

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA No.1990/PUN/2024
Assessment Year : 2021-22**

M/s. Kolte-Patil Integrated Townships Limited Survey No.74, Marunji, Hinjewadi-Marunji, Kasarsai Road, Tal Mulshi, Pune – 411057	Vs.	DCIT, Circle 7, Pune
PAN: AKBPP4290Q		
(Appellant)		(Respondent)

Assessee by : Shri Nikhil S Pathak
Department by : Shri Amol Khairnar CIT-DR
Date of hearing : 17-12-2024
Date of pronouncement : 18-12-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 02.08.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2021-22.

2. Facts of the case, in brief, are that the assessee is a company engaged in business of real estate. It filed its return of income on 12.03.2022 declaring total income of Rs.106,62,47,730/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the CPC on 01.04.2022 raising a demand of Rs.2,92,18,160/- on account of short grant of TDS.

3. Subsequently, the assessee filed a rectification application before the CPC. The CPC in the rectification order dated 11.04.2023 instead of giving any credit for short grant of TDS raised a demand of Rs.16,09,01,080/-.

4. The assessee filed an appeal before the Ld. CIT(A) / NFAC. It was submitted that the assessee filed its return of income declaring total income at Rs.106,62,47,730/-. The assessee had opted for taxation u/s 115BAA of the Act which was accepted by the CPC in the intimation issued u/s 143(1) of the Act. The assessee filed the rectification application u/s 154 of the Act on account of short grant of TDS. However, the CPC instead of granting any benefit for short deduction of TDS, worked out the tax liability at Rs.16,09,01,080/- by not granting the benefit of section 115BAA of the Act.

5. It was submitted that the rectification order passed by the CPC without giving any opportunity to the assessee and without assigning any reason for rejection of the option exercised by the assessee to compute its tax liability as per provisions of section 115BAA of the Act is invalid in law. It was argued that the CPC in the preceding assessment year had allowed the option exercised by the assessee u/s 115BAA of the Act. Therefore, when the assessee has not withdrawn the option exercised earlier u/s 115BAA of the Act, the CPC without assigning any reason and without giving any opportunity could not have computed the tax under the normal rate without computing the tax as per section 115BAA.

6. On the basis of arguments advanced by the assessee, the Ld. CIT(A) / NFAC called for a remand report from the Assessing Officer. However, despite four reminders, the Assessing Officer did not submit any remand report. The Ld. CIT(A) / NFAC, therefore, restored the issue to the file of the Assessing Officer with a direction to verify the claim and pass necessary order by recording as under:

“5. Upon perusal of the written submission, it is noticed that the appellant challenged the order u/s 154 where their claim of lower tax rate u/s 115BAA of the IT Act has been rejected by CPC. The appellant submitted that the option exercised by them cannot be rejected arbitrarily. It is also claimed by the appellant that it is not a mistake apparent from record to rectify the intimation. In Ground No.6, the appellant contended that TDS credit was not allowed fully by CPC while processing their return of income and also in the rectification order passed u/s 154 of the IT Act.

6. This submission was forwarded to the AO and a remand report was called for on the claim of the appellant vide letter dated 20.04 2024. As there was no response from the AO, reminders dated 06.05.2024, 22.05.2024, 06.06.2024 and 25.06.2024 were issued. However, the AO did not submit any remand report.

7. On the other hand, the issues raised by the appellant are rectifiable by the AO by calling for the information. Hence, the AO is directed to verify the claim and pass necessary rectification order. The grounds taken by the appellant are partly allowed.”

7. Aggrieved with such order of the Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

The following grounds are taken without prejudice to each other-

On facts and in law,

1] *The Learned CIT(A) erred in directing the A.O. to verify the claim of the assessee company and thereafter passed necessary rectification order without appreciating that the order passed u/s 154 by the learned CPC was totally incorrect in law and hence, the learned CIT(A) himself should have held that the rectification order passed u/s 154 by the learned CPC was invalid in law.*

- 2] *The learned CIT(A) erred in not appreciating that the action of the learned CPC in computing the tax of the assessee under regular provisions of the Act as against the option exercised by the assessee u/s 115BAA of the Act was totally incorrect and the said issue could not be rectified in the order passed u/s 154 since there was no mistake apparent from record which could be rectified in the order passed u/s 154 of the Act.*
- 3] *The learned CIT(A) ought to have appreciated that the assessee had fulfilled all the conditions and had duly exercised the option for computing the tax as per the provisions of section 115BAA of the Act and therefore, the action of the learned CPC in disallowing the claim was totally incorrect in law.*
- 4] *The learned CIT(A) failed to appreciate that the learned CPC had erred in rejecting the claim of the assessee for computing the tax liability u/s 115BAA of the Act without giving any reason thereof and accordingly, the rectification order passed by the learned CPC was invalid in law.*
- 5] *The learned CIT(A) further erred in not appreciating that the learned CPC erred in restricting the claim of TDS amount at Rs.1,05,47,783/- as against Rs.3,11,80,042/- without giving any reason and therefore, the action of the learned CPC in restricting the claim of TDS to a lesser amount was not justified and the claim of the assessee should have been allowed by him.*
- 6] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

8. The Ld. Counsel for the assessee at the outset drew the attention of the Bench to the copy of Form No.10-IC filed on 31.01.2021 for the assessment year 2020-21 which is placed at pages 66 to 67 of the paper book. Referring to the copy of the intimation for assessment year 2021-22 he submitted that the CPC has accepted the return filed by the assessee and has accepted the option of the assessee to tax the income at lower rate as per section 115BAA of the Act. However, in the order passed u/s 154 of the Act the CPC without assigning any reason and without giving any opportunity to the assessee has computed the tax liability at normal rate and raised a huge demand of Rs.16.09 crore. He submitted that for assessment year 2020-21 the CPC has accepted the lower rate of tax as per

provisions of section 115BAA. Hence, when the assessee filed the application u/s 154 for giving the benefit of short credit of TDS, the CPC instead of giving credit for short deduction of TDS, has determined the tax liability by computing the tax at normal rate. He submitted that when the assessee has not withdrawn the option exercised earlier for assessment year 2020-21, the CPC could not have withdrawn the option exercised for the impugned assessment year without assigning any reason and without giving opportunity to the assessee. He submitted that although the CIT(A) / NFAC has indirectly agreed with the submissions of the assessee, however, instead of deciding the issue, he has restored the issue to the file of the Assessing Officer for verification which is not justified.

9. So far as the order of the Ld. CIT(A) / NFAC that the issue is rectifiable by the Assessing Officer by calling for information is concerned, he submitted that when the Assessing Officer has himself done injustice to the assessee in the rectification order, there is no point in restoring the issue again to the Assessing Officer without deciding the issue. So far as the issue of granting of less credit for TDS is concerned, he submitted that he has no objection if the matter is restored to the file of the Assessing Officer for giving due credit of TDS after verification.

10. The Ld. DR on the other hand supported the order of the Ld. CIT(A) / NFAC. He submitted that the assessee should not have any grievance since the Ld. CIT(A) / NFAC had directed the Assessing Officer to verify the claim and pass necessary rectification order.

11. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC. We find the assessee in the instant case has exercised the option u/s 115BAA of the Act to tax its income at lower rate. The CPC for the assessment year 2020-21 has accepted the option exercised by the assessee and the assessee was taxed at lower rate as per provisions of section 115BAA. For the current year in the original intimation, the CPC has accepted the computation made by the assessee, according to which, net tax payable was computed at Rs.26,83,53,229/-. However, since the CPC had given short credit, the assessee filed an application u/s 154 of the Act. We find the CPC without assigning any reasons and without giving opportunity to the assessee enhanced the tax liability by determining the tax at normal rate as against u/s 115BAA.

12. We find the provisions of section 115BAA read as under:

“115BAA. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent, if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) For the purposes of sub-section (1), the total income of the company shall be computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section

33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of⁷⁸[Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA];

(ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and

(iv) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation.—For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner 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, 2020 and such option once exercised shall apply to subsequent assessment years:

(emphasis supplied by us)

Provided that in case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.”

13. There is also no dispute to the fact that for assessment year 2020-21 the option exercised by the assessee u/s 115BAA was accepted by the CPC. Therefore, for the impugned assessment year as per the said provisions, once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year. Since the assessee has not withdrawn its option and not violated any of the provisions, therefore, the CPC in our opinion, was not justified in raising the demand by taxing the assessee at normal rate as against the provisions of section 115BAA. Since all the details were available before the Ld. CIT(A) / NFAC, therefore, the Ld. CIT(A) / NFAC, in our opinion, should not have restored the matter to the file of the Assessing Officer without deciding the issue himself especially when the Assessing Officer did not respond to four reminders issued by him for submission of the remand report. We, therefore, hold that the rectification order passed by the CPC u/s 154 of the Act was invalid in law to the extent of taxing the assessee at normal rate as against the provisions of section 115BAA of the Act. Thus, the grounds of appeal No.1 to 4 raised by the assessee are allowed.

14. So far as the ground of appeal No.5 is concerned, the same relates to the order of the Ld. CIT(A) / NFAC in restoring the matter to the file of the Assessing Officer for verification of the TDS claim. Since it requires verification at the level of the Assessing Officer, therefore, we do not find any infirmity in the order of the Ld. CIT(A) / NFAC in directing the Assessing Officer to verify the claim and give necessary credit of TDS. We accordingly uphold the order of the Ld. CIT(A) /

NFAC on this issue. The ground No.5 raised by the assessee is accordingly dismissed.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 18th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 18th December, 2024

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	17.12.2024		Sr. PS/PS
2	Draft placed before author	18.12.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			