

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1900/PUN/2024

निर्धारण वर्ष / Assessment Year : 2023-24

Suresh Ramkrishna Bidri, 102 D/82, Bhavani Peth, Near Bhaji Mandai, Solapur- 413002 Maharashtra PAN : ABEPB2644N	Vs.	Dy. Director of Income Tax, CPC, Bengaluru
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri B.S.Rajpurohit
Date of hearing	:	22.10.2024
Date of pronouncement	:	24.10.2024

आदेश / ORDER

PER MANISH BORAD, AM:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2023-24 is directed against the order passed u/s.250 of the Income Tax Act, 1961 [in short "the Act"] by Id. Commissioner of Income-tax (Appeals), NFAC, Delhi [in short Id."CIT(A)"] dated 22.07.2024 arising out of the Intimation order passed u/s.143(1)(a) of the Act dated 10.01.2024.

2. When the appeal was called for, none appeared on behalf of the assessee. However, considering the smallness of the issue and the same being claimed to be covered by the decision of this Tribunal in the case of *Akshay Devendra Birari Vs. DCIT in ITA No.782/PUN/2024, dated 05.06.2024*, I proceed to adjudicate the appeal with the assistance of Id. Departmental Representative and available record.

3. Grounds of appeal raised by the assessee read as under :

“On the facts and circumstances of the case and in law, the Ld. Addl/JCIT has:-

1. *Erred in adjudicating that the Appellant is not entitled for lower rate of tax under the New Tax Regime for AY 2023-2024 even though Form 10-IE was already filed on 10-10-2022 for opting the New Tax Regime (which was not revoked before filing the Income Tax Return for AY 2023-2024). The Ld Addls / JCIT has further erred in ignoring the contents of Income Tax Return for AY 2023-2024 which clearly mentioned that the appellant wanted to continue to opt the New Regime on taxation.*

2. *Erred in holding that the appellant was required to opt once again for New Tax Regime before filing income tax return for AY 2023-24 which is not allowed by the Portal (to opt once again for New Tax Regime so long as option exercised for New Tax Regime by filing the Form 10-IE is not withdrawn).*

3. *Erred in not giving an opportunity of personal hearing through video conferencing in spite of specific request for the same, thereby natural justice is denied to the appellant. Hence, the appeal order may please be declared as bad in law.*

4. *Erred in not following the findings held by this Hon'ble Tribunal in case of Akshay Devendra Birari vs DCIT, CPC, Bengaluru in ITA No. 782/PUN/2024.*

5. The appellant craves leave to add, alter, amend and withdraw any of the 'Grounds' at the time of appeal hearing."

4. Brief facts of the case are that the assessee furnished the return of income for the A.Y. 2023-24 on 25.07.2023. The assessee has furnished Form No.10IE on 10.10.2022 opting for the benefit of New Tax Regime u/s.115BAC. CPC vide its intimation u/s.143(1)(a) of the Act dated 10.01.2024 did not grant the benefit of New Tax Regime to the assessee on the ground that Form No.10IE was filed belatedly. When the assessee approached Id. CIT(A) challenging the order of CPC u/s.143(1)(1) of the Act he failed to get any relief as Id. CIT(A) taking cognizance of Form No.10IE filed on 10.10.2022 held that the same pertain to A.Y. 2022-2023 and being filed belatedly, the assessee is not eligible for any claim u/s.115BAC. The Id. CIT(A) further held that there is no valid Form No.10IE filed by the assessee and the action of CPC denying lower rate of taxation u/s.115BAC is correct for this year and in order.

5. Aggrieved assessee is in appeal before this Tribunal.

6. In the statement of facts and the grounds of appeal, it is claimed by the assessee that once Form No.10IE was furnished on 10.10.1022, the assessee is eligible for the subsequent assessment

year because assessee had made the claim for A.Y.2023-24 and prior to filing of the return of income, the valid Form No.10IE is to be submitted. Reliance has been placed on the decision of this Tribunal in the case of *Akshay Devendra Birari (Supra)*.

7. On the other hand, Id. Departmental Representative vehemently argued supporting the order of lower authorities.

8. I have heard the Id. Departmental Representative and perused the record placed before me. The assessee is aggrieved with the denial of benefit of New Tax Regime u/s.115BAC of the Act. Admittedly, the assessee had filed the option for falling under the New Tax Regime by way of filing Form No.10IE on 10.10.2022.

9. Section 115BAC of the Act provides for special rates of taxation for individuals or HUF and others, subject to certain conditions and for claiming the said benefit assessee has to file the option in Form No.10IE of the Act and such option is to be exercised on or before the due date specified in section 139(1) of the Act for furnishing the return of income relevant to assessment year commencing on or after the first day of April, 2021 and such option once exercised shall apply to subsequent assessment years. Further, the proviso to section 115BAC provides that the option made by the

assessee u/s.115BAC(5)(i) of the Act once exercised for any previous year can be withdrawn only for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option under this section, except where such person ceases to have any income from business or profession in which case, option u/s.115BAC(5)(ii) of the Act shall be available.

10. On perusal of the above contents of section 115BAC of the Act, I notice that the assessee has to make the claim once and then it is applicable for subsequent years subject to proviso referred above. In the instant case, the assessee furnished a claim on Form No.10IE on 10.10.2022. Admittedly, the due date for A.Y. 2022-23 expired prior to filing of Form No.10IE on 10.10.2022 and therefore assessee could not get the benefit of section 115BAC of the Act for the A.Y. 2022-23. However, before us the year under appeal is A.Y. 2023-24 and the option furnished in Form No.10IE is much prior to the due date of filing the return u/s.139(1) of the Act for A.Y. 2023-24. The Revenue authorities have not found any discrepancy in the contents of Form No.10IE furnished by the assessee except being belated.

11. Assessee in its grounds of appeal has referred to the decision of this Tribunal in case of *Akshay Devendra Birari (Supra)* where

similar issue has been adjudicated by this Tribunal holding as follows :

“7. We heard the ld. Sr.DR and perused the relevant material on record. The solitary issue that arises for our consideration in the present appeal is whether the CPC was justified in denying the benefit of New Tax Regime. Admittedly, the appellant had failed to submit the prescribed Form No.10IE in order to claim the benefit of New Tax Regime before the due date for filing the return of income. However, the appellant had filed the said form on 10.01.2024 on which date the CPC had processed the return of income u/s.143(1)(a) denying the benefit of New Tax Regime. In any event, it is not a mandatory requirement for filing of Form No.10IE but directory in nature. The Form No.10IE was very much available with the CPC and the CPC ought to have considered the same allowing the benefit of New Tax Regime. Therefore, we direct the CPC to amend the intimation by taking into consideration the Form No.10IE, as the same was available with the CPC at the time of processing the return of income. We order accordingly.”

12. I therefore considering the facts and circumstances of the case and also respectfully following the decision of this Tribunal in the case of *Akshay Devendra Birari (Supra)*, is the considered view that the assessee has made a valid claim for availing the benefit under the New Tax Regime u/s.115BAC of the Act for A.Y. 2023-24 and the same should have been granted by CPC and now the effect of our decision has to be given by the jurisdictional Assessing Officer. Finding of ld. CIT(A) is set-aside and the grounds of appeal raised by the assessee are allowed.

13. In the result, appeal of the assessee is allowed.

Order pronounced on this 24th day of October, 2024.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th October, 2024.
Satisfy

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.