

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 54/Mum/2024
(Assessment year : 2021-22)

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| Synergy Health Sciences Pvt Ltd, Thane Ashar IT Park, Income-tax Office, 6 th Floor, Road No.16Z, Wagle Industrial Estate, Thane (W)-400 604 PAN : AACCS1621D | vs | National Faceless Appeal Centre, New Delhi. |
| APPELLANT | | RESPONDENT |

Assessee by : Shri Sushant Sant
Respondent by : ShriDinesh A Chourasia – SR AR

Date of hearing : 28/05/2024
Date of pronouncement : 31/ 05/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the Assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2021-22, date of order 30.10.2023. The impugned order was emanated from the order of the CPC, Bangaluru (in short, 'the A.O.') passed under section 154 / 143(1) of the Act date of order 12/08/2023.

2. The assessee has taken the following grounds of appeal:-

“1. Ground 1. On facts and circumstances of the case, the learned COMMISSIONER OF INCOME-TAX (APPEALS), NATIONAL FACELESS APPEAL CENTRE erred in law and in fact, in confirming the tax liability of the Appellant as shown in the rectification order under section 154 of the Income-tax Act, 1961. Learned CIT(A) did not take cognizance of the circular issued by the Central Board of Direct Taxes (CBDT), Circular No.19/2023 dated 23 October, 2023, pursuant to which tax liability of the Appellant would be calculated under section 115BAA of the Act.

2. Ground 2. Without prejudice to the above, the learned CIT(A) has not taken any action against the rectification application filed by the Appellant under section 154 on 7 November 2023 to give effect of the aforesaid CBDT Circular 19/2023 issues on 23 October 2023 i.e. before date of passing of the order (which is 30 October 2023) under section 250 of the Act.

3. Ground 3. Without prejudice to the above, CPC erred in computing tax liability @30% (excluding applicable surcharge and cess) in accordance with the Rates in force as specified paragraph E of the First Schedule of the Act which is applicable to companies having turnover of less than 400 crores. The said demand is not acceptable to the appellant.”

2. Brief facts of the case are that the assessee is a domestic company and professionally managed pharmaceuticals, intermediates and chemical services and also engaged in merchant exports, trading, providing technical support, indenting, strategic sourcing and facilitating contract manufacturing solutions and the turnover is below Rs.400 crores in the impugned assessment year. The assessee filed its return under section 139(1) within the due date and availed the tax payment under section 115 BAA of the Act. Accordingly, the tax was paid amount to Rs. 67,27,381/-. The return was processed under section 143(1), but

the Ld.AO calculated the tax payable on that at effective rate of 33.34% (including surcharge and cess) which amount to Rs.93,95,871/-(including interest under section 234B and 2134C) resulting in the demand amount of Rs.26,68,490/-(Rs. 93,95,871/- - 67,27,381/-). The assessee filed rectification petition under section 154 but the petition was rejected, and the demand stands. Being aggrieved, assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) has passed the order and upheld the action of the Ld.Assessing Officer. Being aggrieved, assessee filed an appeal before us.

3. The Ld.AR filed a written submission (in short APB) which is kept in the record. The Ld.AR first argued that the assessee availed the provisions of section 115BAA during calculation of tax. The assessee filed the Form 10-IC for availing the benefit under section 115BAA. The assessee's turnover is below Rs.400 crores and the effective tax rate is 27.28%. The assessee belatedly filed the Form 10-IC. For that reason the Ld. AO and the Ld.CIT(A) rejected the assessee's claim for calculation of tax under section 115BAA and calculated the tax at the effective rate of 33.34%. The Ld.AR invited our attention in CBDT circular bearing **No.19/2023 F.No.173/32/2022 – ITA-1 dated 23/10/2023** where the CBDT allowed the condonation of delay in availing the tax under section 115BAA. The Ld.AR placed that the appeal order was passed on 30/10/2023 but the Ld.CIT(A), without considering the CBDT circular dated 23/10/2023 has passed the order and rejected the condonation of delay for filing the form, as per direction of the CBDT.

4. The Ld.DR argued and fully relied on the orders of the revenue authorities. The Ld.DR invited our attention in appeal order para 4.4 which is reproduced as below: -

“4.4 On perusal of records, it is noticed that appellant has fulfilled some conditions of this section by not claiming any deductions/exemptions. The turnover reported by the appellant is also found to be less than 400 crores and necessary application for exercise of option under sub-section 5 of section 115BAA of the Act read with rule 21AE has been filed by the appellant. But it is also found that ITR in the case has been filed on 11.01.2022 (before the due date) and Form 10-IC has been filed on 23.03.2022 (after the due date). The due date for the year as per section 139 of the Act was 31.10.2021, which was extended to 15.03.2022. In this case, appellant filed its return before the due date i.e. before 15.03.2022 but failed to file Form No. 10-IC on or before due date i.e. 15.03.2022. Hence, appellant has not completely complied with all the conditions as envisaged in section 115BAA of the Act read with rule 21AE of the Rules. Therefore, appellant is not entitled to avail the benefit of reduced tax rate as per section 115BAA of the Act.”

*In view of the above, the demand is upheld, and grounds of appeal are accordingly, **dismissed.**”*

5. We heard the rival submission, considered the documents available in the record. Here we are reproducing the **CBDT Circular bearing No.19/2023 dated 23/10/2023:-**

Circular No. 19 /2023

F.No.173/32/2022-ITA-1
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

New Delhi the 23rd October, 2023

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 10-IC for Assessment Year 2021-22 – Reg.

In exercise of the powers conferred under section 119(2)(b) of the Income-tax Act, 1961 ('the Act'), the Central Board of Direct Taxes ('CBDT') by Circular No. 6/2022 of even number dated 17.03.2022 condoned the delay in filing of Form No. 10-IC as per Rule 21AE of the Income-tax Rules, 1962 ('the Rules') for the previous year relevant to A.Y. 2020-21 in cases where the conditions stipulated in the said Circular are satisfied.

2. Representations have been received by CBDT stating that Form No. 10-IC could not be filed for A.Y. 2021-22 within the due date or extended due date, as the case may be. It has been requested that the delay in filing of Form No. 10-IC for A.Y. 2021-22 may be condoned.

3. On consideration of the matter, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 115BAA of the Act, CBDT in exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that: -

The delay in filing of Form No. 10-IC as per Rule 21AE of the Rules for previous year relevant to A.Y. 2021-22 is condoned in cases where the following conditions are satisfied:

- i) The return of income for relevant assessment year has been filed on or before the due date specified under section 139(1) of the Act;
- ii) The assessee company has opted for taxation u/s 115BAA of the Act in item (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6; and



CERTIFIED TRUE COPY
 CA Deepak A. Oak (M. No. 040220)
D. A. OAK & CO.
 Chartered Accountants
 Bldg. No. 1, Unit No. 7, 'B' Wing,
 8th Floor, Asher IT Park, Road No. 16Z,
 Wanda Indl. Estate, Thane - 400 604.

iii) Form No.10-IC electronically on or before 31.01.2024 or 3 months from the end of the month in which this Circular is issued, whichever is later."

6. It is a fact that the circular was issued on 23/10/2023 whereas the appeal order was passed later. The CBDT has condoned the delay related to belated filing of Form 10-IC as per Rule 21AE. Accordingly, we set aside the appeal order. The matter is remitted back to the file of the Ld.CIT(A) for considering the appeal in the light of the circular of the CBDT which was issued on 23/10/2023. The Ld. CIT(A) is directed to condone the delay for filing of Form-10IC and passed the order accordingly. The Ld. DR has not made any strong objection against the submission of the Ld. AR.

Accordingly, the appeal of the assessee is allowed for statistical purpose.

7. In the result, appeal of the assessee bearing **ITA No.54/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 31st day of May, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 31/05/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai