

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 30/JP/2024  
निर्धारण वर्ष / Assessment Years : 2022-23

Jagdish Soni, Proprietor of Dhruv Jewels, Shop No. 8, Dher Ke Balaji Crossing Sikar Road, Jaipur	बनाम Vs.	ITO, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADVPS 9857 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vishnu Khandelwal (CA)  
राजस्व की ओर से / Revenue by : Sh. Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 14/02/2024  
उद्घोषणा की तारीख / Date of Pronouncement: 25/04/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Commissioner of Income Tax, Appeal-10, Mumbai dated 20/11/2023 [here in after Id. CIT(A)] for assessment year 2022-23 which in turn arise from the order dated 15.02.2023 passed under section 143(1) of the Income Tax Act, by DDIT, CPC, Bangalore.

2. In this appeal, the assessee has raised following grounds: -

*“1. That the order dated 15.02.2023 is against the law and material available on record.*

*2. Under the facts and circumstances of the case the case the learned Assessing Officer and learned CIT Appeals has seriously erred in not giving standard deduction of Rs.50000/- which is available under the old tax regime.*

*3. Under the facts and circumstances of the case the case the learned Assessing Officer and learned CIT Appeals has seriously erred in not giving deduction of Rs. 150000/- u/s 80C which is available under the old tax regime.*

*4. Under the facts and circumstances of the case the case the learned Assessing Officer and learned CIT Appeals has seriously erred in not giving deduction of Rs. 10000 /- (- u) / s 80TTA which is available under the old tax regime.*

*5. That the appellant craves leave of this Honourable Court to argue other grounds at the time of hearing.”*

3. Succinctly, the fact as culled out from the records is that in this case the assessee has filed his return of income on 02/08/2022 and opted for section 115BAC. In the order passed on 15.02.2023 u/s 143(1) of the Act by the DDIT, CPC, Bangalore i.e. AO has rejected the option of section 115BAC and make the assessment under old scheme. While making assessment under the old scheme, AO has not given following deductions. Standard Deduction; Rs. 50,000/- Deduction u/s 80C : Rs. 1,50,000/- Deduction u/s 80TTA : Rs. 10,000/-.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“5. Findings and Decision: I have carefully considered Form 35, statement of facts, order by DDIT, CPC, Bangalore, submission/details uploaded in the system and the grounds of appeal raised.

6. Ground Nos. 1, 2, 3, 4 are pertaining to the disallowance of deduction of Rs.1,50,000/- u/s. 80C, deduction of Rs. 10,000/- u/s. 80TTA and also the standard deduction of Rs.50,000/-.

In this case the due date of filing return of income was 31.07.2022. However, the appellant has not filed return of income on time. He has filed return of income on 02.08.2022. The appellant has also not submitted Form 10-IE filing of return. He has filed Form 10-IE on 02.08.2022.

Form 10-IE is to submitted for exercising the option of new tax regime u/s 115BAC of the I.T. Act. The appellant has declared profit and gains from business or profession of Rs. 10,55,900/-. The assessee having business or profession income need to fill up Form 10-IE and submit this every year on or before the due date of filing of return. Non filing of Form 10-IE on or before the due date of filing of return will not entitle the assessee to avail the benefit of section 115BAC of the I.T. Act. Therefore, the Assessing Officer's action of rejecting the option of section 115BAC and make the order u/s 143(1) under old scheme is upheld.

Further it is seen that appellant has not claimed deduction of Rs. 1,50,000/- u/s. 80C, deduction of Rs. 10,000/- u/s. 80TTA and also the standard deduction of Rs.50,000/- in the return of income filed by him. The appellant is not eligible for any of deduction since it was not claimed in the return of income filed by him. In this regard reliance is placed on the decision of Hon'ble Supreme Court in the case of Goetz (India) Limited vs. Commissioner of Income Tax, (2006) 284 ITR 323 (SC) wherein it was held that the assessee cannot claim deduction other than by filing of revised return. In this case the appellant has not claimed deduction of Rs.1,50,000/- u/s. 80C, deduction of Rs. 10,000/- u/s. 80TTA and also the standard deduction of Rs.50,000/- by filing the revised return of income.

Therefore, the ground Nos. 1, 2, 3 & 4 of appeal taken by the appellant are dismissed.”

6.1. Ground No. 5 right of the appellant to argue other grounds at the time of hearing of appeal. Since, this right was never exercised by the appellant during the appellate proceedings, this ground has become infructuous, so treated as dismissed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

“This appeal has been preferred against the order of Respondent dated 15/02/2023 while making assessment under old scheme, assessing officer has not given following deductions:

Standard Deduction :	Rs.50000/-
Deduction u/s 80C :	Rs.150000/-
Deduction u/s 80TTA:	Rs.10000/-

Brief facts of the Case are as under:

1. The assessee has filed his return of income in Form ITR 3 on 02/08/2022 and opted for Section 115BAC; Copy of ITR and Computation is enclosed. Page no 1 to 8.

2. An order of intimation u/s 143(1) has been made on 15/02/2023. While making intimation, assessing officer has rejected the option of section 115BAC and make the assessment under old scheme.

3. That at the time of filing ITR, if an assessee opts for section 115BAC, the return form does not allow to fill details of deductions under chapter VIA and Standard Deduction.

4. While making assessment under old scheme, assessing officer has not given following deductions:

Standard Deduction :	Rs.50000/-
Deduction u/s 80C :	Rs.150000/-
Deduction u/s 80TTA:	Rs.10000/-

5. The learned assessing officer has raised a demand of Rs.86620/-

TO SUBSTANTIATE THE GROUND TAKEN IN THE APPEAL MY SUBMISSION IS AS UNDER:

1. That during the year under consideration assessee has earned income under the following heads:

Income from Salary :	Rs.122333/-
Business Income :	Rs.1055900/-
Capital gain :	Rs.48304/-
Other Sources :	Rs.1498403/-

In the income from other sources, Interest on Saving Bank of Rs.15210/- has been included.

In addition to above assessee has made investments/expenses qualifying for deduction u/s 80C amounting to Rs.150000/-.

2. Standard Deduction of Rs.50000/- has not been given :

That while making intimation, assessing officer has not given standard deduction of Rs.50000/- which is available and eligible under the taxation of Normal Provision.

Undisputedly, assessing is earning income from Salary and there is standard deduction of Rs.50000/- from the income of salary under the taxation of Normal Scheme. As the assessing officer has not given the benefit of taxation under New

tax regime u/s 115BAC and make the assessment under the normal provisions, it was the duty of the A.O. to give standard deduction of Rs.50000/-

As the A.O. has not given aforesaid deduction, it is humbly requested to allow the standard deduction of Rs.50000/-

3. Deductions u/s 80C.

During the year under consideration assessee has earned NSC interest of Rs.32865/- which has been reinvested. The said interest has been included in the Income from other sources.

Assessee has also invested in the Mutual funds for an amount of Rs.60000/- which is eligible for deduction u/s 80C. Copy of account of Mutual fund is enclosed. Page no 9 to 11.

Assessee has paid Tuition fees of Rs.64580/- for education of his child, copy of receipt is enclosed, Page no 12.

Therefore, the assessee is eligible for deduction u/s 80C for an amount of Rs.150000/--

As the A.O. has not given aforesaid deduction, it is humbly requested to allow the deduction u/s 80C of Rs.150000/-

4. Deductions u/s 80TTA.

Undisputedly, assessee has earned Interest of Rs.15210/- from Saving Bank which has been offered for tax in his ITR.

As per the taxation under Normal Scheme, deduction of Rs.10000/- is allowable as deduction.

As the A.O. has not given aforesaid deduction, it is humbly requested to allow the deduction u/s 80TTA of Rs.10000/-

It is therefore most humbly prayed to allow the appeal.”

6. The Id. AR of the assessee in support of the grounds so raised relied upon the written submission and stated that the assessee though filed the return of income beyond for few days the benefit of the scheme not given

then alternatively the deduction which are eligible to be received may be given as per the alternative plea of the assessee which the lower authority has not entertained.

7. The Id DR is heard who has relied on the findings of the lower authorities.

8. Heard the parties. Perused the material placed on record. The apple of discord in this case is that the if the assessee has not filed the return of income within the time period allowed for filling the return of income the benefit of the new scheme as per provision of section 11BAC should be allowed or not? If yes then the returned income be accepted or else whether the other deduction as per the old scheme is allowable to the assessee or not. To adjudicate this issue we would first like to reiterate the provision of section 115BAC so as to understand the allowability of deduction on the return of income filed after the due date prescribed:

**Tax on income of individuals <sup>72</sup>[and Hindu undivided family].**

**115BAC.** (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, the income-tax payable in respect of the total income of a person, being an individual or a Hindu undivided family, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2021 <sup>73</sup>[but before the 1st day of April, 2024], shall, at the option of such person, be computed at the rate of tax given in the following Table, if the conditions contained in sub-section (2) are satisfied, namely:—

**TABLE**

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**Provided** that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and other provisions of this Act shall apply, ***as if the option had not been exercised for the assessment year relevant to that previous year:***

**Provided further** that where the option is exercised under clause (i) of sub-section (5), in the event of failure to satisfy the conditions contained in sub-section (2), it shall become invalid for subsequent assessment years also and other provisions of this Act shall apply for those years accordingly.

XXXXXXXX

Thus, considering the new provision of the taxation as laid down and reiterated hereinabove, in this case since, the assessee has not filed the return of income as per the due date prescribed, then as per the proviso given in the above section the assessee is not eligible to get the benefit of the new scheme. Thus, as per the proviso of the aforesaid section the option the option shall become invalid in respect of the assessment year relevant to that previous year under consideration and other provisions of this Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year. Thus, in this case the income shall be computed considering the provision of section 80AC of the Income Tax, Act which also restrict that the certain deduction shall not be allowed to the assessee under the normal provision of the Act. Thus, since the assessee in this case though filed the return after the due date which

was not processed under the new tax regime but the said return is required to be proceeds as per the old provision of the Act and after considering the provision of section 80AC of the Act. Since, the standard deduction, deduction u/s80C and 80TTA is required to be tested as per the evidence that the assessee is supposed to produced. Since the assessee was not provided an opportunity of being heard before processing the return of income, we feel it in the interest of the natural justice that the assessee shall provide the details connected to the claim before the Id. AO on merits a fresh in the interest of equity and natural justice. At the same time Id. Jurisdictional Assessing Officer is directed to examine the contention of the assessee and pass suitable order a fresh after giving sufficient opportunity of being heard to the assessee. Based on this set of facts we hold to remand the matter back the matter to the file of the Id. AO who will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative while proceedings before the Id. AO.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having

any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/04/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/04/2024

\*Ganesh Kumar, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Jagdish Soni, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 30/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar