

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष-
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 971/JPR/2024
निर्धारण वर्ष / Assessment Year : 2023-24

Shrikant Joshi D-40, Madho Singh Circle Bani Park, Jaipur	बनाम Vs.	ITO, Ward 1(1), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AGXPJ 5609 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Utkarsh Mishra, CA
राजस्व की ओरसे / Revenue by: MS. Anita Rinesh, JCIT-Sr. DR

सुनवाई की तारीख / Date of Hearing : 10/12/2024
उदघोषणा की तारीख / Date of Pronouncement: 11/12/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER.

Assessee, a senior citizen of about 84 years of age, is before this Appellate Tribunal while challenging order dated 17.05.2024 passed by Id. Commissioner of Income Tax (Appeal), passed u/s 250 of Income Tax Act, 1961 (in short 'the Act').

The matter pertains to the assessment year 2023-24. As claimed in the ITR, the assessee was in the business of Real Estate and Renting

Services-operating real estate of self-owned buildings (residential and non-residential).

Appellant claims that he has been wrongly deprived of the benefits of new tax regime only because his Form 10IE furnished in relation to last assessment year i.e. 2022-23, was uploaded late.

2. Vide order dated 10th Jan, 2024, the assessee was disallowed benefit of new tax regime due to the only reason that Form 10 1E required to be submitted before or at the time of filing of ITR, was submitted late. Feeling aggrieved by said order, the assessee filed appeal before CIT(A).

Learned CIT(A) has dismissed the appeal filed by the assessee. In that appeal, the assessee had challenged order dated 10th Jan, 2024 passed by CPC, u/s 143(1) of the Act.

3. Hence, this appeal before the Appellate Tribunal.

4. Arguments heard. File perused.

5. This appeal calls for adjudication of a very interesting question i.e.

“Whether an option to be exercised by an assessee for an Assessment Year to avail of benefit of new tax regime as provided under sub-section (5) of section 115BAC of Income Tax Act, 1961, by furnishing Form 10 1E, on non acceptance of said Form by the department due to its submission beyond the due date, is deemed to have rejected thereby disallowing such an assessee from exercising said option, even for the following Assessment Year, especially when the assessee specifies in the ITR for the subsequent Assessment Year to continue to so opt i.e.

for the new tax regime on the basis of the option already expressed in the only Form 10 1E not considered by the department ?”

Ld. AR for the assessee-appellant has submitted that even if Form 10 IE as regards the Assessment Year 2022-23, was submitted late i.e. after the due date, the department could not deprive the assessee of the benefits of the new tax regime during the concerned year i.e. AY 2023-24, he having specified in the return for the year under consideration that he was opting to continue for new tax regime u/s 115BAC(5)(i) for the said year.

Ld. AR has also submitted that the assessee tried his best to upload Form 10 IE afresh for the year under consideration ie. 2023-24, but the system did not allow him to upload the same.

Learned AR has urged that the requirement of furnishing of Form 10 IE within the prescribed period i.e. before or on the date of filing of ITR is merely directory and not mandatory, and as such the department should have considered the option expressed to be exercised for the year under consideration.

In support of his contention, Ld. AR has relied on following decisions by Co-ordinate Benches of ITAT.

- **Pran Panda vs. ITO** in ITA No. 1509 & 1510/Kol/2024 dated 04.11.2024
- **Harbans Singh vs. AO**, CPC [2024] 165 taxmann.com 146 (Amritsar-Trib) dated 24.07.2024
- **Akshay Devendra Birari vs. DCIT, CPC**, [2024] 164 taxmann.com 58 (Pune-Trib.) dated 05.06.2024

6. On the other hand, Id. DR for the department has contended that in the impugned order, CIT(A) recorded cogent and convincing reasons for disallowing to the assessee, the benefit of new tax regime i.e. non-furnishing of Form 10IE by the assessee for the last Assessment Year i.e. 2022-23 before or on the date of filing of the ITR, as per law, and as such there is no merit in the appeal.

As regards the three decisions cited on behalf of the appellant, Id. DR for the department has submitted that same are not applicable to the facts of present case, as in those appeals, the assessees had challenged the very orders vide which the appellants-assessee therein were deprived of the benefits new tax regime by the department and also by CIT(A), as this is a case where the assessee did not challenge action taken by the

department in rejecting his Form 10 1E due to late submission, and rather opted to deposit tax calculated on the basis of old tax regime.

7. Admittedly, the assessee opted for new tax regime, as regards the Assessment Year 2022-23 by submitting Form 10IE; said Form was furnished late i.e. after the due date.

When the matter was in appeal before Ld. CIT(A), it was observed that the Form 10IE having not been furnished in time, as regards the Assessment Year 2022-23, the same was rightly not taken into consideration for the subsequent year i.e Assessment Year 2023-24.

In para 3.6 of the impugned order, Id. Commissioner of Income Tax (Appeal) observed that it is mandatory for individuals to file Form 10 IE every year on the due date i.e. before or on the date of filing of ITR for the specific Assessment Year, and further that in case the taxpayer before does not do so, benefit of tax rate under the new tax regime can be denied to him.

With said observations, Id. Commissioner of Income Tax (Appeal) upheld the disallowing to the appellant to have benefits of or opt for new tax regime.

8. New tax regime was introduced by way of major incentives in the Budget of the year 2023. In order to avail of the benefits of the new tax

regime, assessee was required to furnish Form 10 IE before or on the date of filing of new tax regime.

It is not in dispute that said Form submitted after the given date was not considered by the department for the Assessment Year 2022-23.

As is available from the impugned order passed by Learned CIT(A), while submitting ITR for the year under consideration, the assessee expressed that he had opted for new tax regime u/s 115BAC (5)(i) in respect of Assessment Year 2022-23 i.e. last year.

As is further available from the relevant column (b)(ii) reproduced in the impugned order passed by Learned CIT(A), the assessee had specified therein that he was opting to continue to opt for new tax regime for the year under consideration i.e. Assessment Year i.e. 2023-24.

9. At this stage, for ready reference, sub-section (5) of section 115BAC(5)(i), needs to be reproduced. Same reads as under:-

“(5) Nothing contained in this section shall apply unless option is exercised in the prescribed manner by the person,-

(i) having income from business or profession, on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2021, and such option once exercised shall apply to subsequent assessment years,

(ii) having income other than the income referred to in clause (i), alongwith the return of income to be furnished under sub-section (1) of section 139 for a previous year relevant to the assessment year.

Provided that the option under clause (1), once exercised for any previous year can be withdrawn only once 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 under clause (ii) shall be available.”

10. Nodoubt, whenever, an assessee intends to avail of benefits of new tax regime, he or she is required to furnish Form 10 1E within the prescribed period.

11. We find that in the case of **Pran Panda**'s case(supra), Co-ordinate Bench of Kolkata ITAT condoned the delay filing Form 10 IE and directed the Assessing Officer to grant benefits of concessional rate u/s 115BAC(5)(i) of the Act even though the assessee had failed to file Form 10 IE within the prescribed period. It was observed that because of the procedural lapse on the part of the assessee, there was no loss to the revenue so as to disentitle the assessee to claim the concessional rate benefits.

Even in **Akshay Devendra Birari**'s case (supra), Co-ordinate Bench of ITAT at Pune has observed that it is not mandatory requirement and rather same is directory in nature.

Similarly, while relying on the above decision by Co-ordinate Bench of ITAT Pune, Co-ordinate Bench of ITAT at Amritsar also allowed the

appeal filed by the assessee who had failed to furnish Form 10IE within time allowed under the law.

As regards late submission of the Form 10 IE i.e. beyond prescribed date of submission of ITR, admittedly, the assessee did not challenge the very order vide which he was disallowed benefits of new tax regime due to late submissions of Form 10IE.

No doubt, word "*shall*" appearing in sub-section (5) of section 115BAC of the Act has been used in the above provision requiring the assessee to submit Form 10 1E on or before the due date specified under sub-section (1) of section 139.

But, the question arises as to whether said provision requiring the assessee to submit said form before or on the due date is mandatory, as argued on behalf of the Revenue, or directory, as contended on behalf of the appellant.

Question also arises as to whether an assessee is debarred from uploading of said Form even in the subsequent Assessment year, in case, for certain reasons the assessee was unable to furnish said Form in time, as regards the previous Assessment Year, or when same was rejected by the department only on the ground of same having been submitted or uploaded late i.e. beyond the prescribed period/date.

12. We are told by Learned AR for the appellant and Ld.DR for the department that in case such an assessee, whose Form 10 1E submitted for the previous assessment year was not considered same having been uploaded by the assessee after the due date, intends to furnish said Form for the very next Assessment Year, the system would not accept the same.

Learned AR for the appellant has drawn our attention to the steps taken by the assessee to upload said Form afresh for the year under consideration, and further that said effort was not successful as the system did not accept said Form for the year under consideration.

As argued on behalf of the department, as per provisions of sub-section (5) of Section 115BAC, in order to avail of such benefits under new tax regime, such Form is required to be uploaded only once. It gives option to the assessee to withdraw the same.

Admittedly, the assessee never opted to withdraw said Form 10 IE after having uploaded the same.

In this regard, the expression "*for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2021,*" appearing in clause (i) of sub-section (5) of Section 115 BAC of the Act is of much significance.

As per said expression, due date relates to furnishing of returns of income for any previous year, relevant to the assessment year commencing on or even after 1.4.2021. From said provision, it cannot be said that law debars such an assessee from uploading of said Form, before or on the due date of ITR for the subsequent Assessment Year, even after one Form 10 IE for the previous Assessment Year stands rejected from consideration by the department due to its late submission i.e. beyond the due date.

In other words, once said Form submitted for an Assessment Year is not accepted by the department only because same was uploaded beyond the due date, the abovesaid provision does not debar the assessee from repeating his option or desire to continue to opt to avail benefits of new tax regime in the very next Assessment Year, by furnishing fresh Form 10 IE before or on the due date for furnishing of ITR for the very next Assessment Year.

There is nothing to suggest that permitting an assessee to continue to opt on the basis of previously submitted Form or allowing him to furnish fresh Form for the very next assessment year, is going to cause any loss of revenue to the State.

13. Having regard to the given facts and circumstances, and while applying the decisions cited by Id. AR for the appellant, we deem it a fit case to allow the assessee to avail of benefit of concessional rate u/s 115BAC(5)(i) of the Act, for the year under consideration i.e. AY 2023-24, on the basis of option already expressed to be exercised in the previous Assessment Year, subject to the condition that the assessee fulfills all other requirements of law as available u/s 115BAC(5)(i) of the Act.

Result

14. As a result of the above discussion and findings arrived at, this appeal is allowed and impugned order passed by Id. Commissioner of Income Tax (Appeal) is hereby set aside, and the department is directed to consider the option already expressed to be exercised in the previous Assessment Year, on the basis of Form 10 1E then submitted, subject to the condition that the assessee fulfills all other requirements of law as available u/s 115BAC(5)(i) of the Act.

15. While parting with the order, we may observe that from time to time, CBDT has been extending time lines for submission of certain applications and Forms as prescribed under the Act, by issuing circulars and directions to the concerned Revenue Authorities.

We strongly feel that CBDT ponders over suggesting modification in the system in order to enable such assesseees (whose Form 10 IE submitted for one Assessment Year is not accepted only because it was not uploaded by the due date), who deserve leniency, to upload such Form in the very next Assessment Year, so as to opt to avail of the benefits of the new tax regime.

Order pronounced in the open court on 11/12/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिकसदस्य / Judicial Member

दिनांक / Dated:- 11/12/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Shrikant Joshi, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 971/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar