

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**AND**

**SHRI S. BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 255/VIZ/2024(A.Y: 2023-2024)**

Krishna Chaitanya Durgasi Flat No. 507, Om Sai Residency Huda Trade center Behind Punjab National Bank Lingampally, Hyderabad – 500019 Telangana  <b>PAN: AHKPD6655R</b>	v.	Income Tax Officer - Ward – 1 Eluru
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri C. Subrahmanyam, AR</b>
<b>Department Represented by</b>	<b>:</b>	<b>Dr. Aparna Villuri, Sr. AR</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>16.07.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>31.07.2024</b>

**ORDER**

**PER S. BALAKRISHNAN (AM)**

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-1, Pune [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/APL/S/250/2023-24/1060636402(1) dated 08.02.2024 for the A.Y.2023-2024.

2. At the outset, it is noticed from the appeal record that there is a delay of 71 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

*"1. Assessee was served with CIT(A) order on dt.08.02.2024 passed u/s 250 of the IT Act. Whereas, the assessee being aggrieved was desirous to file appeal before the Hon'ble ITAT and the appeal was filed on dt: 18.06.2024 as against the due date of filing i.e., dt. 08.04.2024, thus causing a delay of 71 days. The reasons and circumstances under which the appeal was filed belatedly are stated hereunder:*

*2. Whereas, it is stated that the assessee was go to counsel office for signing appeal papers on dt.02.04.2024 but on the previous day while attending function in his relative's house, while getting down on the steps from the first floor, slipped and fell down fracturing his right leg ankle. Immediately got the medical treatment and was advised to take bed rest for 6 weeks. In this process going to counsel's office for signing the appeal papers slipped out of assessee mind. Whereas, on 10.06.2024, received a phone call from the income tax office for payment of taxes and then realized that appeal was not filed. Accordingly, approached the counsel requesting to prepare the documents which was done on 15.06.2024 and the appeal was filed on 18.06.2024 causing a delay of 71 days.*

*3. In light of the above, it is respectfully submitted that this delay in filing the appeal belatedly was not as a result of any negligence or lack of diligence, but solely due to the unfortunate and unforeseen circumstances surrounding assessee health. Doctor's certificate in support of petition is attached herewith.*

*4. I understand the importance of adhering to statutory timelines and sincerely apologize for this delay.*

*5. I humbly pray the Honorable Bench for favorable consideration of this delay."*

**3.** On perusal of the contents of the affidavit filed by the assessee and medical records as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 71 days. Therefore, we hereby condone the delay of 71 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

**4.** Briefly stated facts of the case are that, Assessee is an individual filed his return of income on 12.08.2023 admitting the total income of Rs.1,53,45,640/- for the A.Y. 2023-2024. The return was summarily processed under section 143(1) of Income Tax Act, 1961 [hereinafter in short "the Act"] raising a demand of Rs. 98,720/-. Being aggrieved by the demand raised by the Centralized Processing Centre [hereinafter in short "CPC"] assessee filed an appeal before the Ld. CIT(A). During the First Appellate proceedings assessee contested that assessee being a salaried employee the requirement of filing Form-10-IE is not mandated by law and hence need not be filed. He also argued before the First Appellate Authority that assessee has opted for Special rate of taxation under section 115BAC of the Act which was mentioned while filing return of income both under section 139(1) of the Act and 139(9) of the Act.

Ld.CIT(A) rejected the submissions made by the assessee and upheld the order of the CPC.

**5.** Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising the following grounds in its appeal: -

*"1. The impugned intimation processed u/s 143(1) of the IT Act dt. 15/12/2023, and upheld by the Ld. ADIT/JCIT (Appeals) - 1, Pune, vide order u/s 250 of the IT Act dt. 08/02/2024, is fundamentally flawed and contrary to the facts and provisions of law.*

*2. The disallowance of claim for opting to the provisions of sec. 115BAC of IT Act for levy of tax under new tax regime is unjustified.*

*3. The Ld. JCIT(A) failed to take cognizance that there is no requirement of filing Form 10IE for salaried employees filing tax returns in ITR-2 returns in ITR-2i n view of this assessee is rightly entitled for new tax regime u/s 115BAC of the IT Act,*

*4. It is pertinent to note that Form 10IE is mandated for assessee's having business income, whereas the sole source of income for the Appellant is salary income. Hence, the decision of the Ld.JCIT(A) is not only erroneous but also contrary to the provisions of law.*

*5. In light of the aforementioned grounds, it is humbly prayed that this Honorable Tribunal may kindly give directions to compute the tax as per sec 115BAC of the IT Act."*

**6.** The only issue emanating from the grounds raised by the assessee is with regard to denial of special rate of taxation under section 115BAC of the Act opted by the assessee.

**7.** The Learned Authorized Representative [hereinafter in short "Ld.AR"] argued that as per section 115BAC of the Act it is not required to file Form-10-IE when the assessee is a salaried employee. He further

submitted that Form-10-IE is applicable for assessee's who are having business or profession and not for salaried employees. He therefore, pleaded that order of the Ld. CIT(A) be reversed.

8. Per contra, Learned Departmental Representative [hereinafter in short "Ld. DR"] fully supported the order of the Ld. CIT(A).

9. We have heard both the sides and perused the material available on record. Admittedly from the Income Tax Return copies produced before us, we find that assessee has opted for New Tax Regime under section 115BAC of the Act, both while filing return of income under section 139(1) of the Act and 139(9) of the Act. However, CPC has denied the benefit of granting of special rate of taxation under section 115BAC of the Act to the assessee stating that the Form-10-IE was not filed by the assessee opting for New Tax Regime. In this connection, we refer to section 115BAC sub-section (5) clause (1) of the Act, which reads as under: -

**"Section 115BAC**

.....

*(5) Nothing contained in this section shall apply unless option is exercised in the prescribed manner by the person,—*

*(i) having income from business or profession, on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 2021, and such option once exercised shall apply to subsequent assessment years;"*

**10.** From the plain reading of the above section, it is very clear that the assessee who is having income from business or profession shall only exercise option under the New Tax Regime by filing Form – 10-IE of the Act and it is not applicable for the salaried employees.

**11.** Further, we also extract below the provisions of section 115BAC Sub-Section (5) Clause (ii) of the Act, which reads as follows: -

*"(ii) having income other than the income referred to in clause (i), alongwith the return of income to be furnished under sub-section (1) of section 139 for a previous year relevant to the assessment year."*

**12.** In the instant case, the assessee as per provisions of section 115BAC(5)(ii) has exercised his option to opt for new tax regime and hence has followed the procedure laid down under the Act. We therefore have no hesitation to set-aside the order of the Revenue Authorities and allow the appeal of the assessee.

**13.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 31<sup>st</sup> July, 2024.

**Sd/-**  
**(DUVVURU RL REDDY)**  
**JUDICIAL MEMBER**

Visakhapatnam/ Dated 31.07.2024  
Giridhar, Sr.PS

**Sd/-**  
**(S. BALAKRISHNAN)**  
**ACCOUNTANT MEMBER**

**Copy of the order forwarded to :-**

1. The Assessee : Krishna Chaitanya Durgasi, Flat No. 507,  
Om Sai Residency, Huda Trade center,  
Behind Punjab National Bank, Lingampally,  
Hyderabad – 500019, Telangana
2. The Revenue : Income Tax Officer - Ward – 1, Eluru
3. The Principal Commissioner of Income Tax
4. DR, ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. Guard file

//True Copy//

BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam