

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.1590/Del/2023

निर्धारणवर्ष/Assessment Year: 2020-21

Fiesta Propbuild Private Ltd., 108, 1 <sup>st</sup> Floor, Madangir Village, Madangir, New Delhi. PAN No.AABCF6165F	बनाम Vs.	ITO, Ward 9(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri S. Krishnan, Adv.
Revenue by	Shri Vivek Kumar Upadhyay, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	26.12.2023
उद्घोषणाकीतारीख/Pronouncement on	12.03.2024

आदेश /ORDER

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals) - (NFAC), New Delhi dated 16.03.2023 for the AY 2020-21. Assessee raised the following grounds: -

1. "The order of the Ld.CIT(A) is wrong on facts and bad in law, and therefore, is illegal.
2. The Ld.CIT(A) erred in not allowing the appellant company under new regime u/s 115BAA of the Act.
3. The Ld.CIT(A) erred in upholding demand of Rs.15,63,500/- under old tax regime.

4. *The Ld.CIT(A) erred in passing the said order in haste without giving adequate opportunities of hearing.*
5. *The appellant reserved the right to add, delete, amend, or substitute any ground of appeal.*
6. *The assessee reserves the right to add, delete, modify or alter any ground mentioned above.”*

2. The Ld. Counsel for the assessee, at the outset, submits that Ld.CIT(A) erred in passing the order without giving adequate opportunity of hearing. The Ld. Counsel for the assessee submits that the appeal of the assessee was disposed of based on the statement of facts and without providing opportunity of hearing to the assessee. Ld. Counsel, therefore, submits that the appeal may be restored to the file of the Ld.CIT(A) for adjudicating on merits after hearing the assessee. The Ld. Counsel further made his submissions as under: -

*“1. The subject appeal stands filed against ex-parte order dated 16.03.2023 passed by ‘National Faceless Appeal Centre’ (NFAC). At Page 2 of the impugned order, NFAC notes issuance of notices dated 05.05.2022 & 30.12.2022 to the Assessee in appeal, and at Page 3 thereof, it is noted that no submissions were on record before NFAC, and the matter stands decided merely on the basis of statement of facts filed along with appeal memo.*

*2. The issue in appeal, apart from the factum of ex-parte order, is allowability of claim u/s. 115-BAA of the Act in AY 2020-21, wherein Form 10-IC was filed belatedly. NFAC has negatived the plea, stating that language of section 115-BAA requires filing of Form 10-*

*IC within prescribed period as mandatory condition to claim the benefit.*

3. *The Assessee's case, as partially made out in the statement of facts, is that:*

*a. AY 2020-21 was the first year for malting claim u/s. 115BAA, and while Form 10-IC had been notified, ITBA was accepting return of income with claim u/s.115-BAA without upload of Form 10-IC. In the Assessee's case, return of income offering NIL income without payment of any tax in view of claim u/s. 115-BAA had in fact, been accepted, without the form being uploaded;*

*b. The said period was one wherein the Assessee's operations were destabilized on account of the Covid pandemic, and given that the provision was new, the Assessee was not able to have the form filed in a timely manner;*

*c. Immediately upon issuance of CBDT Circular No.6/2022 dated 17.03.2022, the Assessee initiated process of preparation of Form 10-IC, and filed the same along with requests for reprocessing of its return for AY 2020-21, in the case of the Assessee company (PB-04) as well as in cases of its group companies (PB01-03) on 21.05.2022, i.e. within the limitation window of 30.06.2022 as provided by CBDT;*

*d. Returns in cases of group companies have all been re-processed. By CPC, Bengaluru, duly providing deduction u/s 115BAA (PB 05-34), evidenced by NIL computation u/s 115-JB, while even as on date, application dated 21.05.2023 in the case of the Assessee company remains pending (screenshot at PB 35). Assessee's grievance applications as to the non-disposal of the rectification application, based on Form 10-IC, filed before 30.06.2022, are at PB 36 & 37.*

4. *Therefore, while the Assessee's rectification request dated 21.05.2022, based on Form 10-IC filed*

*prior to the CBDT imposed cut-off date of 30.06.2022 remains pending to date, NFAC has issued two notices and dismissed the appeal ex-parte. Hence, the Assessee's prayer in the present appeal for order of remit with directions to NFAC to examine the facts on CPC Bengaluru's record, particularly the pending rectification application, and allowance of the claim u/s. 115-BAA."*

3. The DR has no serious objection in restoring the appeal to the file of the Ld.CIT(A).

4. On hearing both the sides and perusing the submissions of the assessee, we are of the considered view that this matter should go back to the file of the Ld.CIT(A) for fresh adjudication after providing adequate opportunity of being heard to the assessee. Assessee is directed not to seek any un-necessary adjournments and cooperate with the proceedings before the Ld.CIT(A). Thus, we restore this appeal to the file of the Ld.CIT(A) to decide on merits in accordance with law after providing opportunity to the assessee.

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

Order pronounced in the open court on 12/03/2024

Sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 12/03/2024

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**