

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

ITA NO. 809/Del/2024		
AY : 2021-22		
M/S COSMO SPECIALITY CHEMICALS PRIVATE LIMITED, 1008, DLF TOWER-A, JASOLA DISTRICT CENTRE, DELHI - 110 025 (PAN: AAICC6706G)	VS.	Income Tax Officer, Ward 6(1), CR Building, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by : Dr. Rakesh Gupta, Adv. &  
Sh. Somil Aggarwal, Adv.

Respondent by : Shri Om Parkash, Sr. DR.

Date of hearing : 11.07.2024

Date of pronouncement : 16.07.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

This appeal filed by the assessee for the assessment year 2021-22 is directed against the Order of Addl./JCIT(A)-4, Chennai dated 12.01.2024. The assessee has raised the following Grounds of Appeal:-

*1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the intimation under section 143(1) dated 24.8.2022 passed by the Assistant Director of Income Tax, CPC Bengaluru, without acknowledging the bonafide facts and circumstances of the case.*

*2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting benefit of new tax regime rightfully opted by the appellant under section 115BAB of the Act, wrongly upholding determination of income under MAT under section 115JB at INR 41,44,256/- as against the returned loss of INR 84,48,020/- under normal provisions of income, in contravention of the new tax regime under section 115AB of the Act.*

3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the established law that once the return of income was revised under section 139(5) of the Act by the appellant on 19.5.2021 it stepped into the shoes of the original return under section 139(1) of the Act, thereby substituting the original return, filed on 29.12.2020.

4. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in not recognizing that lapse of procedural requirement, cannot be lead to denial of assessee's lawful claim under section 115AB of the Act.

5. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not providing any relief on interest u/s. 234A/B/C of the Act levied by the AO amounting to Rs. 93,194/-.

6. The appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all of the foregoing grounds of appeal at or before the hearing, and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.

2. The facts of the case and orders of the lower authorities are culled out from the following order of the Ld. CIT(A):-

"4.1 The appellant had filed the ITR for the AY 2021-22 on 11/03/2022 admitting a taxable income of Rs. Nil under the normal provisions of the Act and simultaneously claimed Nil book profit income u/s.115JB having opted to the concessional tax regime u/s.115BAB. The CPC while processing the ITR, did not extend the benefit u/s.115BAB and determined the taxable book profit to be Rs.41,44,556/- resulting in a tax demand of Rs.5,15,790/-. Aggrieved by this adjustment, which according to the appellant is incorrect, an appeal was preferred and SOF & GOA were submitted.

4.2 According to the appellant, for the AY 2020-21, the ITR was filed before the time limit u/s.139(1) and Form 10ID opting for the scheme was filed on 19/05/2021. Therefore, having opted for the scheme in AY 2020- 21, by virtue of 1<sup>st</sup> proviso to S.115BAB(7), the benefit is available for the Subsequent years as well.

4.3 In order to ascertain the correctness of the claim made and the compliance to the conditions laid down under the said section, a notice u/s.250 was issued on 29/11/2023 which was responded on 13/12/2023. The facts of the case in the light of the additional submission and the existing material on record were carefully considered.

4.4 As per the provisions of S.115BAB(7),

*"Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:*

***Provided*** *that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year"*

*4.5 The prescribed manner as per Rule 21AF is submission of Form 10ID before the due date specified u/s.139(1). In the case under consideration, as per the own admission of the appellant, form no.10ID was filed on 19/05/2021, which is much after the time limit specified u/s.139(1) for AY 2020-21. While the time limit u/s.139(4) was extended to 31/05/2021, the time limit specified u/s.139(1) for AY 2020-21 was 15/02/2021, thus establishing the fact that form 10ID was filed beyond the due date specified u/s.139(1). Thus, it is established that the Condition laid down under 115BAB(7) has not been satisfied. Further, the order u/s.119(2)(b) passed by CBDT was restricted to condoning the delay in filing of form no.10IC and not 10ID.*

*4.6 Therefore, the need to submit form 10ID within the time limit u/s.139(1) is mandatory in nature and not directory. The Hon'ble Supreme Court in its recent decision in the case of Pr.CIT vs. Wipro Ltd (2022) 140 Taxmann.com 223, had held that filing of a declaration as mandated under the Income tax Act after the due date prescribed for filing of ITR is fatal to the claim. Though the decision was rendered in the context of eligibility of deduction u/s.10B, the Hon'ble Court held that in order to foster a particular claim of deduction or benefit., the twin conditions of furnishing the declaration and filing the original return of income u/s.139(1) ought to be satisfied and both are to be mandatorily complied with. Following the principle laid down by the Hon'ble Apex Court in the case of Wipro Ltd (Supra), the appellant is ineligible for claim of beneficial tax regime u/s.115BAB for the AY 2020-21.*

*4.7 The 4<sup>th</sup> proviso to S.115BAB(1) acts as an impediment to extend the benefit in the subsequent years and for easier comprehension the content of the relevant proviso is depicted below:*

*115BAB. (1) ...*

*...Provided also 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 subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised |for the assessment year relevant to that previous year and subsequent assessment years.*

*4.8 Therefore, having failed to adhere to the essential conditions as laid down u/s.115BAB(7) in AY 2020-21, the benefit of concessional tax regime u/s. 115BAB could not be extended to the appellant for AY 2021- 22 and accordingly the adjustment to book profit u/s. 115JB undertaken by the CPC u/s. 143(1) is upheld. The grounds of appeal of the appellant*

*5. Conclusion: In the result, the appeal of the Appellant is DISMISSED."*

3. Against the above order, assessee has filed the appeal before me.
4. I have heard the rival contentions and perused the material available on record and also gone through the orders of the authorities below.
- 4.1 At the time of hearing, Ld. AR has made the following submissions:-

*"The only issue in the present appeal is not allowing benefit of Section 115BAB in the intimation u/s 143(1) on the ground that Form 10ID was not filed with the return u/s 139(1) but was filed with the revised return u/s 139(5).*

*Return for AY 2020-21 u/s 139(1) was due on 15.02.2021 as extended by CBDT due to covid.*

*Return u/s 139(5) was filed on 19.05.2021 as extended by CBDT due to covid.*

*Form 10ID was filed on 19.05.2021 with revised return aforesaid.*

*PB 92 is the intimation u/s 143(1) for AY 2020-21 showing 15.02.2021 as extended due date and date of filing of return u/s 139(1) on 29.12.2020.*

*PB 92-93 is the intimation u/s. 143(1) for AY 2020-21 showing that revised return filed on 19.05.2021 was considered in processing and claiming relief u/s 115BAB.*

*PB 86-90 is Form 10ID fled on 19.05.2021 with revised return for AY 2020-21.*

*In view of the above facts, it is submitted that benefit of Section 115BAB cannot be denied merely on the ground that Form 10ID was not filed within due date of Section 139(1) but was filed on 19.05.2021 with revised return u/s. 139(5) within the permissible time.*

*Filing of Form is directory and not mandatory as held in the following judicial decisions:*

- PB 300-305 is the copy of decision of Hon'ble High Court of Gujarat in the case of PCIT vs. KGY Glass Industries Pvt. Lt., R/Tax Appeal No. 722 of 2023*
- Gurcharan Singh vs. ITO, ITA No. 380/2024 dated 04.04.2024 (Del).*

- *Aprameya Engineering Ltd. vs. ITO, ITA No. 456/2024 dated 11.06.2024 (Ahd).*
- *M/s Canadian Specialty Vinyls vs. ITO, ITA No. 7612/2019 dated 02.06.2023 (Del).*
- *Krushvi Vibhag Karmchari Vrund Sahakari Pat Sanstha Maryadit vs. ITO, ITA No.182/2019 DATED 07.10.2022 (Nagpur)."*

5. Upon careful consideration, I find that the assessee's claim is cogent as benefit of Section 115BAB cannot be denied merely on the ground that Form 10ID was not filed within due date of Section 139(1) but was filed on 19.05.2021 with revised return u/s. 139(5) within the permissible time. However, I note that facts submitted in this case need to be verified from the factual details available with the Assessing Officer. Accordingly, I remit back the issues to the file of the Assessing Officer with the directions to examine the submissions of the assessee and decide the appeal accordingly.

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

Order pronounced in the Open Court on 16<sup>th</sup> July, 2024.

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**SR Bhatnagar**

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar