

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2457/दिल्ली/2024 (नि.व. 2023-24)

ITA No.2457/DEL/2024 (A.Y.2023-24)

Cosmo Specialty Chemicals P. Ltd.,
1st floor, Uppals Plaza, M-6 District Centre,
Jasola, Delhi 110025

PAN: AAICC-6706-G

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward 6(1),
CR Building, Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Dr. Rakesh Gupta, &
Shri Somil Aggarwal, Advocates

प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Tiwari, Sr. DR

सुनवाई की तिथि/ Date of hearing : 09/12/2024

घोषणा की तिथि/ Date of pronouncement: : 09/12/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)/Additional Joint Commissioner of Income Tax (Appeals)-4, Chennai (hereinafter referred to as 'the CIT(A)') dated 26.04.2024, for assessment year 2023-24.

2. Dr. Rakesh Gupta, appearing on behalf of the assessee submits that solitary issue on merits in appeal is denial of benefit of tax regime u/s. 115BAB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). He submitted that the issue is identical to the one adjudicated by the Coordinate Bench of Tribunal in

assessee's own case in ITA No. 2766/Del/2024 for AY 2022-23 vide order dated 10.09.2024. He placed on record copy of the aforesaid order.

3. The Id. DR vehemently defended the impugned order. However, he fairly stated that the issue in present appeal is identical to the one considered by the Tribunal in assessee's own case in the preceding assessment year.

4. Both sides heard. The assessee in appeal has raised as many as six grounds. The effective ground for adjudication on merits is ground no. 2 and 3 of appeal assailing denial of benefit of new tax regime opted by the assessee u/s. 115BAB of the Act. I find that in AY 2021-22 and 2022-23, the Revenue in similar manner had denied the benefit of section 115BAB of the Act to the assessee. The assessee carried the issue in appeal to the Tribunal. The Tribunal decided the issue in favour of the assessee and directed the Assessing Officer (AO) to allow the benefit of section 115BAB of the Act. For the sake of ready reference, relevant extract of the Tribunal order in ITA No. 2766/Del/2024 (supra) is extracted herein below:

3. Dr. Rakesh Gupta, appearing on behalf of the assessee submitted that in accordance with provisions of section 115BAB(7) of the Act, the assessee was required to file Form 10ID along with the return of income within the time prescribed u/s. 139(1) of the Act. The assessee filed return of income for AY 2021-22, the assessee exercised one time option for new tax regime in AY 2021-22 and filed Form 10ID alongwith return of income within the time prescribed u/s. 139(4) of the Act. The benefit of section 115BAB of the Act was denied to the assessee in AY 2021-22.

3.1. In appeal before the Tribunal in ITA No. 809/Del/2024 for AY 2021-22, the Tribunal held that the assessee is eligible for benefit of section 115BAB of the Act. Merely for the reason that return of income was not filed within the due date as specified u/s. 139(1) of the Act, benefit of section 115BAB of the Act cannot be denied. Since, benefit of section 115BAB of the Act has been allowed to the assessee in first year of claim, the benefit of section 115BAB cannot be denied in the subsequent assessment year.

4. *Per contra, Smt. Shivani Bansal representing the department strongly supported the impugned order and prayed for upholding the same.*

5. *Both sides heard. In AY 2021-22, the co-ordinate Bench has allowed the benefit of section 115BAB of the Act to the assessee holding as under:*

5. Upon careful consideration, I find that the assessee's claim is cogent as benefit of Section 115BAB cannot be denied merely on the ground that Form 10ID was not filed within due date of Section 139(1) but was filed on 19.05.2021 with revised return u/s. 139(5) within the permissible time. However, I note that facts submitted in this case need to be verified from the factual details available with the Assessing Officer. Accordingly, I remit back the issues to the file of the Assessing Officer with the directions to examine the submissions of the assessee and decide the appeal accordingly.

Since, the assessee has been granted the benefit of section 115BAB of the Act in the first year of exercising option by the Tribunal, now the benefit of said section cannot be denied to the assessee in the subsequent assessment year solely for the reason that Form 10ID was filed beyond time specified u/s. 139(1) of the Act in first year.

6. *I find merit in submission of the assessee. The AO is directed to allow the benefit of section 115BAB of the Act to the assessee. In the result, appeal of the assessee is allowed.*

5. Since, facts in the impugned assessment year are identical, I see no reason to take a different view, hence, for parity of reasons the impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 09th day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 09/12/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI