

आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री संजय अवस्थी, लेखा सदस्य के समक्ष
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Sanjay Awasthi, Accountant Member]

I.T.A. No. 1139/Kol/2024
Assessment Year: 2020-21

Digvijay Finlease Limited (PAN: AAACD 6998 D)	Vs.	ACIT, Circle-5(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	11.02.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	27.02.2025
For the assessee / निर्धारिती की ओर से	Shri Saurav Garg, A.R
For the revenue / राजस्व की ओर से	Shri Sailen Samadder, Addl. CIT Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 22.03.2024 for AY 2021-22.

2. Brief facts of the case of the assessee are that the assessee being a non-banking financial company engaged in business of investment in shares and securities and financial activities. The assessee filed its return of income declaring taxable income of Rs. 40,04,19,230/- and tax liability @ 22% including surcharge and education cess of Rs. 5,73,72,220/-. The return of income was processed and determined the tax liability @30% and additional demand of Rs. 78,76,850/- was raised.

3. Aggrieved by the said demand, the rectification request has been done by the assessee which was disposed of by the AO u/s 154 of the Act and a demand of Rs. 73,06,380/- has been raised. Against the said order the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been partly allowed as the Ld. CIT(A) has dismissed the prayer of the assessee regarding the concessional rate of taxation u/s 115BAA on the ground that the return of income was filed after due date.

Being aggrieved and dissatisfied the present appeal has been preferred by the assessee before us.

4. The Ld. Counsel for the assessee challenges the very impugned order thereby submitting that it is not in dispute that turnover of the company is below the amount of Rs. 400 crores and the assessee are entitled to claim deduction u/s 115BAA. The Ld. Counsel submits that the assessee had duly filed tax audit report and the assessee has opted new tax regime u/s 115BAA of the Act. The Ld. Counsel further submits that due to COVID-19 pandemic due date of filing of return of income for assessment year under consideration has been extended to 15th March, 2022. It has further been argued that despite adverse effect of COVID pandemic the assessee managed to compile all the data so that the return can be filed within the due date but because of various technical glitches and issues in the new e-filing portal it could not be uploaded by 12 mid-nights, and after various conversation with the IT personnels the assessee could be able to uploaded with delay of just few hours. The learned counsel by filing an order passed by CIT Kolkata dated 14-11-2024 submits that petitioner's petition for condonation of delay u/s 119(2)(b) in filing the revised return of income for year under consideration

has been condoned. The Ld. Counsel further submits that the Ld. CIT(A) has rejected the claim of the assessee that Form no 10IC was filed but return of income for the relevant assessment year has been filed belatedly and the assessee has violated the condition. The Ld. Counsel cited a decision of Hon'ble Calcutta High Court passed in the case of PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA VERSUS FASTNER COMMOMDEAL PVT. LTD. in ITAT/267/2024 IA NO: GA/2/2024 dated 10.1.2025 wherein it has clearly held that filing of such form is procedural in nature.

5. Contrary to that the Ld. D.R supports the impugned order.

6. Upon hearing the Ld. Counsel for the respective parties, we have perused the order of Ld. CIT(A) and find that the Ld. CIT(A) has rejected the claim of the assessee on the ground that the assessee company did not file its original return of income within the extended due date of filing return of income which was to be filed on 15-03-2022 whereas return was filed on 16.03.2022 and Form no. 10IC was filed on 26.03.2022 much later issued actual date of filing as well. The learned CIT(A) has held that vide circular no.19 dated 23-10-2023 CBDT has condoned the delay in filing Form10ICfor the AY 2021-2022, however one of the condition was that return of income has been filed on or before the due date. It is pertinent to mention here that PCIT vide order dated14-11-2024 has condoned the delay in filing revised return of income. In this context we have gone through the order of the Hon'ble Calcutta High Court which deals thus:

“Denial of benefit u/s 115BAA - assessee did not file the Form 10IC along with the return within the extended period, as extended by the Circular issued by the Central Board of Direct Tax dated 17th March, 2022 - whether filing of such form would be mandatory or directory? - whether the assessee should be given an opportunity to file Form 10IC before the AO in order to claim the benefit? - HELD THAT:- It is not in dispute that the assessee company has opted for taxation u/s 115BAA and the option was available to the assessee by opting the option given in filing status in Part AGE of the form by return of income in ITR-6. This conduct of the assessee will undoubtedly go to show that the assessee intended to opt to pay tax under the simplified tax regime as also accepted in the Circular issued by the Central Board. During the relevant period there was Covid pandemic which also led to certain other difficulties for the assessee to upload the form along with the return within the extended time thereof. That apart, the assessee has specifically stated that they had certain difficulties in uploading the form in the Income tax portal. Also assessee pointed in case of a HUF opting under the new taxation

scheme under Section 115BAC, the portal requires management number of 10IE while filing the income tax return as this being a mandatory column and the assessee continue process of filing ITR without filling the same and if there was non-compliance in filing Form 10IE, the assessee would be aware of that and will submit the same but such facilities is not provided when returns are filed by companies. The peculiar facts and circumstances would show that the error was an inadvertent procedural error and the conduct of the assessee will clearly show that they had opted for taxation u/s 115BAA of the Act. Appeal is disposed of and the matter stands restored back to the file of the Assessing Officer to permit the assessee to file the report in Form 10IC and the Assessing Officer shall consider as to what relief the assessee would be entitled to subject to the conditions that the assessee fulfils all other requisite conditions as per law.”

7. Further we find that vide order dated 14.11.2024 the PCIT had condoned the delay of the petitioner in filing revised return of income for AY 2021-22. The operative portion of the order passed by the PCIT against the assessee are as follows:

“9. I have perused the submission of the assessee and have also examined the comments of the AO and Range Head. Upon careful consideration and factual matrix of the case, I am of the considered opinion that liberty may be provided to the taxpayer to file revised return of income for the AY 2021-22 to substantiate its claim. Keeping in mind the true spirit of CBDT’s Circular No. 19/2023 dated 23.10.2023 due to the following reasons:

- 1. The assessee has a demand of Rs. 78,76,850/- vide order u/s 143(1) of the Act by computing the tax rate @ 30% on normal income instead of claim of assessee of tax rate @22%.*
- 2. The assessee opted for taxation u/s 115BAA in the return and for the purpose of opting new regime, the assessee was required to file form 10IC which the assessee was not aware of it. The assessee filed the Form 10IC for the assessment year on 26.03.2022 with a delay of 11 days.*
- 3. In absence of Form 10IC an undue demand is created which is a cause of genuine hardship to the assessee.*
- 4. The reasons cited by the assessee appear Bonafide.*
- 5. The assessee filed Form 10IC on 26.03.2022 which is well before the date i.e. on 31.01.2024 as enumerated in the Point no. 3(iii) of the CBDT’s Circular no. 19/2023 dated 23.10.2023.*

10. I, therefore, find that, this is a case of genuine hardship & the assessee company has satisfied the conditions of CBDT’s Circular No. 19/2023 dated 23.10.2023.

11. In view of the above, the petitioner’s petition for condonation of delay u/s 119(2)(b) in filing the Revised Return of income for the Assessment Year 2021-22 is hereby condoned by exercising the power contained in CBDT’s Circular No. 19/2023 dated 23.10.2023.”

8. Going over the facts of the case, the order passed by the Hon’ble Calcutta High Court, the appeal of the assessee is hereby allowed for statistical purposes as the matter restored to the file of AO to consider the case of the assessee and pass a fresh order by condoning the reason whether the assessee could be entitled to claim relief u/s 115BAA and further if the assessee fulfills all other requisite condition as per law.

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

Order is pronounced in the open court on 27th February, 2025

Sd/-

Sd/-

(Sanjay Awasthi /संजय अवस्थी)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 27th February, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Digvijay Finlease Limited, 21, Strand Road, Kolkata-700001
2. Respondent – ACIT, Circle-5(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata