

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,  
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 6137/MUM/2024  
(A.Y. 2021-22)**

<b>JSW Minerals Trading Pvt. Ltd.,</b> 5A Jindal Mansion Dr G Deshmukh Marg, Mumbai 400 026, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 5(2)(1), Room No. 567, 5 <sup>th</sup> Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai 400020, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAECJ0350K</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Ms. Deepa Khare, AR
Respondent by :	Ms. Neena Jeph, (CIT DR)

Date of Hearing	15.01.2025
Date of Pronouncement	27.01.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal arising from the appellate order dated 04.10.2024 is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeal)/ADDL/JCIT (A)-5, Kolkata [hereinafter referred to as “CIT(A)”] pertaining to the intimation order passed u/s. 143(1) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 13.11.2022 as passed by the CPC, Bangalore for the Assessment Year [A.Y.] 2021-22.

2. The grounds of appeal are as under:-



- (i) *On the facts and circumstances of the case and in law, the ld. CIT(A) erred in applying provisions under section 115JB in spite of the fact that assessee has opted for section 115BAA though ITR & Form 3CA. total Income be calculated without applying provisions of section 115JB. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of not calculating Total Income as per provisions of section 115BAA.*
- (ii) *On the facts and circumstances of the case and in law, the ld CIT(A) erred in not applying the provisions of section 115BAA while calculating Total Income & Tax liability.Total Income & tax thereon be calculated applying provisions of section 115BAA.*
- (iii) *On the facts and circumstances of the case and in law the ldCIT(A) erred in confirming charging of interest u/s 234A, 234B and 234C and raising a demand of Rs.12.02,73,660. The demand and interest u/s 234B and 234C be cancelled.*

3. The main issue involved in the above appeal pertains to denial of option u/s 115BAA on the ground that Form 10IC was not submitted before the prescribed time i.e due date u/s 139(1).It is stated that the assessee filed its return of income for AY 2021-22 on 11.03.2022,seeking option u/s 115BAA and paid tax at the prevalent tax rate 22 percent plus applicable surcharge and cess as per provisions of the relevant section. Tax audit in Form 3CA was filed on 11.02.2022 wherein assessee specified section 115BAA in clause 8(a) of Form 3CA. Income returned by the assessee was Rs.2,97,474/-.Return was processed u/s 143(1) on 13.11.2022 wherein the CPC calculated the tax liability without applying provisions of section 115BAA.The CPC calculated tax u/s 115JB (instead of section 115BAA) and has not given the benefit of the provisions of section 115BAA as form 10IC was filed late by the assessee.



4. Section 115BAA of the Income Tax Act, 1961 offers a reduced tax rate for domestic companies. Rule 21AE (1) of the Income Tax Rules allows a domestic company to benefit from lower tax rates by filing Form 10IC. By doing so the company will be charged a 22% tax rate under the Income Tax Act 1961 and will receive all benefits under Section 115BAA. Form 10IC must be submitted by the 'due date' for filing the company's return for the previous year.

5. Before us, while the ld.DR has relied on the orders of authorities below, the ld.AR of the assessee has made oral arguments and also made written submission in support of the grounds of appeal. It is contented that while filing the return of income for the AY 2021-22, one of the members of the accounts department selected the option of paying taxes as per the provisions of section 115BAA, however inadvertently failed to file form 101C in time. Non submission of 10IC within due date is a procedural mistake on part of company's employee, which does not involve any loss to the revenue. It is further contented that ITR Form 6 for this year does not reflect the option of section 115BAA selected for Tax Computation in Column (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income. Further, there was no column requiring to mention the date of submission of Form 10 IC. This resulted in the mistake of non-filing of Form 10IC.



5.1 It is further submitted that Income Tax Portal was not accepting submission of 10 IC for AY 2021-22 anymore. The Company therefore filed Form 101C for AY 2022-23 on 19.10.2022 as a precautionary measure to avoid any consequences in subsequent years. It is also stated that section 115BAA specifically gave an OPTION to the company to opt for the new tax regime. From tax calculated in ITR and from clause 8(a) of Form 3CA, the intention and act of the assessee was very clear to opt new tax regime as per section 115BAA. Besides, IT portal did not provide option for condonation of delay in filing this form. Assessee intended to make an application u/s 119(2)(b) to PCIT / CCIT seeking permission for condonation of delay in filing of Form No. 10-IC. However, there was no option reflecting on IT Portal.

5.2 The ld.AR has also relied on certain decisions of co-ordinate benches and High Court in support of the contention that filing of form is not mandatory. In the case of KGY Glass Industries (P) Ltd, the Gujarat High Court made observation that the assessee could not upload Form No.10-1C on account of technical problem on ITBA portal at the relevant time. Also this was the first year, in which, the assessee was to avail benefit u/s 115BAA. Therefore, it could not be deprived of benefit particularly when this being the first year for availing such benefits. The Ahmedabad ITAT in case of Aprameya Engineering Limited allowed assessee's appeal on the basis of judicial precedents and facts that the delay in filing Form 101C may be a



procedural requirement, but does not invalidate the assessee's substantive right to claim the benefit of Section 115BAA. It is also argued that as per section 143(1) the impugned adjustment of different tax rate not does not fall within the scope of adjustment stated in Section 143(1)(a).

5.3 The Id.AR has further contented that CBDT vide its Circular No. 19/2023 dated 23rd October 2023 has condoned delay in filing of Form. No. 10-IC as per Rule 21AE of the Rules for previous year relevant to A.Y. 2021-22 where certain conditions are satisfied. Assessee's case is covered by the circular as assessee has satisfied all the conditions specified in the above circular as under - The return of income for AY 2021-22 has been filed on 11.03.2022 i.e. before the due date specified under section 139(1) of the Act. The assessee company has opted for taxation u/s 115BAA of the Act while filing the return and has calculated and paid the tax u/s 115BAA.

6. We have duly considered all the relevant facts of the case. The issue involved in the above appeal pertains to denial of option u/s 115BAA on the ground that Form 10IC was not submitted before the prescribed time i.e. due date u/s 139(1). From the facts of the case and the contentions made, we find that the assessee had acted in bonafide manner in claiming the option of discharging tax under [Section 115BAA](#) of the Act, in as much as while filing the return, it made clear that option to pay tax under [Section 115BAA](#) was exercised. Importantly, tax has also been paid at 22% in accordance with



provisions of [Section 115BAA](#). The company has selected the OPTION under section 115BAA in return of income while calculating the tax as well as specified in clause 8(a) of Form 3CA which is clearly the beneficial one for the company. From tax calculated in the return and from clause 8(a) of Form 3CA, the intention and act of the assessee was very clear to opt new tax regime as per section 115BAA. There is no material objective to be achieved by the assessee in not e-filing papers before the due date of return of the same, once the intent was very well declared in Form 3CA.

6.1 We also find that, there has been substantial compliance of the requirement under [Section 115BAA](#) of the Act, as evident from the fact that while filing the returns, it was declared/stated by the assessee that the option to discharge the tax was exercised under [Section 115BAA](#) of the Act and taxes were in fact paid @ 22% without claiming deductions as contemplated under [Section 115BAA](#) of the Act. In this regard, it may be relevant to refer to the **Hon'ble Supreme Court, in the case of Dilip Kumar (2018) 9 SCC** , wherein while deciding the Doctrine of Substantial Compliance held as under:

*“33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment*



*has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.”*

6.2 The authorities below failed to appreciate that if the failure to consider the claim of option to discharge tax under [Section 115BAA](#) on the ground of failure on the fact of the petitioner to file Form 10-IC within the period stipulated under [Section 115BAA](#) would cause genuine hardship to the assessee. Rejection of the petition under [Section 119\(2\)\(b\)](#) to permit the petitioner to file Form 10-IC in support of its exercise of option under [Section 115BAA](#) of the Act would cause genuine hardship and it is desirable and expedient to permit the petitioner to file Form 10-IC in support of its claim / option under [Section 115BAA](#) of the Act and deal with such claim on merits in accordance with law. The CBDT's Circulars extending the due dates for filing such forms in earlier years indicate a recognition of such procedural difficulties. These Circulars indicate a degree of administrative flexibility and a recognition that procedural lapses should not necessarily lead to the denial of substantive benefits. Moreover, denying the benefit based solely on this lapse would be against the principles of equity and justice, especially when there is no dispute regarding the



assessee's eligibility for the lower tax rate. Considering the principle of beneficial interpretation, the procedural requirements should not override substantive benefits. The Courts have taken a lenient view on procedural lapses when substantive benefits are involved. Supreme Court rulings always emphasized that the making of a claim of deduction is mandatory, but timing/format is directory.

6.3 It may be stated here that the coordinate bench of ITAT, Mumbai has considered similar issue in the case of **Kumar Medicare Pvt Ltd , Mumbai vs Commissioner Of Income Tax Department** dated 21 August, 2024 in **ITA No.1675/Mum/2024**. Relevant parts of the order are extracted below for ready reference:

*“5. In view of the above provisions, it is observed that the assessee is fulfilling all the conditions except filing of Form No. 10IC. Considering the principle of beneficial interpretation, the procedural requirements should not override substantive benefits. The Courts have taken a lenient view on procedural lapses when substantive benefits are involved. Supreme Court rulings always emphasized that the making of a claim of deduction is mandatory, but timing/format is directory. The assessee duly claimed the benefit in its return of income filed in Form No. ITR-6 and return was filed well within the time prescribed [u/s. 139\(1\)](#) of the Act.*

*6. The provisions of [Section 143\(1\)](#) of the Act are clear in their requirement that prior to passing an intimation order, the Assessing Officer must provide the taxpayer with a reasonable opportunity to present their case and address any concerns or discrepancies. It is incumbent upon the tax authorities to afford taxpayers a fair hearing and a chance to clarify or contest any issues related to their tax assessment. In this specific case, it was not provided with any such opportunity to be heard. As observed that the assessee has not filed Form No. 10IC for claiming concessional rate of tax but on the other hand [CPC, Bengaluru](#) also has not followed the procedure prescribed by the law. It is reasonably assumed that the if [the CPC, Bengaluru](#) would have followed the procedure, i.e. giving the assessee a reasonable opportunity of hearing, the assessee would have filed the Form No. 10IC before [the CPC, Bengaluru](#) and this technical requirement would have been completed.*



7. In view of this, the Jurisdictional AO is directed to give a fresh opportunity to the assessee ignoring this adjustment made by [the CPC](#), Bengaluru and the assessee is directed to file the form no. 10IC electronically/before the Jurisdictional AO to comply with the rules. Once the assessee filed the Form 10IC, the Jurisdictional AO is directed to revise the tax computation of the assessee in compliance with the provisions of [section 115BAA](#) of the Act.”

6.4 The co-ordinate bench of ITAT, Kolkata has taken also considered the issue in hand as below in the case of **Fastner Commoddeal Private Limited vs Adit (Cpc), Bengaluru on 7 March, 2024 ITA No.1010/Kol/2023:**

“9. We after hearing the rival submission of the parties and perused the material available on record find that the assessee is a domestic company and eligible to avail the benefit of tax u/s 115BAA of the Act, provided the assessee fulfilled the requisite condition for availing such benefit. The point of dispute in the appeal is only in relation to lower authorities are that assessee has not filed Form No. 10IC electronically before due date for filing return of income u/s 139(1) of the Act. The case of the assessee is that Form 10IC could not be uploaded on ITBA portal due to technical glitch and it was the first year of availing such benefit. The only question for our consideration is whether non-filing of Form No. 10IC on ITBA portal is fatal to the assessee or not in availing the benefit of section 115BAA.

10. We find that the Hon'ble High Court in [Gujarat Paguthan Energy Corporation \(P\) Ltd. Vs DCIT](#) (supra) while considering the eligibility of deduction of Section 80-IA of the Act, wherein the assessee is required to furnish audit report before due date of filing return of income, and such audit report was filed during assessment proceedings, the assessee was held to be eligible for deduction under Section 80-IA of the Act. Further, Hon'ble Delhi High Court in [CIT vs Web Commerce \(India\) \(P\) Ltd.](#) (2009) 318 ITR 135/178 Taxman 310 (Delhi) also held that once audit report is filed before framing of assessment, the provisions of Section 80-IA (7) would be complied as furnishing of such report at the time of filing of return is directory in nature and not mandatory. Considering the similar principle that the assessee prayed before the ld. CIT(A) to allow it to file Form 10-IC before the appropriate authority in order to claim the benefit u/s 115BAA of the Act. It is settled principles under law that appeal is a continuation of assessment proceedings and the ld. CIT(A) has co-terminus power as of Assessing Officer, therefore, the ld. CIT(A) was required to consider the report in Form 10-IC. In view of the above factual and legal discussion, the ground of appeal raised by the assessee is restored back to the file of assessing officer to consider the report in Form-10IC and allow relief to the assessee, if the assessee fulfil all other requisite condition as per law. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.”



6.5 The co-ordinate bench of ITAT,Ahmedabad has taken also considered the issue in hand as below in the case of **Mahalaxmi Asphalt Private Limited vs Ito, Ward-2(1)(1), Ahmedabad** dated 30 September, 2024 in **ITA No.1291/Ahm/2024:**

*“7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that tThe assessee vide written submission madehe assessee has filed the return of income on 29.12.2020 thereby applying the tax rate as per [Section 115BAA](#) of the Act. The only fault of the assessee was that the assessee has not filed Form 10IC alongwith the said return. It is not disputed that for claiming tax rate under [Section 115BAA](#) of the Act, the Assessment Year 2020-21 is the very the first Assessment Year and due to the fault on the part of the System as mentioned by the assessee, it would have happened that the assessee has not filed the Form alongwith the return of income. It is not the case of the Revenue that the assessee is not entitled for the tax rate under [Section 115BAA](#) of the Act. If the assessee had filed Form 10IC within the prescribed time alongwith return of income, as held by various Hon'ble High Courts including the jurisdictional High Court, the CIT(A) has co-terminus power as that of the Assessing Officer. The CIT(A) is required to consider the report in Form 10IC and, therefore, it will be appropriate to take on record the Form 10IC and consider the same in consonance with the return of income filed by the assessee and after verifying the same, the Assessing Officer will adjudicate the issue whether the assessee is entitled for tax rate as per [Section 115BAA](#) of the Act in Assessment Year 2020-21 or not. Needless to say, the assessee be given opportunity of hearing by following the principals of natural justice.”*

6.6 The Id.AR has placed on record a copy of the letter addressed to NFAC,New Delhi dated 23.09.2024 as per page 3 of the paper book dated 15.01.2025 filed before us wherein on page-5 w.r.f. ground no.3,it is claimed that the assessee's case is covered by the CBDT Circular no.19/2023 dated 23.10.2023 as the assessee has satisfied all the three conditions specified in the said Circular and has already filed Form no.10IC electronically on 19.10.2022 i.e. within the time frame laid by the Circular.

7. In view of the above factual position of the case and also the legal proposition emerging from the cited decisions (supra),respectfully following



them, the ground of appeal raised by the assessee is restored back to the file of ld. Assessing officer with a direction to take on record the Form 10IC and consider the same in consonance with the CBDT Circular(supra) and the return of income filed by the assessee and after verifying the same, he will adjudicate the issue whether the assessee is entitled for tax rate as per [Section 115BAA](#) of the Act in Assessment Year 2020-21 or not. Needless to say, the assessee would be given opportunity of hearing following the principles of natural justice and fairplay.

8. In the result, the appeal is **allowed for statistical purposes.**

Order pronounced in the open court on 27/01/2025.

Sd/-

Sd/-

**SANDEEP GOSAIN**

(न्यायिकसदस्य /JUDICIAL MEMBER)

**PRABHASH SHANKAR**

(लेखाकारसदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 27.01.2025

Lubhna Shaikh / Steno



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

