आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ,रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य **एवं** श्रीअरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 384/RPR/2025

(**निर्धारण वर्ष** Assessment Year: 2023-24)

Virat Solvent Private Limited, Ward No. 3, Near Panch Mandir, Bhaiyathan Road, Surajpur-497229, C.G.	v s	Deputy Commissioner of Income Tax-1(1), Aayakar Bhawan, Bilaspur, C.G.
PAN: AAHCV3212B		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से / Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	25.06.2025
घोषणा की तारीख / Date of Pronouncement	:	30.06.2025

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeal), ADDL/JCIT(A), Panaji, [in short "Ld. CIT(A)"], passed on 10.03.2025, u/s 250 of the Income Tax Act, 1961 (in short "the Act") for the Assessment Year 2023-24, which in turn arises out of the intimation passed u/s 143(1) by the Centralized Processing Centre (hereinafter referred to as "CPC"), Bengaluru, (in short "Ld. AR"), dated 22.12.2023.

2. The grounds of appeal raised by the assessee are as under:

1. *Ld. CIT(A) erred in dismissing the appeal without adjudicating the merits of the case.*

2. *Intimation / order passed by CPC u/s 143(1) is illegal inasmuch as re-computation of tax liability is not permissible u/s 143(1). Action of CPC is beyond jurisdiction.*

3. *Without prejudice to ground no. 2, CPC erred in denying tax rate as per sec. 115BAB opted by the appellant and in imposing tax as per normal provisions.*

4. *The appellant reserves the right to amend, modify or add any of the ground/s of appeal.*

3. Briefly stated, the assessee is a Private Limited Company engaged in manufacturing activity (nature of activity not specified by the assessee), who had filed its return of income under Form ITR-6 for AY 2023-24 on 28.10.2023. It is claimed by the assessee to have filed Form 10ID on 14.05.2023 after commencement of such manufacturing activities, accordingly, entitle to lower rate of tax u/s 115BAB. However, in intimation u/s 143(1) of the Act issued by CPC dated 22.12.2023, such claim of assessee has been denied and a demand of Rs. 31,50,280/- was raised, against NIL tax payable as computed and declared by the assessee in its ITR.

4. Aggrieved with the aforesaid tax demand assessee preferred an appeal before the first appellate authority, however the appeal of assessee has

been dismissed *in limine* on ex-parte basis by the Ld. CIT(A) on account of non-prosecution by the assessee.

5. Before us Ld. AR representing the assessee submitted that adjustment in tax liability by CPC is not permitted under the provisions of 143(1) of the Act. It is argued that the CPC is only allowed to make adjustment *qua* the Income and Loss and have no authority to make changes in the amount of Tax liability. Ld. AR also alleged against the revenue that the intimation u/s 143(1) has been passed, raising a demand, making unwarranted adjustments by imposing the normal rate of tax instead of special rate opted by the assessee as per provisions of section 115BAB, without putting the assessee to notice u/s 143(1) of the act, such action of the revenue was arbitrary and unsustainable being the same is without authority of law. It is contented by Ld. AR that Ld. CIT(A) had not adjudicated the ground of appeal raised by the assessee on merits, therefore, the order of Ld. CIT(A) is not sustainable.

6. Per contra Ld. Sr. DR representing the revenue vehemently supported the order of Ld. CIT(A) and submitted that as per provisions of section 143(1) clause (a)(ii) the CPC is entitled to make necessary adjustment about an incorrect claim, if such incorrect claim is apparent from any information in the return. For the sake of inference, the provision of Section 143(1)(a)(ii) of the Act, has been extracted as under:

***143**. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) ……..

(ii) ***an incorrect claim, if such incorrect claim is apparent from any information in the return****;*

(iia) to (vi) ……..

7. Referring to the aforesaid provisions, Ld. Sr. DR further submitted that the CPC is empowered by the statute to make necessary amendments in the return filed by the assessee, while processing it u/s 143(1) of the Act, regarding any incorrect claim of the assessee, may it pertains to income or loss or about the taxes calculated by the assessee. With such assertions, it was the request that the order passed by Ld. CIT(A) be upheld.

8. However, when the Ld. Sr. DR is confronted with the fact that the order of Ld. CIT(A) was an *ex-parte* order, without considering the merits of the facts or speaking on the merits, why the same should not be restored back to the file of Ld. CIT(A) for fresh adjudication, she did not object to the same.

9. After having heard the rival parties, considering the aforesaid facts and circumstances, we observe that the arguments of Ld. Sr. DR regarding CPC's authority to make adjustment in the Tax liability on account of an incorrect claim by the assessee has substance and, therefore, the contention raised by the Ld. AR that the CPC is not entitled to make any adjustment in the tax liability of the assessee is unacceptable. On this aspect, we are of the considered view that the CPC is permitted, rather obliged to make necessary adjustments *qua* the income / loss declared by the assessee and further needs to make necessary amendments if there are any incorrect claims by the assessee which is apparent from any information in the return filed, as per mandate of Section 143(1) of the Act (referred to supra).

10. Further, in present case, admittedly, the order of Ld. CIT(A) is an *ex-parte* order and passed *in limine* without having any discussion or deliberation on the merits of the facts, therefore, the matter needs to be restored back to the file of Ld. CIT(A) for fresh adjudication, reliance placed on the judgment of Hon'ble Mumbai in the case of **CIT vs. Premkumar Arjundas Luthra (HUF) reported in [2016] 240 taxman 133**, the relevant observations wherein are produced hereunder for the sake of reliance and applicability in the present case:

"……It is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. ***Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support****. Section 251(l)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it dear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus, once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact, the CIT(A) is obliged to dispose of the appeal on merits. In fact, with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply dear from the Section 251(l)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to at the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him.* ***Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."***

(*Emphasis supplied…)*

11. Respectfully following the ratio of law emanating from the aforesaid order of Hon'ble Mumbai High Court, we are of the considered opinion to restore the present matter back to the file of Ld. CIT(A) for fresh adjudication.

12. Adverting to the other legal contention raised by the Ld. AR, that the assessee had been deprived off the reasonable opportunities mandatory under the provisos to Section 143(1)(a) to respond regarding the proposed adjustments by the CPC, which in present case were not intimated, while processing the return and making certain adjustments by the CPC u/s 143(1). Since we have decided to restore the matter back to the file of Ld. CIT(A), the assessee is permitted to raise such contention before the First Appellate Authority, so that necessary and relevant information can be verified from the assessment records and the issue can be decided accordingly.

13. In backdrop of aforesaid observations, facts and circumstances, the matter is restored back to the file of Ld. CIT(A), to which both the parties have fairly conceded.

14. Before parting with, regarding allowability of claim of low tax rate under the provisions of section 115BAB in the present case, it would be

pertinent to mention that the identical issue regarding has been dealt with and decided by the coordinate bench of ITAT, Raipur in the case of **Vivran Foods Pvt. Ltd. vs. The Income Tax Officer, Ward-1(2), Raipur** in **ITA No. 364/RPR/2025 dated 25.06.2025,** wherein the relevant findings for the sake of adherence by the First Appellate Authority, while deciding the appeal of assessee are extracted as under:

5. *We are of the considered view as per mandate of the provision particularly clause (7) which reads as follows:*

> *"(7) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:"*

It is crystal clear that in order to take benefit of the said provision, the assessee needs to file Form 10ID on or before the due date specified as per sub section (1) of Section 139 of the Act for furnishing the return of income for the first assessment year commencing on or after 1st day of April, 2020.

That it has been brought on record that as per the ITBA portal, the assessee filed first income tax return for A.Y.2021-22 on 24.02.2022 vide acknowledgement No.252919040240222. However, Form 10ID was only filed by the assessee on 21.09.2024 electronically which was after due date from the first return of income filed. Since the mandate of the provision is not complied with, therefore, the CPC/A.O had rightly denied the benefit of concessional tax rate to the assessee as per Section 115BAB of the Act. The quasi-judicial authority has to follow the

mandate of the statute in its strictest form and provide always literal interpretation of the provision. The quasi-judicial authorities while interpreting fiscal statutes cannot interpret the provision in a way other than the way it is provided in the statute itself. Meaning thereby the intention of the legislature regarding the fiscal statute has to be applied in totality in black and white i.e. word to word as it is written and intended in the said statute. Accordingly, we find no infirmity with the order of the Ld. CIT(Appeals)/NFAC which is upheld.

6. As per the above terms grounds of appeal raised by the assessee are dismissed.

15. The matter, therefore, is restored back to the file of Ld. CIT(A) for fresh adjudication, in terms of our aforesaid observations, within a period of 3 months from the receipt of this order.

16. Needless to say, the assessee, shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings and as conceded by Ld. AR before us, is directed to cooperate and assist proactively in the set aside proceedings, failing which the Ld. CIT(A) would be at liberty to decide the case in accordance with the mandate of law.

17. In result, appeal of the assessee is **partly allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 30/06/2025.

Sd/-	**Sd/-**
(PARTHA SARATHI CHAUDHURY)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

रायपुर/Raipur; दिनांक Dated 30/06/2025
Vaibhav Shrivastav

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Virat Solvent Private Limited
2. प्रत्यर्थी/ The Respondent- DCIT-1(1), Bilaspur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur