

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6304/MUM/2024
(Assessment Year : 2021-22)

Neumec Builders Private Limited,
G-3, Natwar Chambers,
94 Nagindas Master Road,
Oak Lane, Fort,
Mumbai - 400023

..... Appellant

v/s

Assistant Director of Income Tax, CPC
Bengaluru
PAN : AACCN0519J

..... Respondent

Assessee by : Shri Gunjan Kakkad
Revenue by : Shri Kailash C. Kanojiya, CIT-DR

Date of Hearing – 28/01/2025

Date of Order - 30/01/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal challenging the impugned order dated 05/11/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional/Joint Commissioner of Income Tax (Appeals)-3, Chennai [*"learned Addl./Joint CIT(A)"*], for the Assessment Year 2021-22.

2. In this appeal, the assessee has raised the following grounds: –

"1. On the facts and circumstances of the case and in law, the learned Additional Joint Commissioner of Income-tax (Appeal) [hereinafter for the sake of brevity referred to as "the Addl./ JCIT(A)"] has erred in upholding the intimation processed under section 143(1) of the Act dated 28 December 2022.

2. On the facts and circumstances of the case and in law, the learned Addl./ JCIT(A) failed to appreciate that the delay in filing the return of income has been condoned by the Hon'ble Bombay High Court by order dated 8 October 2024 in Writ Petition (L) No. 30260 of 2024.

3. On the facts and circumstances of the case and in law, the learned Addl./ JCIT(A) failed to take into consideration the order of the Hon'ble High Court which was duly furnished during appellate proceedings.

4. On the facts and circumstances of the case and in law, the learned Addl./ JCIT(A) failed to consider that the appeal for assessment year 2019-20 has been allowed and consequently, the loss must be allowed to be set off for the assessment year 2021-22."

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 17.03.2022 declaring a total income of Rs.1,56,760/-. Since the assessee did not file the return of income on or before the due date and Form 10-IC was also not filed till the due date for filing the return of income while processing the return of income vide intimation issued under section 143(1) of the Act, the benefit of section 115BAA of the Act was not granted to the assessee and its income was assessed under the provisions of section 115JB of the Act, determined the total income at Rs.10,20,60,940/-. In its appeal before the learned Addl./Joint CIT(A), the assessee submitted that it opted for the option provided under section 115BAA by filing the return of income on 17.03.2022 and Form 10-IC on 24.03.2022. The assessee further submitted that due to reasons beyond its control, the return of income and Form 10-IC was not filed within the due date. In this regard, the assessee submitted that it has already

requested for condonation of delay before the Central Board of Direct Taxes under section 119 and a decision on its application is still pending. The learned Addl./Joint CIT(A) dismissed the ground raised by the assessee and upheld the intimation issued under section 143(1) of the Act and held that taxation under section 115BAA of the Act was rightly denied to the assessee since there was a delay in filing the return of income and Form 10-IC. As regards the claim of the assessee of set-off of carried forward losses pertaining to Assessment Year 2019-20 against the income for the year under consideration, the learned Addl./Joint CIT(A), after taking into consideration the fact that for the Assessment Year 2019-20 assessee's appeal has been partly allowed vide order passed under section 250 of the Act held that the claim of the assessee for set off of carried forward losses shall be addressed when appellate order is given effect by the Jurisdictional Assessing Officer.

4. During the hearing, the learned Authorized Representative ("*learned AR*") submitted that Hon'ble Jurisdictional High Court vide its order dated 08.10.2024 passed in Writ Petition (L) No.30260 of 2024, in M/s. Neumec Builders Pvt. Ltd. vs. Central Board of Direct Taxes allowed the writ petition filed by the assessee and directed that the delay in filing the return of income and Form 10-IC for the year under consideration be condoned. Further, the variation made in the intimation dated 20.12.2022 was also directed to be deleted by the Hon'ble Jurisdictional High Court. In this regard, the learned AR placed reliance upon the following findings of the Hon'ble Jurisdictional High Court in assessee's writ petition.

"7. In so far as the present case is concerned, the learned Counsel for the Respondent would also not dispute that the delay in filing the Return is only of two days and that it appears to be wholly bona fide. The principles which are paramount and jurisprudentially accepted, and as discussed by this Court in the case of Jyotsna Mehta (supra), in our opinion, mandates their application in the present facts, for the delay to be condoned.

8. In light of the above discussion, we are of the opinion that in the interests of justice, the Petition would be required to be allowed in terms of prayer clause (a) which reads thus:-

"(a):- that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, ordering and directing the Respondents to condone the delay in filing the return of income (Exhibit C) and form 10-IC (Exhibit K0 and thereafter direct Respondent No.5 to delete the variation made in the intimation dated 28 December 2022 (Exhibit M))."

5. Having considered the submissions and perused the material available on record, since the Hon'ble Jurisdictional High Court has already directed the Revenue to condone the delay in filing the return of income and Form 10-IC by the assessee and also directed deletion of variation made vide intimation issued under section 143(1) of the Act, we direct the AO to process the return of income filed by the assessee, as per law, implementing the directions of the Hon'ble Jurisdictional High Court passed vide order dated 08.10.2024 in assessee's writ petition.

6. As regards the grounds raised by the assessee pertaining to the set-off of carried forward losses for the Assessment Year 2019-20 against the income for the year under consideration, the AO is directed to implement the directions of the learned Addl./Joint CIT(A) passed in paragraph 6.4 of the impugned order. As a result, the impugned order is set aside and grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/01/2025

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 30/01/2025

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai