

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 1251/SRT/2024
(Assessment Year: 2021-22)

Shilpi Sureshbhai Bapna, 66-67, Chanakyapuri Society, Jamna Nagar, Bhatarroad, Surat, Gujarat-395001	Vs.	Asst. Director of Income Tax, CPC, Bengaluru
[PAN No.AXXPB3477G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Kishore Gheewala, C.A.
Respondent by:	Ms. Jayshree Thakur, Sr. DR
Date of Hearing	24.04.2025
Date of Pronouncement	28.04.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short "Ld. CIT(A)"), ADDL/JCIT(A)-5, Mumbai vide order dated 03.11.2023 passed for A.Y. 2021-22.

2. The assessee has raised the following grounds of appeal:

- "1. The learned CIT(A) has grossly erred in not allowing benefit of new tax Regime u/s 115BAC, in spite of all taxes having been paid on 15.03.2022 which is in time & filing of Return of Income on 16/03/2022 being within suo moto extension order by Hon'ble Supreme Court.
2. The denial of benefit of se. 115BAC by CPC by way of adjustment u/s 143(1) & that too without affording any opportunity being heard is unjustified, illegal & utter vires.
3. Without prejudice to above, if New Regime u/s 115BAC not allowed, appellant ought to have been allowed the deduction of Rs. 1,52,260/- as under, under old scheme.

Deductions	Amount
Deduction u/s 80C :-	1,50,000/-

LIP	50,000/-	
Tax Saving M.F.	1,10,000/-	
	1,60,000/-	
Deduction u/s 80TTA :- Int. on Saving A/C		2,260/-
Total		1,52,260/-

4. *The appellant Craves leave to add, to alter or amend present grounds of Appeal.”*

3. The brief facts of the case are that the assessee filed return of income for the impugned assessment year and opted for being taxed under the new tax regime under section 115BAC of the Act. While processing the return of income, CPC processed the return of income filed by the assessee under old tax regime since the due date of filing of return of income was 15.03.2022, whereas the assessee had filed the return of income on 16.03.2022. Since the assessee had income from business and profession, the assessee was required to file Form 10-IE alongwith return of income which was not filed by the assessee within the due stipulated time as well. Since the return of income as well as Form 10-IE both were filed beyond the due date prescribed under Section 139(1) of the Act, the CPC rejected the option of the assessee for opt for new tax regime and accordingly processed the return of income under the old tax regime.

4. In appeal Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

“Section 115BAC(5) provided that section 115BAC shall not apply if option is not exercised in the prescribed manner by the person on or before the due date specified under sub section (1) of section 139 for furnishing the returns. The appellant was aware of the fact that Return of income was filed beyond the due date and the Form 10IE was also not filed and therefore the provisions of section 115BAC would not be applicable in the case. Despite this the appellant chose to file it u/s 115BAC instead of the old tax regime. Therefore, the contention of the appellant lacks merit.”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the Counsel for the assessee submitted that though

the assessee had filed return of income on 16.03.2022, however, the assessee had paid self-assessment tax liability of Rs. 1,49,921/- on 15.03.2022 itself and accordingly, there was no non-compliance on part of the assessee. The Counsel for the assessee submitted that it is a well-settled law that mere delay in filing of Form No. 10-IE cannot disentitle the assessee to opt a new tax regime and this proposition has been upheld by various Tribunals across the country. The Counsel for the assessee placed reliance on several judicial precedents on this issue.

6. On going through the facts of the case we note that is a settled law that delay in filing of Form 10-IE is a procedural lapse and cannot deny the benefit of new tax regime to the assessee. In this case however, there was a minor delay in filing of return of income as well and the return was filed on 16.03.2022 as against the due filing date of 15.03.2022. Further, there was also delay in filing of Form 10-IE as well which was filed beyond the due stipulated time. In the case of **Jagdish Soni vs. ITO in ITA No. 30/JP/2024**, the assessee had filed return of income belatedly and opted for the new tax regime under Section 115BAC of the Act. However, the assessee was assessed under the old tax regime due to non-filing of Form 10-IE and the claim of deduction under Section 80C, 80TTA and standard deduction were denied to the assessee. The ITAT held that **since new tax regime option was invalid due to late filing of return of income**, the return of income must be re-assessed under the old tax regime. Accordingly, the Assessing Officer was directed to provide an opportunity to substantiate the claims for taxes with evidence. The matter was accordingly, remanded for fresh adjudication. Before us, the Counsel for the assessee submitted that if the new tax regime

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under Section 115BAC is not allowed, then in the alternative, the assessee may be allowed deduction of Rs. 1,52,260/- under the old tax regime. We concur with the submission of the Counsel for the assessee and accordingly, restore the matter to the file of Assessing Officer to carry out necessary verification with regards to claim of deduction under Section 80C and 80TTA of the Act under the old tax regime and direct the Assessing Officer to grant relief to the assessee, in accordance with law. We note that in this case admittedly there is a delay in filing of return of income, beyond the due stipulated date and also delay in filing of Form 10-IE as well. Accordingly, in the interest of justice, the matter is restored to the file of Assessing Officer to allow deduction under Section 80C and 80TTA of the Act under the old tax regime, in accordance with law, which were denied to the assessee despite having been assessed under old tax regime.

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

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 28/04/2025

Sd/-

**(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/04/2025

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

Sd/-

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat