

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.5696/Del/2024
(ASSESSMENT YEAR 2022-23)

Sunita Rani, H. No. 257, Sector-3 Haryana-121004 PAN-AYKPD4423G (Appellant)	Vs.	CPC, Bengaluru (Respondent)
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Assessee by	Shri Jitender Wadhwa, CA
Department by	Shri Sanjay Kumar, Sr. DR
Date of Hearing	20/02/2025
Date of Pronouncement	21/03/2025

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 23/10/24 passed by the Commissioner of Income Tax (Appeals), Mumbai arising out of the intimation u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') issued by CPC dated 16.03.2023 for Assessment Year 2022-23.

2. The assessee, an individual, files her return of income for Assessment Year 2022-23 as per old scheme on 5.11.2022 declaring total income at Rs.21,76,560/-. However, the staff of the assessee inadvertently filed form 10E despite the fact that the assessee never utilized or intended to utilize this form. However, the income of the

assessee was assessed under the new scheme followed by demand raised of Rs.6661920/-. The assessee filed tax and audit report on 30.09.2022 where she has declined the option for opting the new tax regime and the supportive documents is also filed before the Bench. Before the appellate authority though the same was brought to the notice, the appeal stood rejected. It is submitted by the assessee's counsel that once the Form is filed, there is no option to cancel or withdraw the same neither any remedy was available with the assessee to correct the said mistake. The occurrence of communication gap can be deemed as a procedural laps. However, it is imperative to recognize that such a laps should not unjustly deprive the assessee of significant benefit to which the assessee is entitled. He therefore, prayed for a direction upon the CPC to allow the assessee to opt for the old scheme and, thus, the Form 10(ICE) is, thus, deemed to be withdrawn. He further relied upon the judgments passed by the Hon'ble Mumbai Bench where it has been observed that further requirement of filing Form 10IE is directory in nature and not mandatory and it is sufficient compliance if the said Form is filed/available before the Assessing Officer at the time of assessment. He relied upon the decision of ITAT, Mumbai in the case of DCIT vs. Oceanic Trade Minerals Pvt. Ltd. vide ITA No.5255/Mum/2024. He has further relied upon the judgment of the Hon'ble Apex Court in the case of Price Waterhouse Coopers Pvt. Ld. Vs. CIT, Kolkata where it has been held that 'if the assessee had committed inadvertent and bonafide error and had not intended to or attempted to conceal its

income or furnish inaccurate particulars then there will be no addition or penalty on such case.

3. The Ld. DR on the other hand relied upon the orders passed by the authorities below.

4. Having heard the Ld. Counsels appearing for the parties and having regard to the facts of the circumstances of the matter, it appears that the assessee in her tax audit report dated 30.09.2022 declined to opt the new tax regime and, thus, filing Form 10IE is found to be inadvertent error on the part of the assessee or her staff for which no addition is called for particularly when the assessee does not have any option to rectify such an error already committed. Thus, having regard to this particular aspect of the matter, the order passed by the CPC further confirmed by the CIT(A), Mumbai is liable to be quashed. The CPC is directed to consider the return filed by the assessee under the old scheme and to assess her income. Accordingly, the appeal filed by the assessee is allowed.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 21/3/2025.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 21/03/2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI