. DR submits that assessee has not fulfilled the requisite condition for availing the benefit of section 115BAA of the Act. The assessee has not uploaded Form 10IC before or at the time of filing of return of income within the time period as prescribed u/s 139(1) of the Act. Even as per CBDT Circular No. 6/2022, the assessee has not uploaded such form before stipulated time as prescribed. Thus, the order of ld. CIT(A) is as per law.

9. We after hearing the rival submission of the parties and perused the material available on record find that the assessee is a domestic company and eligible to avail the benefit of tax u/s 115BAA of the Act, provided the assessee fulfilled the requisite condition for availing such benefit. The point of dispute in the appeal is only in relation to lower authorities are that assessee has not filed Form No. 10IC electronically before due date for filing return of income u/s 139(1) of the Act. The case of the assessee is

that Form 10IC could not be uploaded on ITBA portal due to technical glitch and it was the first year of availing such benefit. The only question for our consideration is whether non-filing of Form No. 10IC on ITBA portal is fatal to the assessee or not in availing the benefit of section 115BAA.

10. We find that the Hon'ble 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 prayed before the ld. CIT(A) to allow it to file Form 10-IC before the appropriate authority in order to claim the benefit u/s 115BAA of the Act. It is settled principles under law that appeal is a continuation of assessment proceedings and the ld. CIT(A) has co-terminus power as of Assessing Officer, therefore, the ld. 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.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07.03.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 07.03.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Fastner Commodeal Private Limited, 2nd Floor, Anand Mangal Square, S.F. Road, Siliguri – 734 005.
2. Respondent – ADIT, CPC, Bengaluru.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata