

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM
AND
SHRI PRABHASH SHANKAR, AM**

आयकर अपील सं./**ITA No.5255/MUM/2024**
(निर्धारण वर्ष / Assessment Year :2022-23)

DCIT 2, 3, 1 Aayakar Bhavan, M. K. Road, Churchgate, Mumbai, Maharashtra-400020	Vs.	Oceanic Trade Minerals Pvt. Ltd. 1207, Remi Comercio, Off Veer Desai Road, Shah Industrial Estate, Andheri Railway Station S.O, Maharashtra-400058
स्थायी लेखा सं./PAN No. : AACCO9091J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Ms. Neha Paranjpe (Proxy Counsel)
राजस्व की ओर से /Revenue by	:	Shri Mahesh Pamnani (Sr. DR)

सुनवाई की तारीख / Date of Hearing	:	10/02/2025
घोषणा की तारीख/ Date of Pronouncement	:	28/02/2025

आदेश / O R D E R

PER NARENDER KUMAR CHOUDHRY:

This appeal has been preferred by the assessee against the order dated 30.07.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2022-2023.

2. At the outset, it is observed that there is a delay of 9 days in filing the instant appeal, on which the Ld. Assessing Officer (AO) has filed an application for condonation of delay, wherein it has been mentioned that the delay has been occurred due to delay in administrative exigencies and unavailability of crucial documents necessary for preparation of the appeal under consideration. Considering the reason for the delay in filing the appeal as genuine and bonafide, the delay is condoned.

3. Coming to the merits of the case, it appears from the orders passed by the authorities below that the Assessee for the A.Y. 2021-22 by filing form no.10IC on dated 19.07.2022 had opted for taxability of its income u/s 115BAA of the Act. However, the benefit of the scheme was not provided to the Assessee mainly on the reasons that form no.101C has been filed beyond the due date of filing of return u/s 139(1) of the Act. The Assessee, subsequently by filing its return of income, has opted for option 'E' and has claimed to have filed form no.10IC for the A.Y. 2021-22 on 19.07.2022 and therefore claimed the benefit of provisions of section 115BAA of the Act for the A.Y. 2021-22 as well. However, the CPC vide intimation/order dated 28.07.2023 u/s 143(1) of the Act, also denied such benefit claimed by the Assessee by considering the fact that the benefit of the new tax regime as claimed in the A.Y. 2021-22 by filing form no.10IC belatedly on 19.07.2022 has been disallowed. The AO consequently vide intimation/order dated 28-07-2023 u/s 143 (1) of the Act, raised the demand of Rs. 1,02,20,780/-.

4. The Assessee, being aggrieved, challenged the decision of the CPC for not allowing the benefit of new tax regime, who vide impugned order allowed the appeal of the Assessee and accordingly directed the AO to allow the benefit of the provisions of section 115BAA of the Act, to the Assessee and recompute the tax liability accordingly. For brevity and ready reference, the conclusion drawn by the Ld. Commissioner is as under:

“4.2.3 A perusal of the documents available on record reveals that the appellant is claiming that it had filed form 10-IC well before the due date as far as assessment year 2022-23 is concerned. However, it is pertinent to mention here that though the appellant had claimed benefit of the provisions of section 115BAA for A.Y. 2021-22 also but as Form 10-IC was filed on 19.07.2022. Primarily for this reason, it was denied the benefit of the provisions of section 115BAA for 2021-22.

4.2.4 It is also seen from the ITR filed for assessment year 2022-23 that in the portion containing details of filing status the appellant has opted for option 'e' and has claimed that it has filed the form 10-IC for assessment year 2021-22 on 19.07.2022, and accordingly it is claiming benefit of provisions of Section 115BAA for assessment year 2022-23 also. Since the appellant was denied the benefit of provisions under section 115BAA for assessment year 2021-22 probably for this reason, the appellant has been denied the benefit for assessment year 22-23 as well by the AO, CPC.

4.2.5 However, the contention of the appellant has merit. As far as assessment year 2022-23 is concerned, it has filed its return of income by the due date u/s 139(1) and further form 10-IC filed on 19.07.2022 has also been filed before filing the ITR for A.Y. 2022-23, therefore, in my opinion, the form 10-IC filed by the appellant on 19 July 2022 needs to be considered while deciding the claim of the appellant regarding section 115BAA for assessment year 2022-23. As stated earlier since Form-10IC has been filed, before the due date for assessment year 2022-23 and ITR has also been filed within the due date u/s139(1) and as the appellant fulfils the required conditions, it deserves to be allowed the benefit of the provisions of section 115BAA. Accordingly, the assessing officer is, therefore, directed to allow the same and re-compute the tax liability of the appellant accordingly. Hence, this ground of appeal taken by the appellant is allowed.”

5. The Revenue Department, being aggrieved, is in appeal before this Court.

6. Heard the parties and perused the material available on record. In the instant case, the Assessee has opted for new tax regime for the A.Y. 2021-22 by filing form no.10IC on dated 19.07.2022 and thereafter on the basis of such form no.10IC again claimed the benefit of new tax regime by filing its return of income for the A.Y. 2022-23 which is under consideration. Admittedly, the Assessee never withdrawn its option exercised for the new tax regime and as on date of filing the return of income for the assessment year under consideration and processing the same by intimation/order dated 28.07.2023 u/s 143(1) of the CPC, Form no.10IC was available as the same was neither withdrawn nor rejected by the Revenue Department and therefore question emerge ***“whether the Assessee is entitled for the benefit of new tax regime on the basis of the form no.10IC filed on 19.07.2022, as claimed by the Assessee by filing its return of income”***.

6.1 The Tribunal at Amritsar Bench in the case of Harbans Singh vs. AO, CPC, Bangalore in ITA No.25/Asr/2024 decided on 24.07.2024, also dealt with identical issue and held ***“that requirement of filing Form No.10IE is directory in nature and not mandatory and it is sufficient compliance, if the said Form is filed before the AO at the time of assessment”***, by analyzing the provisions of law and the relevant judgments available up to the date of decision i.e. upto

24.07.2024 including in the case of PCIT vs. KGY Glass Industries P Ltd., (2023) 156 taxmann.com18 (Gujarat) by the Hon'ble Gujarat High Court wherein it was held **"where Form 10-1C was required to be filed by the domestic company within time allowed u/s 139(1) of the Act, opting to be taxed as per provisions of section 115BBA, was not practically possible due to technical glitches in the portal, then in absence of any fault on the part of the Assessee , the Assessee cannot be deprived of benefit under section 115BBA of the Act."** For ready reference and brevity, the concluding part of the judgment of the Hon'ble coordinate Bench of the Tribunal is reproduced herein below:

"10.2 We find that an identical issue has been decided by the coordinate bench of the ITAT , Pune in the case of Akshay Devendra Birari vs DCIT , CPC, Bangalore, in ITA no 782/ PUN/ 2024 dated 05/06/2024, where the Hon'ble Bench has held on the facts case that filing of Form 10-IE is not a mandatory requirement but only directory in nature and CPC ought to have considered the same allowing the benefit of new tax regime.

10.3 We would also like to consider the decision of the Bangalore Bench of the tribunal in the case of Hertz Software India Private limited vs ACIT Cir - 3, Bangalore, ITA No 29/ Bang/ 2021, dated 07/03/2022 , which relates to the matter of delayed filing of Form 67 , under Rule 128, in the matter of claim of FTC. On the facts of the case, it was held that one of the requirements of Rule 128 for claiming FTC is that form 67 is to be submitted by assessee before due date prescribed u/s 139(1) of the Act, but this requirement cannot be treated as mandatory, rather it is directory in nature, because Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form 67. Similar view has been taken in the case of Ms. Brinda Kumar Krishna (2022 (2) TMI 752- ITAT Bangalore, for the purpose of Form 67 rwr 128 relating to FTC.

10.4 We also consider the decision of the ITAT , Ahmedabad Bench, in the case of ITO (E) vs Ramji Mandir Religious and Charitable Trust, (2024)158 taxman .com 114 (Ahmedabad), where in the matter of filing of Form 10/10B which is required to be furnished before due date u/s 139(1) of the Act, the tribunal held the same to

be merely directory in nature and opined that the same cannot be so fatal so as to deny exemption u/s 11(2) specially when the said Form - 10/10B was available before the AO when intimation was passed by CPC, u/s 143(1).

10.5 Regarding the issue of technical glitch raised by the assessee , that Form 10- IE could not be uploaded in the portal within the time allowed u/s 139(1), due to technical incompatibility in the portal we refer to a judgment of the Hon'ble Gujrat High court in the matter of section 115BBA of the Act , in the case of PCIT vs KGY Glass Industries P Ltd, (2023) 156 taxmann.com18 (Gujrat), where Form 10-1C was required to be filed by the domestic company within time allowed u/s 139(1) of the Act, opting to be taxed as per provisions of section 115BBA , was not practically possible due to technical glitches in the portal, the Hon'ble court held that in absence of any fault on the part of the assessee , the assessee cannot be deprived of benefit under section 115BBA of the Act .

10.6 As such considering all aspects of the matter, and noting the legal conclusions derived at by various courts and tribunals, on the facts of respective cases, cited above, we are in agreement with the decision of the coordinate bench of the Pune tribunal in the case of Akshay Devendra Birani (supra), and we hold that requirement of filing form 10-IE is directory in nature and not mandatory and it is sufficient compliance if the said form is before the AO at the time of assessment. As such we direct the CPC to take into consideration the form 10-IE filed by the assessee and pass appropriate orders.

11. In the result, the appeal of the assessee bearing ITA No. 25/Asr/2024 is allowed for statistical purposes.”

6.2 We further observe that recently the co-ordinate Bench of the Tribunal in the case of Pran panda vs. ITO Ward, 2(1) ITA no.1509 & 1510/Kol/2024 decided on 04.01.2024 has also dealt with the identical issue, **“where the Assessee failed to file form 10IE within the prescribed due date but otherwise the Assessee complied with the other conditions u/s 115BBE of the Act then the Assessee would be entitled to get the benefit of such tax regime”**.

6.3 We further observe that the CBDT vide Circular no 19/2023 dated 23.10.2023 considering the identical issue and genuine hardships, issued the following directions:

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 10-IC for Assessment Year 2021-22 –

Reg. In exercise of the powers conferred under section 119(2)(b) of the Income-tax Act, 1961 ('the Act'), the Central Board of Direct Taxes ('CBDT') by Circular No. 612022 of even number dated 17.03.2022 condoned the delay in filing of Form No. 10-IC as per Rule 21AE of the Income-tax Rules, 1962 ('the Rules') for the previous year relevant to A.Y. 2020-21 in cases where the conditions stipulated in the said Circular are satisfied.

2. Representations have been received by CBDT stating that Form No. 10-IC could not be filed for A.Y. 2021-22 within the due date or extended due date, as the case may be. It has been requested that the delay in filing of Form No. 10-IC for A.Y. 2021-22 may be condoned.

3. On consideration of the matter, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 115BAA of the Act, CBDT in exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that: -

The delay in filing of Form No. 10-IC as per Rule 21AE of the Rules for previous year relevant to A.Y. 2021-22 is condoned in cases where the following conditions are satisfied:

"i) The return of income for relevant assessment year has been filed on or before the due date specified under section 139(1) of the Act;

ii) The assessee company has opted for taxation u/s 115BAA of the Act in item (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6; and

iii) Form No. 10IC is filed electronically on or before 31.01.2024 or 3 months from the end of the month in which this Circular is issued, whichever is later."

6.4 Recently the jurisdictional co-ordinate Bench of the Tribunal in ITA No.3981/M/2024 in the case of M/s. Swingtel Communications Pvt. Ltd. vs. ITO, Ward 4(3)(1), Mumbai dated 06.01.2025 also dealt

with the almost identical issue, wherein due to some technical glitches in the ITBA portal, the Assessee was unable to file/upload Form No.10IC for the A.Y. 2022-23 as the portal system did not accept the same for the reason that Form 10IC has already been uploaded for the A.Y. 2022-23 and therefore the Hon'ble Bench allowed the claim of the Assessee by taking refuge of the CBDT circular (supra) and observing and holding as under:

“12. In view of the above facts, we are of the considered view that the assessee deserves to get the benefit of lower tax rate prescribed by section 115BAA for AY 2021-22 as well, considering that the CBDT itself had relaxed the condition regarding filing of Form 10IC and provided a window for late submission of the same. The assessee having filed Form 10IC for AY 2022-23 on 22.09.2022 i.e. much before the issue of CBDT circular dated 23.10.2023, was not able to file another Form 10IC on the system. Simply because of the technical glitch in the system, the assessee cannot be denied the benefit of the circular when all other conditions are satisfied. We, therefore, direct that the Form 10IC filed on 22.09.2022 (albeit for AY 2022-23) should be deemed to have been filed for AY 2021-22 in the peculiar facts and circumstances of the case and benefit of section 115BAA should be allowed for & from AY 2021-22 to the assessee.”

6.6 On the aforesaid facts, circumstances, analyzations and the judgments referred to above, we are of the considered view that until and unless the option exercised for the new tax regime by filling Form-10IE has been rendered invalid due to violation of the conditions contained in the relevant provisions thereto, the benefits of new tax regime would be available or applicable in the subsequent assessment years but subject to fulfilling of prescribed conditions for the regime and the Assessee cannot be treated as in-eligible for the

benefits of new tax regime, which is certainly a benevolent provision for the benefit and welfare of the Assessee. Further requirement of filing form 10-IE is directory in nature and not mandatory and it is sufficient compliance if the said Form is filed/available before the AO at the time of assessment. Further if the Assessee has opted for taxation u/s 115BAA of the Act and filed Form No. 10IC or 10IE electronically on or before 31.01.2024 or 3 months from the end of the month in which the CBDT Circular (supra) is issued and whichever is later, then the delay in filing of Form No. 10-IC as per Rule 21AE of the Rules for previous year relevant to A.Y. 2021-22 is liable to be condoned.

6.7 Coming to the instant case again, we reiterate as observed above that till the date of processing the return filed by the Assessee for the A.Y. 2022-23, Form No.10IE for exercising the option for availing the benefits of new tax regime filed on 19-07-2022 for the AY 2021-22 was neither withdrawn nor rejected or made invalid but the same was still available or effective before the AO during the assessment proceedings or passing the Assessment order and therefore in our considered view, the Assessee is entitled for the benefit of new tax regime and thus the Ld. Commissioner rightly allowed such claim lodged by the Assessee. Thus, the decision of the Ld. Commissioner is liable to be affirmed, as the same is neither suffered from any perversity or impropriety nor illegality. Resultantly, the decision of Ld. Commissioner is affirmed.

7. In the result, the appeal filed by the Revenue Department is dismissed.

Order pronounced in the open court on 28/02/2025.

Sd/-	Sd/-
(PRABHASH SHANKAR)	(NARENDER KUMAR CHOUDHRY)
लेखा सदस्य / ACCOUNTANT	न्यायिक सदस्य / JUDICIAL
MEMBER	MEMBER
मुंबई/Mumbai; दिनांक Dated	/ /2025

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई
/ DR, ITAT, **Mumbai**
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
ITAT, Mumbai