

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

	ITA NO. 1509/Del/2024		
	A.YR. : 2021-22		
HPL MERCANTILE PVT. LTD., 803, VISHAL BHAWAN, 95, NEHRU PLACE, NEW DELHI – 110 019 (PAN: AAACH0109G)	VS.	ASSISTANT DIRECTOR OF INCOME TAX, CPC, BANGALORE -560500 KARNATAKA	
(APPELLANT)		(RESPONDENT)	

Appellant by : Sh. Manish Kumar, Adv.

Respondent by : Shri Rajesh Kumar Dhanesta, Sr. DR.

Date of hearing : 27.11.2024

Date of pronouncement : 03.12.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. Addl/JCIT(Appeal), Aurangabad dated 08.02.2024 on the following grounds:-

1. *The CIT (Appeals) erred in not adjudicating the ground numbers 1 to 4 as raised vide Form 35 which concerns with alleged variance of Rs 19,253/- in the total income by CPC Bangalore while processing the return under section 143(1) which is in fact a liability written back during the year under consideration and it has itself been considered as income by assessee under section 41 of the Act vide Note 23 of the Audited Financials*

which concerns with other income.

2. *That due to non-adjudication of ground numbers 1 to 4 as raised vide Form 35 the CIT (Appeals) omitted to appreciate that in the facts of the case the alleged variance of Rs 19,253/- which is in fact a liability written back and duly considered as income by the assessee itself amounts to double addition of the same amount which is against the basic tenets of the taxing law.*
3. *That in the facts and circumstances of the case the CIT(Appeals) erred in dismissing the appeal of the assessee concerning the claim of concessional tax under section 115 BAA of the Act only on the ground of filling of Form No 10 IC during the course of appellate proceedings without appreciating that assessee complied all the conditions stipulated vide CBDT circular number 19/ 2023 dated 23rd October 2023.*
4. *The CIT (Appeals) in utter disregard of CBDT Circular Number 19/2023 dated 23rd October 2023 while dismissing the appeal of the assessee concerning claim of concessional tax failed to appreciate that in the facts of the case the return had been filed by the assessee within the due date and the assessee had also opted for taxation under section 115 BAA of the Act in the e filed ITR and Form 10 IC also filed electronically on or before the cut-off date in compliance of the said circular.*
5. *The CIT (Appeals) failed to appreciate that the Circular/Instructions issued by the CBDT under section 119 of the Act would be binding upon the revenue only to the extent they are beneficial to the assessee.*
6. *The CIT (Appeals) while dismissing the appeal of the assessee failed to appreciate that the legislative intent behind bringing the section 115BAA of the Act is to promote growth and investment of Industry and therefore, rejection of the claim only on the ground of procedural laps amounts to defeating the very object of the legislation once no irregularity in the substantive part of law.*
7. *The CIT (Appeals) while rejecting the claim of the assessee erred in not*

appreciating that a procedural law is always subservient to the substantive law and nothing can be given by a procedural law what is not sought to be given by the substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

8. *The CIT(Appeal) erred in not appreciating that even though sub-section 5 of section 115 BAA of the Act uses the word Shall thereby mandatorily requiring filing of Form 10 IC on or before the due date of furnishing return and such requirement is likely to be considered as directory.*
9. *The CIT (Appeals) further erred in not appreciating that whether a provision is mandatory or directory depends upon the intent of the legislator and not upon the language in which the intent is clothed.*
10. *The CIT(A) further erred in not appreciating that one of the tests often adopted is to ascertain whether the objects of the legislator will be defeated or furthered by holding it directory and if the object of the enactment will be defeated by holding it as directory, it should be construed as mandatory.*

2. The brief facts in this case are that for the assessment year 2021-22, the assessee on 11.3.2022 filed e-return declaring returned income for Rs. 61,81,971/-. In the ITR the assessee had specifically shown in the respective column its declaration to pay concessional tax under section 115BAA. However, the assessee has failed to claim to file form 10-IC within due date specified under sub-section (1) of section 139 for furnishing the returns of income. Hence, the CPC has rejected the option of the assessee to pay concessional rate of tax under section 115 BAA of the Income Tax Act. The CPC Bangalore vide intimation dated 27.10.2022 processed the return under section 143(1) and the total income has been computed for Rs. 62,01,220/- and computed tax under normal provision and due to consequent demand after

adjusting the current year refund of Rs. 50,160/-, a further demand of Rs. 11,600/- has been created. Against the above action of the CPC, Bangalore, assessee appeal before the Ld. CIT(A), who vide his impugned order dated 08.2.2024 dismissed the appeal of the assessee by holding that CPC has correctly rejected the option of assessee to pay concessional rate of tax under section 115BAA of the Act.

3. Against the aforesaid action of the Ld. Addl/JCIT(A), Aurangabad, assessee is in appeal before us.

4. We have heard both the parties and perused the records.

5. At the time of hearing, Ld. AR for the assessee submitted that a sum of Rs. 19,253/- was chargeable to tax under section 41 as specified in tax audit report but not shown in the ITR because the same amount was already part of other income shown in audited financial. Hence, the same is included in profit figure taken before tax in the computation of income, hence, not shown separately in the ITR and it has no impact on the income and due tax thereon. He further submitted that impugned variance of Rs. 19,253/- in the total income by the CPC Bangalore while processing the return u/s. 143(1) of the Act which is in fact a liability written back during the year under consideration and it has itself been considered as income by assessee under section 41 of the Act vide Note 23 of the Audited Financials which concerns with other income. Hence, he pleaded that there is double addition which is not sustainable in the

eyes of law. Per contra, Ld. DR did not have any serious objection to this proposition.

6. Upon careful consideration, we find that the variation made by the CPC amounting to Rs. 19,253/- is erroneous as it relates to liability written back which has already been included as income by the assessee in its income tax computation, hence, separate addition of the same by CPC Bangalore has resulted in double addition and sustaining thereof by the ld. CIT(A), is not sustainable in the eyes of law. In this view of the matter, we direct the AO to delete the addition of Rs. 19,253/- and accordingly, the ground nos. 1 to 2 are hereby rejected.

7. As regards ground no. 3 to 10 are concerned, the same were not pressed by the ld. AR, hence, the same are dismissed, as not pressed.

8. In the result, the Assessee's appeal is partly allowed for statistical purposes.

Order pronounced on 03/12/2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar