

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2400/Del/2024
[Assessment Year : 2021-22]**

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|---|-------------------------|----------------------------------|
| Indo British Garments Pvt.Ltd., C-16, Community Centre, Behind Janakpuri Cinema, C-4 S.O., Delhi-110058. PAN-AAACI7874B | vs | DCIT, Circle-10(1), Delhi. |
| APPELLANT | | RESPONDENT |
| Appellant by | -None- | |
| Respondent by | Shri Om Parkash, Sr. DR | |
| Date of Hearing | 18.11.2024 | |
| Date of Pronouncement | 29.11.2024 | |

ORDER

PER PRADIP KUMAR KEDIA-AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 22.03.2024 passed by Ld. Commissioner of Income Tax (A)/ADDL/JCIT(A),-10, Mumbai ["Ld.CIT(A)"] u/s 250 of the Income Tax Act, 1961 ["the Act"] arising from the assessment order dated 17.10.2022 passed u/s 143(1) of the Act pertaining to assessment year 2021-22.

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

- 1). *"Addition in tax liability on account not providing the benefit under section 115BAA of the Act, 1961.*
 - 1) *The Learned Commissioner of Income Tax (Appeals) ("CIT(A)") erred in confirming the addition in tax liability of Rs 12,26,043. This decision was made without due consideration of the provisions outlined in section 115BAA of the Income Tax Act, 1961. Instead of applying the provisions of Section 115BAA of the*

Income Tax Act and erroneously relied on the provisions of section 115JB of the Income Tax Act, 1961, thereby creating an unjust tax demand.

- 2) *The CIT(A) has failed to consider that the appellant submitted Form-10IC for the same in Assessment Year 2020-21, dated 31-12-2020.*
- 3) *The CIT(A) overlooked the fact that Form-10IC, once filed, remains applicable for subsequent assessment years and does not necessitate filing in each assessment year.”*

3. When the matter was called for hearing, no one appeared on behalf of the assessee. The matter was accordingly, proceeded *ex-parte* based on material available on record. It is observed that few opportunities have already been given in the past to the assessee to represent the matter which remained unavailed.

4. The Revenue has relied upon the first appellate order and the intimation passed u/s 143(1) of the Act. The Ld. Sr. DR for the Revenue pointed out that the assessee company has availed the option under s. 115BAA of the Act. However, the assessee has failed to file Form 10IC prescribed under Rule 21AE of the Income Tax Rules, 1962 before due date of filing of return of income. Consequently, the assessee is not entitled to exercise the option available under section 115BAA of the Act as rightly held by the Ld.CIT(A) the Ld. Sr. DR thus, submitted that the action of the Ld.CIT(A) cannot be faulted in law.

5. We have perused the intimation passed u/s 143(1) of the Act and the first appellate order thereon. The denial of benefits under s. 115BAA is in controversy.

6. The assessee company is engaged in the business of manufacturing of garments. The company also has branch operations in Johannesburg, South Africa. The assessee filed its return of income for AY 2021-22 electronically on 11.03.2022, declaring total income at INR 2,18,68,649/-. An intimation u/s 143(1) of the Act was issued by the Centralized Processing Center (“CPC”) on 17.10.2022 in which the total income returned by the assessee was increased from INR 63,48,872/- to INR 75,74,915/-. The tax liability was also increased as

the CPC while processing the return of income, has denied the benefit of provision of section 115BAA of the Act.

7. Aggrieved, the assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the additions made by the AO on the ground that the assessee company has not filed Form 10IC for the current AY 2021-22 and thus, justified the denial of benefit of provisions of section 115BAA of the Act.

8. As per the grounds of appeal and statement of facts filed on behalf of the assessee, the assessee has opted for section 115BAA of the Act from AY 2020-21 and onwards. The assessee further pointed out before the Ld. CIT(A) that it has filed Form 10IC on 31.12.2020 for the preceding AY 2020-21. The assessee also pointed out that as per the Frequently Asked Questions (“FAQs”) issued by the Income Tax Department for Form 10IC, the said form once filed will not be required to be filed in every assessment year. The said form once filed, will apply to subsequent AY as well.

9. Challenging the denial of relief by the Ld.CIT(A), the assessee preferred appeal before the Tribunal.

10. As per section 115BAA of the Act, domestic companies have the option to pay new cooperate concessional tax rate @ 22% and applicable surcharge and cess provided they do not avail specified deduction and incentives. The companies can opt for the concessional rate from AY 2020-21 onwards if they file Form 10IC within prescribed time limit.

11. A bare reading of section 115BAA of the Act provides that once the assessee opts for concessional tax rate, it shall also apply subsequent AY as well and cannot be withdrawn. The FAQ on Form 10IC issued by the Income Tax Department also suggests the same.

12. A perusal of tax regime under provision of section 115BAA of the Act gives a infallible impression that exercise of option to avail concessional tax rate provided under section 115BAA of the Act, creates a substantive right on the assessee. The option once exercised in any previous year cannot be withdrawn in later year. Once the assessee opted for taxation under section 115BAA of the Act and exercised, there can be no reason to deny the benefit in the years subsequent to the AYs in which the option was first exercised. Where the statute itself provides for incapacity of the assessee to withdraw the exercise of option, the requirement of filing Form 10IC in the subsequent year, in our considered view becomes an irrelevant consideration.

13. The reasons are not far to seek. Once the assessee loses its right to deviate from the option exercised in the earlier year, no further obligation by way of filing Form 10IC can be fastened. This is so for the reason that if the assessee is allowed to not exercise the option by not filing prescribed Form 10IC, it will mean that the assessee has a gateway to not exercise the option in the subsequent AYs. This is plainly contrary to the express language of the Act which will defeat the plain intent and purpose of fastening the obligation on the assessee for availing the benefit of section 115AAB of the Act. Thus, where the option has already been exercised in AY 2020-21, such option exercised in the preceding AYs cannot be allowed to be deviated for non-filing of the prescribed Form 10IC.

14. Thus, in accord with the position of law, we remit the matter back to the file of AO. The AO shall verify as to whether the claim of the assessee to avail benefit of section 115BAA of the Act in previous year relevant to A.Y. 2020-21 has been duly acknowledged and concurred by the Income Tax Department. Where the Income tax Department has duly accepted the stand of the assessee seeking exercise of option under section 115BAA of the Act in AY 2020-21, the obligations fastened by section 115BAA will continue and shall not be dependent on the filing or non-filing of Form 10IC or belated filing thereof in AY 2021-22 *per se*. It shall be open to the assessee to produce corroborative evidences qua the AY 2020-21 in support of its stand towards exercise of section 115BAA of the Act in that year and

furnish such further explanations as may be considered expedient to support its case. The AO shall pass the order in accordance with law.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 29th November, 2024.

Sd/-

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI