INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 1856/Del/2023
(Assessment Year: 2021-22)

Bansal Corelam Pvt. Ltd C-167, MP Enclave, Maurya Enclave, Pitampura, New Delhi (Appellant) **PAN:AADCB7341M**	Vs.	ITO, Ward-32(3), New Delhi (Respondent)

Assessee by :	Shri Gurjeet Singh, CA
Revenue by:	Shri Poojan Rana, Sr. DR
Date of Hearing	18/11/2024
Date of pronouncement	26/11/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1856/Del/2023 for AY 2021-22, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1052259751(1) dated 21.04.2023 against the order of assessment passed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 09.12.2022 by the Assessing Officer, AO(CPC) (hereinafter referred to as 'ld. AO').

2. The only issue to be decided in this appeal is as to whether the ld NFAC was justified in confirming the denial of claim made by the assessee to opt new tax regime under section 115BAA of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is a private limited company and had filed its return of income for assessment year 2021-22 belatedly on 30-3-2022. The extended due date under section 139(1) of the Act for the year under consideration was 15-3-2022. The assessee in the return of income had opted to pay the tax under the new tax regime as provided in section 115BAA of the Act by declaring total income of Rs 1,11,94,760/-. The requirement to file Form No. 10 IC along with the return of income was indeed not adhered to by the assessee in the instant case. Form 10 IC was admittedly filed by the assessee on 17-3-2022 which was beyond the extended due date under section 139(1) of the Act. But the return of income was filed belatedly on 30-3-2022. The Learned CPC while processing the return under section 143(1) of the Act on 13-11-2022 denied the benefit of lower tax rate as provided under section 115BAA of the Act to the assessee on the ground that Form 10 IC was not filed on or before the due date of filing the return of income under section 139(1) of the Act and computed the income of the assessee under normal provisions of the Act. In the instant case, Form 10 IC was filed by the assessee beyond the due date prescribed under section 139(1) of the Act, but was filed before the date of filing the return under section 139(4) of the Act. The intention of the assessee to disclose the income under the new tax regime under section 115BAA of the Act was disclosed in the tax audit report of the assessee. In our considered opinion, the filing of Form 10 IC though mandated in the Act need to be construed as directory in nature. This view of ours is further fortified by the decision of Ahmedabad Tribunal in the case of Aprameya Engineering Ltd vs ITO reported in 164 taxmann.com 740 (Ahdbd Trib) wherein it was held as under:-

"6. *We have considered the rival submissions and perused the material available on record. Section 115BBA of the Act was introduced for the purpose of granting benefit of reduced corporate tax rate for the domestic companies. In order to avail the benefit, such companies are required to exercise the option in prescribed manner on or before due date specified under section 139(1) for furnishing the return of income. As per the rule 21AE of the Income-tax Rules, 1962, such option can be exercised by filing Form 10-IC. Sub-section (5) of Section 115BAA of the Act, makes it mandatory to file this form on or before the due date of furnishing the return of income as specified u/s 139(1) of the Act. In present case, the assessee has filed this form belated i.e. on 1-12-2022.*

7. *The Ld. CIT(A) in his order has relied on the judgement of Hon'ble Apex Court in the case of Wipro Ltd. (Supra) The case of Wipro Ltd. (supra) was rendered on a different set of facts, wherein in the original return of income the assessee had claimed benefit under section 10B of the Act and thereafter, a revised return of income was filed by the assessee foregoing the claim of benefit of section 10B of the Act. As an afterthought the assessee filed a declaration as required under section 10B(5) of the Act belatedly after the due date mentioned in section 10B(5) of the Act and claimed carry forward of losses under section 72 of the IT Act, withdrawing its claim for deduction under section 10B of the IT Act. In the present case, the intention to opt for the lower tax rate was unambiguously declared in the tax audit report (Form 3CD) which was filed on 30-9-2022 i.e. before due date specified under section 139(1) of the Act, indicating the assessee's bona fide belief and commitment to the concessional tax regime. Therefore, there is a marked distinction between the facts of the Wipro Ltd. case (supra) and the instant facts. Further, we observe that Ahmedabad ITAT in the case of Dy. CIT v. Croygas Equipments (P.) Ltd. [IT Appeal No. 415 (Ahd.) of 2020, dated 16-6-2023] had also held that the Principal of Wipro Ltd. (supra) cannot be uniformly applied to all cases and the aforesaid decision was distinguished by the AhmedabadTribunal, with the following observations:*

> *"6.3 Another notable issue for consideration is that recently the Hon`ble Supreme Court was confronted with the claim of benefit u/s 10B in Pr. CIT v. Wipro Ltd. [2022] 140 taxmann.com 223/288 Taxman 491/446 ITR 1. The assessee furnished the original return taking the benefit of section 10B and did not carry forward the loss. Thereafter, a revised return was filed foregoing the claim of deduction u/s 10B. The AO rejected the withdrawal of exemption under section 10B by holding that assessee did not furnish the necessary declaration in writing before due date of filing return of income, which was an essential requirement for not claiming the benefit of section 10B. The Hon`ble High Court decided the issue in favour of the assessee by holding that the requirement of filing the declaration was mandatory but filing it along with the return of income u/s 139(1) was a directory requirement. The matter was*

brought by the Revenue before the Hon`ble Supreme Court. The assessee, inter alia, relied on the judgment of the Apex Court in G.M. Knitting Industries (P.) Ltd. (supra). Their Lordships held that the requirement of filing the report in support of deduction u/s 10B was not a directory but a mandatory requirement. It further held that both the conditions of - filing the declaration and filing it before the time limit u/s 139(1) -were mandatory and had to be cumulatively satisfied. Rejecting the reliance on G.M. Knitting Industries (P.) Ltd. (supra), the Hon`ble Supreme Court held that that decision was relevant in the context of deduction provisions and not the exemption provisions as given under Chapter III of the Act.

6.3.1 In our view, the aforesaid decision would not apply to assessee`s set of facts and would not preclude/prohibit the assessee from claiming deduction u/s. 10AA of the Act, for the following reasons:

(i) Firstly, in the case of Wipro Limited supra, the issue for consideration before the Hon`ble Supreme Court was that in the original return of income, the assessee had claimed deduction under section 10B of the Act, whereas in the revised return filed under section 139(5) of the Act, assessee did not claim deduction under section 10B of the Act, and instead claimed benefit of carry forward of losses. It was in light of these facts that the Hon`ble Supreme Court held that on a plain reading of section 10B(8) of the Act, it is clear that where assessee claimed benefit under section 10B(8) by furnishing declaration in revised return much after due date prescribed under section 139(1), same was to be denied as requirement of furnishing declaration before AO before due date of filing original return under section 139(1) was a mandatory condition not directory. However, notably, there is no such equivalent/similar provision in section 10AA of the Act, which gives an option to the assessee to file a declaration before the due date of return of income under section 139(1) of the Act, to the effect that the provisions of this section may not be made applicable to him, for the impugned assessment year. Therefore, going by the strict language of section, the relevant statutory provisions on which the decision of Wipro was based, were on a different footing. Further, the issue for consideration in the Wipro case is also distinguishable, since in the assessee`s case, it had claimed benefit of deduction u/s. 10AA in the original return of income (and only Form 56F was omitted to be e-filed alongwith return of income), whereas the issue for consideration in Wipro case supra was that once the assessee had claimed benefit of section 10B in the original return of income, whether such benefit could be foregone/withdrawn by filing declaration u/s 10B(8) of the Act in the revised return of income filed u/s 139 (5) of the Act

(and the assessee could, in turn, avail the benefit of carry forward losses in the revised return of income).

(ii) Secondly, the Hon`ble Supreme Court in the case of Wipro Limited held that section 10B of the Act is an "exemption provision" and hence, assessee claiming such exemption has to be "strictly" comply with the exemption provisions. However, notably, the Hon`ble Supreme Court in the case of CIT v. Yokogawa India Ltd 391 ITR 274 (Supreme Court), held that section 10A of the Act is a "deduction provision" and not an "exemption provision". Therefore, apparently there seems to be a difference of opinion to whether section 10A/B provisions qualify as "Exemption" or Deduction" provisions. Therefore, since it is well-settled principle of law that deduction provisions, which have been introduced in the Statute to provide incentive to the assessee, should be construed "liberally", in our considered view, once it is not disputed that the instant set of facts, the assessee claimed the benefit of provisions under section 10AA in the return of income (which in our view is a mandatory/directory requirement), the benefit of section 10AA cannot be denied only on the ground that the assessee could not file Form 56F along with the return of income (being a procedural requirement), especially when Form 56F has been filed by the assessee at the assessment stage when such claim was being considered by the Assessing Officer.

(iii) Besides the above, in the case of G. M. Knitting Industries (P.) Ltd. case supra, the Hon`ble Supreme Court further held that even though necessary certificate in Form 10CCB along with return of income had not been filed but same was filed before final order of assessment was made, assessee was entitled to claim deduction under section 80-IB of the Act as well. Therefore, in light of the decision of Yokogawa supra (which is held that section 10A of the Act is a "deduction provision" not an "exemption provision") and the decision of G. M. Knitting Industries case supra, which have been rendered on a similar facts as that of the assessee i.e. claim of deduction was made in the original return of income itself, in our view, the ratio laid down in the Wipro Ltd case would not disentitle assessee to claim benefit of section 10AA of the Act, since it has been rendered on a different set of facts. Therefore in our considered view, once such claim has been made in the original return of income and assessee has also furnished Form 56F during the course of assessment proceedings itself, before the assessment was finalized. The assessee should not be denied the benefit of s. 10AA of the Act. It is a well settled principle of law that if there is any ambiguity regarding interpretation of a Statutory provision, an interpretation favourable to the assessee may be taken, especially when we are

dealing with Statutory provisions aimed at giving some incentive to the assessee."

8.1 *The Hon'ble Gujarat High Court in the case of Zenith Processing Mills v. CIT [1996] 219 ITR 721 held that provision of section 80J(6A) of the Act to extent it requires furnishing of auditor`s report in prescribed form along with return, is directory in nature and not mandatory. Further, it was held that the assessee can be permitted to produce such a report at later stage when question of disallowance arises during course of assessment proceedings. In the instant case, the Ld.A.O. as well as the Ld.CIT(A) has denied benefit of concessional tax rate u/s 115BAA of the Act on account of an inadvertent error on the part of the assessee in not e-filing Form 10 IC before due date prescribed. We are, therefore, of the view that there is sufficient compliance if the Form 10 IC has been filed during the course of assessment proceeding, since there is no material objective to be achieved by the assessee in not e-filing the same, once the intent was very well declared in Form 3CD.*

8.2 *Considering the principle of beneficial interpretation, the procedural requirements should not override substantive benefits. The Courts have taken a lenient view on procedural lapses when substantive benefits are involved. SC ruling in the case of CIT v. G.M. Knitting Industries (P.) Ltd. [2016] 71 taxmann.com 35/[2015] 376 ITR 456 (SC) emphasized that the making of a claim of deduction is mandatory, but timing is directory. Even if the claim is made during the assessment proceedings, such a claim is to be allowed.*

8.3 *After considering the submissions, the judicial precedents cited and the specific facts of the case, we are of the opinion the delay in filing Form 10-IC, though a procedural requirement, should not invalidate the assessee's substantive right to the benefit of section 115BAA of the Act.*

8.4 *The CBDT's Circulars extending the due dates for filing such forms in earlier years indicate a recognition of such procedural difficulties. These Circulars indicate a degree of administrative flexibility and a recognition that procedural lapses should not necessarily lead to the denial of substantive benefits. Moreover, denying the benefit based solely on this lapse would be against the principles of equity and justice, especially when there is no dispute regarding the assessee's eligibility for the lower tax rate."*

4. Respectfully following the same, we direct the learned AO to recompute the income under the new tax regime in terms of section 115BAA of the Act in the facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.