

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 2449 & 2450/Bang/2024
Assessment Years : 2022-23 & 2023-24

Ms. Sumana Arora, No. 1152, Sai Krupa, 12 th Main, HAL 2 nd Stage, Indiranagar, Bangalore – 560 038. PAN: AMLPA3320N	Vs.	The Income Tax Officer, Ward 1 (2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Bharath .L, CA
Revenue by	:	Shri Subramanian S, JCIT-DR

Date of Hearing	:	30-01-2025
Date of Pronouncement	:	31-01-2025

ORDER

PER BENCH

These are the appeals filed by the assessee challenging the orders of the NFAC, Delhi both dated 21/10/2024 in respect of the A.Ys. 2022-23 and 2023-24 and raised the following grounds:

Assessment Year 2022-23:

“1. On the facts and in the circumstances of the case, the orders passed by the LAO and the Hon. CIT(A) are bad in law and is against the principle of natural justice since the same were undertaken without appreciating the facts of

the case and the Appellant's submissions and without considering the merits of the appeal filed.

2. The Hon. CIT(A) erred in not condoning the delay in filing of appeal by the Appellant.

3. The Hon. CIT(A) erred in dismissing the appeal merely basis the delay in filing the appeal, without considering the merits of the case.

4. The Hon. CIT(A) and the LAO erred in not considering the fact that Form 10-IE required for exercising the option to pay tax under section 115BAC of the Act was filed by the Appellant before filing the return of income.

5. Without prejudice to the above, the LAO erred in not considering that the delay in filing the Form 10-IE was purely a bona fide and procedural / technical delay and substantive application of law and justice should not be denied for a bona fide and bona fide and procedural / technical delay.

6. The Hon. CIT(A) and the LAO erred in not computing the tax liability in accordance with the provisions of section 115BAC of the Act.

7. The Hon. CIT(A) erred in not directing the LAO in the facts and circumstances of the case, to nullify the levy of statutory interest under section 234A, 234B and 234C of the Act. The same is consequential in nature and would be nullified if the above grounds are allowed.

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal.”

Assessment Year 2023-24:

“1. On the facts and in the circumstances of the case, the orders passed by the LAO and the Hon. CIT(A) are bad in law and is against the principle of natural justice since the same were undertaken without appreciating the facts of the case and the Appellant's submissions and without considering the merits of the appeal file

2. The Hon. CIT(A) erred in not condoning the delay in filing of appeal by the Appellant.

3. The Hon. CIT(A) erred in dismissing the appeal merely basis the delay in filing the appeal without considering the merits of the case.

4. The Hon. CIT(A) and the LAO erred in not considering the fact that Form 10-IE required for exercising the option to pay tax under section 115BAC of the Act was filed by the Appellant before filing the return of income.

5. Without prejudice to the above, the LAO erred in not considering that the delay in filing the Form 10-IE for AY 2022-23 was purely a bona fide and procedural / technical delay and substantive application of law and justice should not be denied for a bona fide and bona fide and procedural / technical delay. Thus, since the initial filing of Form 10-IE is appropriate, the option to pay the tax under section 115BAC should be allowed to the Appellant.

6. The Hon. CIT(A) and the LAO erred in not computing the tax liability in accordance with the provisions of Section 115BAC of the Act

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal.”

2. Both the appeals are related to the same assessee and the issue involved in both the appeals are similar. We decided to take up both the appeals together and pass a common order for the sake of convenience.

3. The assessee is an individual receiving income from salary, house property, business, capital gains and from other sources. During the assessment years, assessee opted to compute the tax liability under the new tax regime provided u/s. 115BAC of the Act by filing form 10-IE on 30/08/2022. The assessee also filed her return of income on 30/08/2022 u/s. 139(4) of the Act. The said return of income was processed u/s. 143(1) of the Act and an intimation u/s. 143(1) was issued on 15/02/2023. In the said intimation, the CPC had not considered the option exercised by the assessee and raised the demand of Rs. 96,890/-. The assessee came to

know about the intimation only on 04/08/2023 after receiving the outstanding demand by way of email. Thereafter, the assessee filed a reply to the CPC on 04/09/2023 and brought to the knowledge of the CPC about the filing of form 10-IE and submitted that the method adopted by the CPC is not correct. However, the CPC replied only on 11/01/2024 in which they stick on their demand raised in the intimation. This reply was also not sent by the assessee. In respect of the A/Y 2023-24 the assessee requested for reprocessing of the return and also filed a grievance, since the said grievance was not considered by the authorities favourably, the assessee finally filed the appeals before the Ld.CIT(A) on 05/04/2024 against the intimation dated 15/02/2023. The assessee had raised several grounds on merits and also seeking the Ld.CIT(A) to condone the said delay of 383 and 54 days by relying on the above said facts. However, the Ld.CIT(A) had not accepted the reasons stated for the said delay and dismissed the appeal on the ground of limitation. As against the said order, the assessee is in appeal before this Tribunal.

4. At the time of argument, the Ld.AR submitted that the order of the Ld.CIT(A) is against the principles of natural justice and also without considering the issue on merits, and therefore the Ld.AR further submitted that form 10-IE as prescribed u/s. 115BAC was filed by the assessee before filing the return of income and even assuming that the said form 10-IE is filed belatedly, the same was available before the CPC while the return was processed and therefore the same should have been considered and proper assessment has been made u/s. 115BAC of the Act. The Ld.AR further submitted that the filing of form 10-IE is only a procedural one and therefore on technical grounds, the same should not be omitted to be considered.

5. The Ld.DR relied on the orders of the lower authorities and submitted that admittedly, the form 10-IE was filed belatedly and therefore the CPC

had correctly made the assessment not under the provisions of section 115BAC of the Act.

6. We have heard the arguments of both sides and perused the materials available on record.

7. We have seen that the only issue is that whether the form 10-IE filed belatedly could be taken into consideration while processing the return u/s. 143(1) of the Act. Even though, the facts exhibits that the form 10-IE was available at the time of processing the return u/s. 143(1), the CPC had not considered the same since the same was not filed in time. Even though, the filing of form 10-IE is a technical one, the assessee was not able to canvas her case before the Ld.CIT(A) for the reason that the Ld.CIT(A) had dismissed the appeals on the ground of limitation.

8. We have also perused the sequence of events right from the date of the intimation and up to the date of filing of the appeals before the Ld.CIT(A), and we found that the assessee had seriously perused the matter before the authorities but unfortunately she was not able to get any favourable orders. Subsequently, she filed the appeal before the Ld.CIT(A) with a delay of 383 days and 54 days in respect of the assessment years 2022-23 and 2023-24 respectively. In the present case, it is a fact that the form 10-IE was made available to the CPC before the intimation was sent on 15/02/2023 and 10.01.2024 but unfortunately the CPC had not considered the same on merits even though intimation was made later on. Therefore we are setting aside the orders of the lower authorities and remitted the issue to the file of the JAO with a direction to consider the issue denova on merits.

9. We also make it clear that the AO should consider the material documents placed before him and decide the issue afresh and in accordance with law after hearing the assessee.

10. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2025.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 31st January, 2025.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore