

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.376/KOL/2024  
Assessment Year: 2021-22**

OSD Coke (Consortium) Pvt. Ltd. 3/2, 75C, Park Street, 3 <sup>rd</sup> Floor, Kamdhenu Building, Kolkata-700016. (PAN: AABCO2713Q)	Vs.	Assessing Officer, Circle-5(1), Kolkata, CPC Bengaluru
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri J. M. Thard, Advocate

Respondent by : Shri Bibekananda Madhu, JCIT, Sr. DR

Date of Hearing : 09.05.2024

Date of Pronouncement : 13.05.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. ADDL/JCIT(A)-2, Chennai (hereinafter referred to as "the Ld. Addl./Jt. CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2021-22 vide Appeal No. ITBA/APL/S/250/2023-24/1059358101(1) dated 04.01.2024.

2. Grounds of appeal raised by the assessee are reproduced as under:

*"1. FOR that the Ld. Addl./JCIT(A)-2 Chennai was wrong and unjustified in not considering and/or giving any decision in respect of Ground No.3 taken before him which reads as "FOR that the Ld. ADIT, CPC was wrong and unjustified in processing the return with variance without sending any prior proposal adjustment Intimation and not following the provisions of First proviso to sec. 143 (1) and violating the principle of natural justice".*

2. FOR that the Ld. Addl./JCIT(A)-2 Chennai was wrong and unjustified in not considering and/or giving any decision in respect of Ground No.1 taken before him which reads as "FOR that the Ld. ADIT, CPC was wrong and unjustified in issuing the Intimation u/s. 143(1)".

3. FOR that the Ld. Addl./JCIT(A)-2 Chennai was wrong and unjustified in not cancelling the Intimation u/s.143(1) dtd.13.11.2022 since it was issued by violating the provisions of first proviso to sec. 143(1).

4. FOR that the Ld. Addl./JCIT(A)-2 Chennai was wrong and unjustified in rejecting the Ground No.2 taken before him which reads as "FOR that the Ld. ADIT, CPC was wrong and unjustified in applying the provisions of sec. 115JB ignoring the fact that appellant company had opted for taxation u/s.115BAA in their ITR-6".

5. FOR that the Ld. Addl./JCIT(A)-2 Chennai was wrong and unjustified in not considering and/or discussing the submission made on 07.12.2023.

6. FOR that the Ld. Addl./JCIT(A)-2 Chennai was wrong and unjustified in not allowing the appeal in pursuance of Circular No.19 of 2023 dated 23.10.2023.

7. FOR that the appellant craves leave to alter, amend, modify any of the grounds and/or take additional grounds before or at the time of hearing of this appeal."

3. Though the assessee has raised as many as seven grounds of appeal but the sole issue involved in this appeal is confirming the action of the Ld. AO in rejecting the assessee's claim for the tax regime u/s. 115BAA of the Act by the first appellate authority as against its option exercised in the income tax return.

4. Brief facts of the case are that the assessee exercised its option for the tax regime u/s. 115BAA of the Act which was denied by the Ld. AO u/s. 143(1) of the Act. In appeal before the first appellate authority, the Ld. Addl./Jt. CIT(A) has observed as under:

*"In this instance, the appellant submitted ITR 6 on 02.3.2022, well within the extended deadline of 15.3.2022. However, the appellant did not choose section 115BAA, as indicated in ITR 6 under Part A Gen "Filing Status" Col (e). Even though the appellant submitted Form 10IC on 04.12.2023, it is determined that the appellant did not fulfill the all three conditions specified in Circular No. 19 of 2023 dated 23.10.2023. The ITR for the A.Y. 2021-22, the alleged initial year of the appellant's exercised option, downloaded from the system, explicitly indicates that the appellant did not opt for the tax regime under section 115BAA. Consequently, the appellant's arguments are considered invalid, and the AO (CPC)'s rejection of the tax regime under section 115BAA remains justified. The appeal on this basis is dismissed. The Jurisdictional Assessing Officer (JAO) is*

*instructed to calculate the appellant's total income in accordance with the regular provisions of the IT Act.”*

Aggrieved by the aforesaid order, the assessee preferred appeal before the Tribunal.

5. We have heard rival contentions and perused the material available on record. Ground Nos. 1, 2 and 3 refer to the adjustment being made without sending any prior proposal for the adjustment by the CPC. It is observed that no such mention of the intimation of the proposed addition has been made either in the intimation or even before the Ld. Addl./Jt. CIT(A), even though the assessee had raised this ground at ground no. 3 before the Ld. Addl./Jt. CIT(A). A perusal of the proviso to clause (a) of sub-section (1) of section 143 shows that no such adjustment shall be made unless an intimation is given to the assessee for such adjustment either in writing or in electronic mode. Since this is a matter of verification to be made by the Ld. AO from the CPC as to whether any intimation was given or not, we set aside these grounds of appeal to the Ld. AO for examination from the CPC and in case no such intimation has been sent, the grounds of appeal are liable to be allowed. These grounds of appeal of the assessee are allowed for statistical purposes.

6. Ground nos. 4, 5 and 6 are regarding not applying the provisions of section 115BAA of the Act being tax rate of 22- %, even though the assessee company had opted for application of section 115BAA in its ITR-6 and Circular No. 19 of 2023 dated 23.10.2023 was applicable and required submissions were made before the first appellate authority. In the course of hearing, it was submitted that the assessee had opted for tax regime u/s. 115BAA, however, Form No. 10-IC was not filed. It is mentioned that on page 1 of the intimation u/s. 143(1) at Sl. No. 1 related to tax regime option i.e. whether opted for 115BAA, it has been mentioned “YES” under the column as provided by the tax payer but not

in the column of as computed u/s. 143(1,) thereby implying that the assessee had opted for applicability of the provisions of section 115BAA. It is further mentioned that in the paper book at page 16, which is the PDF of the annexure under the column whether the assessee has opted for taxation u/s. 115BA/115BAA/115BAB, the required mention does not appear. However, it is not blank but it is the PDF copy and the required mention has not been printed erroneously. It was also submitted that if MAT is applicable, the system picks up the case even though the assessee has not opted for it but u/s. 143(1), a prior intimation is required to be sent for adjustment. Had the assessee not opted for it, the provisions of section 115BAA could not have been applicable. It is further submitted that in paper book 2 at page 32 there is mention of "0" in column 7 since the assessee has exercised the option. The assessee submitted that Form No. 10-IC was not filed with the return but was dated 02.12.2023 and was filed vide acknowledgement dated 04.12.2023 and, therefore, the assessee was eligible in view of Circular No. 19/2023 dated 23.10.2023.

Since the issue involves verification of the electronic record in the CPC, we deem it proper to set aside the issue to the AO. The AO shall examine whether the CPC had issued any prior intimation and in case no such intimation was issued, the adjustment could not have been made. Secondly, the Ld. AO shall also verify with the CPC whether Form No. 10-IC was also filed with the CPC within time as claimed by the assessee and in case it is so, the benefit of Circular No. 19/2023 dated 23.10.2023 shall be available to the assessee and the delay in filing Form No. 10-IC is to be condoned and the same shall be deemed to be filed within time and the assessee shall be eligible for the applicability of provision of section 115BAA of the Act. These grounds of appeal are, therefore, allowed for statistical purposes.

7. Ground no. 7 of the appeal is general in nature and does not require any separate adjudication.

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

Order pronounced in the open court on 13<sup>th</sup> May, 2024.

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Rakesh Mishra)  
Accountant Member

***Dated: 13th May, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. Addl./Jt. CIT(A), Chennai
  4. The CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata