

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA.No.1699/Mum./2024  
Assessment Year 2020-2021

D.H. Exports Private Limited, 621, Arun Chambers, Tardeo Road, Tulsiwadi S.O. Mumbai – 400 034. Maharashtra. PAN AABCD6998E	vs.	The DCIT, Circle-6(1)(1), Aaykar Bhawan, Mumbai – 400 021. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Satish Mody
For Revenue :	Smt. Sanyogita Nagpal, CIT-DR On behalf of Smt. Mahita Nair, Sr. DR

Date of Hearing :	08.07.2024
Date of Pronouncement :	18.07.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

This assessee's appeal, for assessment year 2020-2021, arises against the Addl/JCIT(A)-4, Chennai, Chennai's Din and Order No. ITBA/APL/S/250/2023-24/1060692438(1), dated 09.02.2024, in proceedings u/s.143(1) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *"The Learned Commissioner of Income-tax Appeal, National Faceless Appeal Centre, Delhi, has erred in confirming the order u/s. 143(1) of the I.T. Act, 1961 by not giving benefits of New Tax regime u/s.1 15BAA availed by Appellant from A.Y.2020-2021 and as a result raised a demand of Rs.1,56,07,230/- while processing of return u/s. 143(1) of the I.T. Act, 1961.*
2. *The Learned Commissioner of Income-tax Appeal. National Faceless Appeal Centre. Delhi, has erred in confirming, denying the benefits of provision of Sec. 115BAA of the I.T. Act. 1961 without giving an opportunity to Appellant by issuing Notice u/s. 143(l)(a) and/or u/s. 139(9) of the I.T. Act, 1961.*
3. *The Learned Commissioner of Income-tax Appeal, National Faceless Appeal Centre, Delhi, has erred in confirming applying the normal rate of tax @ 30% whereas the correct rate is 25% since the turnover of the company in financial year 2018-2019 and in the current financial year is less than 400 crores."*

4. *The Appellant reserves the right to add, alter or amend the above grounds of appeal as and when found necessary.”*

3. We next note that the Addl./JCIT’s impugned lower appellate discussion denying the concessional new tax regime benefit u/sec.115BAA to the assessee reads as under :

“4. *Decision*

4.1. *The Appellant was denied the benefit of concessional new tax regime u/s.115BAA by the CPC while processing the return of income, despite having filed the return of income on 08/01/2022, which is within the extended due date u/s.139(1) for AY 2021-22, for the reason that the supporting documentation in the form of form 10IC was omitted to be filed before the due date specified u/s.139(1).*

4.2. *However, the CBDT vide Circular no.19/2023 dated 23/10/2023 in F.No.173/32/2022-ITA-1 had condoned the delay in filing form No.10IC for AY 2021-22, if the conditions expressed in Para 3 of the said circular are satisfied. In the given facts of the case, the Appellant had filed the return of*

*income before 139(1) limit and had opted for new tax regime u/s.115BAA in the said return as is evident from the entry in Col. No.(1) of Return details in Intimation issued u/s.143(1). Thus 2 conditions expressed in Para 3 of the said circular were complied. However, to this date, the appellant has not provided any evidence of having complied with the 3rd condition that form no.10IC was already filed. Therefore, if the said form is filed on or before 31/01/2024, the benefit of concessional tax regime u/s.115BAA has to be extended to the appellant and hence the JAO directed to grant relief subject to this compliance. As at present, the appellant has not established that the 3rd condition had also been satisfactorily complied and hence the corresponding ground of appeal is therefore dismissed.*

5. *Conclusion: As a result the appeal of the Appellant is DISMISSED.”*

4. Suffice to say, it has come on record as per the foregoing lower appellate discussion that the Addl./JCIT herein has rejected the assessee's claim for having not satisfied the third condition of filing Form-10IC(supra) before the prescribed date. Faced with this

situation, we deem it appropriate to restore the assessee's instant sole substantive grievance back to learned lower appellate authority for its afresh appropriate adjudication after considering all the supportive material on record to this effect so as to claim eligibility u/sec.115BAA of the Act. We make it clear that it shall be the assessee's risk and responsibility only to plead and prove all the relevant facts in consequential proceedings within three effective opportunities. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 18.07.2024

Sd/-  
[GIRISH AGARWAL]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Mumbai, Dated 18<sup>th</sup> July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "D" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Asst. Registrar, ITAT, Mumbai Benches,  
Mumbai.