

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।  
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.566/Ahd/2023  
निर्धारण वर्ष /Assessment Year : 2021-22

Makevale Acrylics Pvt.Ltd. 372, 373, 374, 1,2 Sankarda Bhadarwa Road At Moxi, Tal.Savli, Vadodara- 391 780 (Gujarat)	<b>बनाम/ v/s.</b>	The ADIT, CPC Bengaluru Present Jurisdiction - The DCIT, Circle-2(1)(1), Vadodara - 390 007
<b>स्थायी लेखा सं./PAN: AAFCM 2737 E</b>		

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Ms. Amrin Pathan, AR
Revenue by :	Shri Ashok Natha Bhalekar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08/08/2024  
घोषणा की तारीख /Date of Pronouncement: 12/08/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

This appeal is filed by the Assessee as against the order dated 27/05/2023 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" in short] arising out of the assessment order dated 13/11/2022 passed by the Assessing Officer (AO) under section 143(1) of the Income Tax Act, 1961

(hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2021-22.

**Facts of the case:**

2. The assessee-company is a manufacturer of high-performance acrylic-based polymers with applications across various industries, including dental materials, bone cement, anti-skid surfacing, 3D printing, and more. The Assessee filed its return of income for the A.Y. 2021-22 on 02-03-2022, declaring a total income of Rs.6,68,17,890/- on 02-03-2022. The Tax Audit Report (Form 3CD) was filed on 07-01-2022. The Assessee opted for the alternative tax regime under Section 115BAA of the Income Tax Act. For AY 2021-22, the due date for filing the Income Tax Return was initially 30-11-2021. However, due to the COVID-19 pandemic, the Central Board of Direct Taxes (CBDT) extended the due date to 15-03-2022 through Circular Nos.9/2021, 17/2021, and 01/2022. The Assessee provided all necessary information for opting the alternative tax regime in the return of income and Tax Audit Report, marking "yes" in relevant sections indicating the choice for Section 115BAA of the Act, thus making Section 115JB of the Act inapplicable.

2.1. The return was processed u/s.143(1)(a) of the Act on 29-09-2022 for a proposed adjustment of Rs.25,583/- under Section 36(1)(va) of the Act, without disputing the alternative tax regime claim opted by the assessee. The Assessee accepted the adjustment of Rs.25,583/- and the AO passed an intimation order on 13-11-2022, processing the total income at

Rs.6,68,43,470/-. However, the AO calculated the tax at the regular rate of 30%, not considering Section 115BAA of the Act. The AO's calculation led to an excess tax liability of Rs.54,98,297/- and excess interest of Rs.16,30,280/-, resulting in a total excess liability of Rs.71,28,577/-. The Assessee realised that Form 10-IC, necessary for opting for Section 115BAA of the Act, was not uploaded with the ITR due to oversight. The Income Tax Utility did not allow for subsequent uploading of Form 10-IC after ITR submission.

3. The assessee filed an appeal before the Ld.CIT(A), where the assessee argued that despite the procedural lapse of not filing Form 10-IC with the ITR, the substantive requirements of Section 115BAA of the Act were met as all necessary details were provided in the ITR and Tax Audit Report. The Assessee cited legal precedents where courts held that procedural requirements, like filing specific forms with ITR, are directory, not mandatory and the substantive compliance with the conditions of Section 115BAA of the Act should suffice for the tax benefits. However, the Ld.CIT(A) dismissed the appeal relying on some judicial precedents and concluding that the assessee had not exercised any such option in the return of income filed u/s 139(1) of the Act and also did not furnish requisite Form 10IC.

4. Aggrieved by the order of the Ld.CIT(A), now the assessee is in appeal before us with following grounds of appeal:

*"All the grounds of appeal in this appeal are mutually exclusively and without prejudice to each other.*

### **Denial of alternative tax regime opted u/s 115BAA of the Act**

1. *The learned Commissioner of Income-tax (Appeal, National Faceless Appeal Center "the CIT(A)"I erred in fact and in law in upholding the impugned action of the Assistant Director of Income Tax, Central Processing Center (CPC), Bengaluru ("the AO" in denying claim of alternate tax regime opted by the Appellant u/S 115BAA of the Act.*
2. *The learned CIT(A) has erred in fact and in law in confirming the action of the learned AO in denying the claim of the Appellant u/s 115BAA of the Act by observing that the ITR uploaded from the portal indicate that the column meant for exercising the option us 115BAA is left black. The learned CIT(A) ought to have inter-alia appreciated that baring Schedule "Part- A Gen". the Appellant had filed all the necessary information in the "Schedule MAT", "Schedule DPM" and "Part B - TTT - Computation of tax liability" on total income of ITR which clearly indicates the option us 115BAA of the Act has been validly exercised along with the ITR.*
3. *The learned CIT(A) has erred in fact and in law in not appreciating the fact that the Appellant has already computed the total income by forgoing the specific deduction / exemptions/ allowances in accordance with the mandatory conditions prescribed u/s 115BAA(2) of the Act and therefore, the substantive conditions of section 115BAA having been duly complied with, there was no justification to deny the relief to the Appellant*
4. *The learned CIT(A) has further erred in fact and in law in not appreciating the fact that requirement of filing of Form 10IC along with the ITR is directory in nature and the claim of section 115BAA of the Act therefore cannot be denied merely on bar of limitation of filing of the form in time.*
5. *The learned CIT(A) has further erred in law and in fact in not admitting the Form 10IC filed before him which is admissible being submitted during the appellate stage.*
6. *The learned CIT(A) has erred in law and in fact in denying the claim of section 115BAA of the Act despite the fact that the total income of the Appellant has been processed / assessed in accordance with the provision of section 115BAA of the Act.*

### **Without prejudice to the above:**

7. *The learned CIT(A) has erred in fact an in law in upholding the impugned action of the AO computing the tax under normal provision at rate of 30% as against the rate of 25%.*

8. *The learned CIT(A) has erred in fact and in law in not appreciating the fact that total turnover of the Appellant in PY 2018-19 did not exceed Rs. 400 Crore as per the First Schedule of Finance Act, 2021 which is duly reported in IT already filed earlier.*
9. *The learned CITA.) has erred in fact and in law in rejecting the grounds of the Appellant without appreciating the facts of the case and provision of law in proper perspective.*
10. *The learned CIT(A) has erred in law and in fact in rejecting the appeal of the Appellant on fallacious grounds.*
11. *The learned CT) erred in fact and in law in confirming the action of the AO in charging interest u/s 234A of the Act.*
12. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234B of the Act.*
13. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234C of the Act.*
14. *Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."*

**On the grounds related to denial of alternative tax regime opted u/s 115BAA of the Act**

5. The Ld.Authorised Representative (Ld.AR) of the assessee explained the facts of the case and stated that the Ld.CIT(A) passed his order on 27-05-2023 and after that on 23-10-2023, in exercise of powers conferred under 2023, on 119(2)(b) of the Act, the CBDT has issued a Circular No. 19/2023 directing to condone the delay in filing form No.10-IC as per Rule 21AE of the Rules for the A.Y. 2021-2022. The AR further stated that the assessee has filed the form 10-IC in accordance with the said circular on 1<sup>st</sup> November-2023 and therefore eligible for the claim of assessee u/s.115BAA of the Act.

6. The Ld.Departmental Representative (Ld.DR) agreed to the applicability of the said circular in case of the assessee.

7. We have heard the parties and noted the contents of the Circular. For the sake of clarity, we reproduce the paragraph No. 3 of the said Circular as follows:

*"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*
- iii) Form No. 10-IC is filed 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."*

7.1. We also note that the assessee has satisfied the conditions specified in the said Circular. The assessee has filed its return of income on 07-01-2022, has opted for taxation u/s.115BAA of the Act in item (e) of filing status and filed Form 10-IC on 01-11-2023, thus eligible to get benefit of the said Circular.

7.2. In light of the facts and circumstances of the case, and after careful consideration of the grounds of appeal, we hereby set aside the order of the Ld.CIT(A). The AO is directed to re-compute the tax liability of the assessee in accordance with the option exercised under Section 115BAA of the Income Tax Act, 1961. The AO shall ensure that the assessee has duly filed Form No. 10-IC electronically on or before 31st January-2024, or within three months from the end of the month in which this Circular is issued, whichever is later. The AO is directed to afford a reasonable opportunity of being heard to the assessee and to verify the compliance of the procedural requirements as stipulated. This direction is issued in conformity with the legislative intent to facilitate the exercise of options under Section 115BAA of the Act, ensuring that the procedural lapses do not impede the substantive benefits intended by the provisions of the Act. The AO is further directed to finalize the assessment proceedings expeditiously, adhering to the principles of natural justice. Hence, Ground Nos.1 to 6 raised in assessee's appeal are allowed but for statistical purposes.

8. Ground Nos.7 to 10 are infructuous as the primary grounds are allowed for statistical purposes.

9. So far as Ground Nos.11 to 13 regarding charging of interest u/s.234A, 234B and 234C are concerned, the same are consequential in nature and, hence, not adjudicated.

10. In the result, the appeal of the Assessee is treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 12August, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 12/08/2024

*टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad