

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 351/Ind/2023
Assessment Year: 2020-21

Wilshire Pharmaceuticals Private Limited, F-29, Vardhaman City Plaza, Dawa Bazar, Hamidia Road, Bhopal (Appellant/Assessee)	<u>बनाम/</u> <u>Vs.</u>	CPC, Bangaluru (Respondent/Revenue)
PAN: AABCW0051B		
Assessee by	Shri S.S.Solanki, CA & AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.05.2024	
Date of Pronouncement	09.05.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 11.08.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of rectification-order dated 15.12.2022 u/s 154 read with intimation of assessment dated 24.12.2021 u/s 143(1) passed by CPC, Bangaluru ["AO"], the assessee has filed this appeal on following grounds :-

1. *That in the facts and circumstances of the case, the Ld. CIT(A) Faceless upheld the intimation order passed u/s 143(1) and rectification order passed u/s 154 where tax liability is calculated in the hands of the appellant under old regime even though appellant has correctly opted for taxation u/s 115BAA in (e) of "Filing Status" in "Part A-GEN" of the Form ITR-6, which is bad in law and erroneous.*
2. *That in the facts and circumstances of the case, mere non-filing of Form 10-IC on account of technical glitch caused by the e-portal should not be a ground for rejecting the option exercised by the appellant to apply the provisions of section 115BAA and pay taxes according to the new regime.*
3. *That in the facts and circumstances of the case, the Ld. CIT(A) Faceless has passed the order in haste without giving any opportunity of being heard to the appellant which is against the principle of natural justice.*

2. Ld. AR for assessee submitted the precise facts leading to present appeal. The assessee is a company. For AY 2020-21, the assessee filed return of income in Form ITR-6 on 31.03.2021 opting for concessional tax regime u/s 115BAA. However, the assessee could not file the required Form No. 10-IC within the prescribed time for availing the said concessional tax regime. Therefore, the AO denied the benefit of concessional tax regime and computed tax under normal provisions which resulted in creating demand of tax and interest upon assessee. The assessee then filed rectification request u/s 154 to AO but the AO rejected such request vide order dated 15.12.2022. Aggrieved, the assessee filed appeal to CIT(A) but could not attend hearing fixed by the Ld. CIT(A). Therefore, the CIT(A) passed an ex-parte order wherein no relief has been given to assessee and the order passed by AO has been upheld. Now, the assessee has come in next appeal before ITAT.

3. Having explained thus, Ld. AR submitted that the order of first-appeal passed by CIT(A) is ex-parte because of non-representation by assessee. But the non-filing of Form 10-IC within the prescribed time is only a procedural lapse and there are numerous judicial rulings holding that procedural lapses should not come in the way of granting substantive benefits available to assessees. Ld. AR submitted that the assessee is ready to make a detailed representation before CIT(A) in the matter on the basis of relevant judicial

rulings. Therefore, it would be better and judicious if this matter is set aside to CIT(A) for an apt adjudication. Ld. AR prayed to remand this case to CIT(A). Ld. DR for revenue does not have any objection to Ld. AR's prayer. In view of consensus agreed by both sides and also to grant one more opportunity to assessee in the interest of justice, we restore this matter to the file of CIT(A) for adjudication afresh. The assessee is directed to make compliances on the hearings to be fixed by CIT(A) and ensure proper representation.

4. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 09.05.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 09.05.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore