

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 4776/Mum/2023
(Assessment Year: 2020-21)

Transcreek Engineers Private Limited 2 Abdeally Chambers 187, Lamington Road, Grant Road, Mumbai-400 007	Vs.	The Dy. CIT, CPC, Faceless Circle 5(3)(1) Mumbai-400 020
PAN/GIR No. AA ACT 5626 Q		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Paraas Savla
Respondent by	:	Shri P. D. Chougule
Date of Hearing	:	09.05.2024
Date of Pronouncement	:	06.08.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short)2020-21.

2. The assessee has challenged the following grounds of appeal:

1. **General**

On the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC) has erred in dismissing the appeal and thereby confirming the order passed under 154 r.w.s. 143(1) of the Income Tax Act, 1961 (‘Act’).

2. **Applying incorrect tax rate @ 30%**

2.1. *On the facts and circumstances of the case and in law, the Ld. NFAC erred in confirming the tax rate @ 30% and not allowing the concessional rate u/s 115BAA*

2.2. *On the facts and circumstances of the case and in law, the Ld. NFAC erred in not condoning the delay of filing Form 101C as per section 115BAA.*

2.3. *Without prejudice to above, the Ld. NFAC erred in confirming the tax rate of 30% instead of 25%, applicable to the Assessee, as the total turnover/gross receipts during the previous year 2017-18 was less than Rs.400 Crores.*

3. **Interest u/s 234B**

On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the interest u/s 234B levied by the Assessing officer.

4. Natural justice violated

On the facts and circumstances of the case and in law, the Ld, NFAC failed to grant sufficient opportunity to present the case and thus principles of natural justice are grossly violated.

3. The brief facts are that the assessee is a private limited company, which is engaged in the business of trading of goods and provision of services. The assessee had filed its return of income dated 27.12.2010, declaring total income of Rs.2,10,30,990/- and had computed net tax payable of Rs.52,93,080/- by computing the tax rate at 25.168% (22% basic tax + 10% compulsory surcharge + 4% health and education cess) being the concessional rate and the same was processed u/s. 143(1) of the Act and the Id. CPC/learned Assessing Officer (Id. A.O. for short) vide intimation dated 23.12.2021 raised a demand of Rs.4,45,110/- after adjusting refund of Rs.12,93,350/- claimed by the assessee after duly increasing the net tax liability by Rs.17,38,460/- by applying 30% + 7% sur charge and 4% health and education cess after disallowing the concessional rate of 22% claimed by the assessee u/s. 115BAA of the Act. The assessee then filed a rectification application u/s. 154 of the Act where the Id. A.O. vide order dated 31.01.2023 raised a demand of Rs.4,41,980/- after duly adjusting the refund claimed by the assessee without giving relief to the assessee.

4. Aggrieved by the said order, the assessee is in appeal before the first appellate authority, who vide order dated 01.11.2023 dismissed the appeal filed by the assessee on the ground that the delay in filing Form 10-IC cannot be condoned and also rejected the alternate claim of the assessee in implementing the tax rate of 25%, thereby upholding the order of the CPC/A.O.

5. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

6. The learned Authorised Representative (ld. AR for short) for the assessee contended that the assessee was eligible for concessional rate as per section 115BAA of the Act and that the assessee had filed Form 10-IC belatedly which was due to the reason that the assessee was unaware of the new provision and the same could not be uploaded in the portal post the due date. The ld. AR further stated that Form 10-IC was filed before the first appellate authority and the same was not considered by the ld. CIT(A). The ld. AR also made an alternate submission that even if 22% beneficial concessional tax rate was not applicable to the assessee for non filing of Form 10-IC, the assessee was entitled to tax rate of 25% since the total turnover or gross receipt does not exceed Rs.400 crores. The ld. AR prayed that the maximum rate of tax at 30% ought not to have been applied by the lower authorities in assessee's case. The ld. AR relied on the decision of the coordinate bench of the Tribunal in the case of *A R Overseas Tradecom (P) Ltd. vs. DCIT* (in ITA No. 651/Kol/2022 vide order dated 06.02.2023).

7. The learned Departmental Representative (ld. DR for short), on the other hand, controverted the said facts and stated that filing of Form 10-IC is the mandatory requirement and the delay in filing the same cannot be condoned. The ld. DR further stated that the assessee has not opted for 25% rate of tax as per section 115BA of the Act and hence, the same has been rightly rejected by the ld. CIT(A). The ld. DR relied on the order of the ld. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. As the assessee has raised the alternate ground, the only issue that has to be adjudicated is whether the assessee company is applicable to the tax rate of 25% as per

the submission of the Id. AR or @ 30% as determined by the lower authorities. The Id. CIT(A) has rejected the assessee's contention for the reason that since the assessee has exercised option u/s.115BAA of the Act and as the same stands rejected by the lower authorities for non filing of Form 10IC within the specified due date, the tax would be determined @ 30% automatically. As the Id. AR has argued extensively on the alternate plea that in case where 115BAA is not applicable, then the assessee will be entitled to tax rate of 25%, on the basis of the Finance Act, 2020 which is cited hereunder for ease of reference:

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company,—

- (i) where its total turnover or the gross receipt in the previous year 2017-2018 does not exceed four hundred crore rupees;*
- (ii) other than that referred to in item*

II. In the case of a company other than a domestic company,—

(i) on so much of the total income as consists of,—

- (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern 25 per cent. of the total income; 30 per cent. of the total income; 50 per cent.; after the 31st day of March, 1961 but before the 1st day of April, 1976; or*
- (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved by the Central Government;*

(ii) on the balance, if any, of the total income

9. From the above, it is evident that the assessee being a domestic company whose turnover or gross receipt during the previous year does not exceed Rs.400 crores where in the assessee's case the total turnover is less than Rs.400 crores, the assessee would fall under the tax liability of 25% as per the Finance Act, 2020. On perusal of the provisions of the Act, it is observed that there is no express bar on the assessee to opt for tax rate on other provision when the assessee has opted the same u/s. 115BAA of the Act when the

same is rendered invalid due to violation of the conditions specified in the section. The provision merely states that the assessee should withdraw the option exercised by it, if in case it decides to opt under the other provisions of the Act. We also draw support from the decision of the Tribunal relied upon by the Id. AR in the case of *A R Overseas Tradecom (P) Ltd.* (supra), where the relevant extract is cited hereunder for ease of reference:

7. *We have heard the rival contentions, perused the records placed before us. We notice that the assessee is private limited company which filed its return of income on 22.03.2021 for assessment year 2020-21. The assessee opted for a lower tax rate of 22% u/s 115BAA of the Act but failed to file the declaration of Form 10-IC before the due date of filing the return of income. However, since the assessee claimed the said relief u/s 115BAA of the Act in the income tax return, the Central Processing Centre (CPC) denied and calculated the tax @30%. A rectification application was filed on 06.01.2022 by the assessee stating that its turnover is less than 400 crores as stated in Finance Act 2020, assessee is liable to tax @25% and the same should have been applied by the CPC while processing the income-tax return. But CPC failed to give relief to the assessee. Aggrieved, assessee preferred appeal before the Id. CIT(A). But the Id. CIT(A) only focused on the issue regarding exercising of the option u/s 115BAA of the Act and dismissed the ground raised by the assessee. Before us, the Id. counsel for the assessee has contended that tax rate of 25% is applicable in its case and suitable direction may be given to the Assessing Officer.*

8. *We find that so far as applicability of section 115BAA of the Act is concerned, the assessee does not fall in this category as it failed to file the option on Form 10-IC before the due date of filing the return of income u/s 139(1) of the Act and therefore, tax rate of 22% is not applicable. However, as regards the application of tax rate of 25% is concerned, we find force in the contentions of the assessee. On perusal of the extracted provision of Finance Act 2020 placed in the paper-book at pages 41 to 43, we notice that in Paragraph E, under the head rate of income tax, it states that where the total turnover or the gross receipt of a domestic company does not exceed four hundred crore then for such domestic company, Income Tax rate of 25% is applicable. On perusal of the audited financial statement, we find that for F.Y 2019-20, total turnover/gross receipt is 103.57 crores which is less than 400 crores, therefore, Income Tax rate applicable to assessee domestic company is 25%. We, therefore, reverse the findings of Id. CIT(A) and direct the Assessing Officer to apply the tax rate of 25% as against 30% applied by CPC while processing the Income Tax return and re-compute the tax liability. Accordingly, the sole ground raised by the assessee is allowed.*

10. On the above observation, we deem it fit to hold that the assessee is eligible to be taxed @ 25% , subject to the other conditions specified in the provisions of the Act. The Id. A.O. is directed to tax the assessee @ 25% instead of 30% and to recompute the tax liability accordingly. Ground no. 2.3 raised by the assessee is allowed.

11. As the alternate plea raised by the assessee is allowed and the other grounds of appeal requires no adjudication.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06.08.2024

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 06.08.2024

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai