

आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई।
IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH,
MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.6469/MUM/2024
(निर्धारण वर्ष / Assessment Year: 2020-21)

Deputy Commissioner of Income Tax (Central Circle)-3(3) 404, Kautilya Bhawan, BKC, Mumbai 400051	v/s. बनाम	Excel Entertainment Pvt Ltd. Shubham 701, Orchid Pride, Convent Avenue Road, Santacruz (W), Mumbai 40054
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACE5273A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Nitesh Joshi a/w Shri Anurag Tulsian & Shri Vipul Mody
राजस्व की ओर से /Revenue by:	Shri Hemanshu Joshi, SR DR

सुनवाई की तारीख / Date of Hearing	08.07.2025
घोषणा की तारीख/Date of Pronouncement	06.08.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax, (Appeal) 51, Mumbai [CIT(A)] dated 15.10.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year 2020-21.

2. The revenue has raised the following grounds in this appeal.

"1. "On the facts and in the circumstances of the case, the Ld CIT(A) is not justified in holding that assessee is eligible to claim concessional rate of tax u/s. 115BAA of the

LT. Act, 1961 without filing of its return of income within the due date prescribed u/s. 139(1) of the Income Tax Act, 1961".

2. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in placing reliance on decision of ITAT, Mumbai in ITA No. 889/Mum/2022 in the case of Suminter India Organics Private Limited while holding that assessee is eligible to claim concessional rate of taxation u/s, 115BAA of the LT. Act, 1961 even when the assessee has not filed its return of income within the due date prescribed u/s 139(1) of the Income Tax Act, 1961."

3. Brief facts of the case are that the assessee filed return for AY 2021 on 25.03.2021 declaring income of Rs. 37,16,95,860/-. The case was selected for scrutiny and assessment was completed vide order u/s. 143(3) dated 15.03.2022 at returned income. However, tax on the assessed income was levied @30% instead of the concessional rate of 22% claimed by the assessee u/s. 115BAA of the Act. Aggrieved with the order, the assessee filed an appeal before Ld. CIT(A). Ld. CIT(A) observed that the assessee had filed requisite Form 10IC on 25.03.2021 which was treated as belated since last date of filing of return u/s. 139(1) was 15.02.2021, in view of the extensions allowed on account of the pandemic by the CBDT. Ld. CIT(A) after duly considering the submissions of the assessee as well as the provisions of section 115BAA r.w.s. the provisions of Taxation and other laws (Relaxations and Amendments of Certain Provisions Act, 2020, ("TOLA"), held that the claim of the assessee is allowable in view of the decision of the co-ordinate bench in the case of *M/s. Suminter India Organics Private Limited in ITA No.889/Mum/2022* on identical facts. Accordingly, Ld. CIT(A) held that Form 10IC has been filed within the extended time limit (up to 31.3-2.21) under TOLA for filing of forms,

report etc and allowed the assessee's appeal. He, therefore, directed the AO to recompute the tax liability at the concessional tax rate.

4. Aggrieved with the order of Ld. CIT(A), the department has preferred an appeal before the ITAT. The main argument of the revenue is that the requisite Form No.10IC was filed on 25.03.2021 which was beyond the due date of filing of the return for the relevant year i.e. 15.02.2021 and, therefore, the assessee was not entitled to claim the concessional rate of tax u/s. 115BAA of the Act in view of specific requirement under subsection (5) of filing of form on or before the due date for furnishing of return u/s. 139(1) of the Act.

5. We have heard the rival submissions. Admittedly, the assessee had filed Form No.10IC after the due date of the filing of return, but before 31.03.2021 which was the extended date for filing of other forms, reports etc. as per the TOLA. This issue stands squarely covered by the decision of the co-ordinate bench in the case of *Suminter India Organics Pvt Ltd (supra)*. The relevant portion of the order is reproduced below:

"6. Learned senior counsel's plea is indeed well taken. The scheme of section 115BAA, as visualized under the Income-tax Act, is that the option for availing of the concessional tax rate regime must be exercised within the time permissible for the filing of the income tax return under section 139(1); section 115 BAA unambiguously provides so when it states that "nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner un or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the fur day of April 2020 and such option once exercised shall apply to subsequent assessment years" This scheme, however, was diluted under the scheme of TOLA when the relaxation, on account of the covid pandemic, when different treatment was accorded to "furnishing of return under section 139 (see clause i of third proviso to section 3(1) of TOLA] and "filing of any appeal, reply, application or furnishing of any report document, return or statement or such other record, by whatever name called, under the provisions of the specified Act (vee section 3(1)(8) read with section

2013(5)(o) of TOLA), Section 2(1)(5)(4) provides that the Income-tax Act, 1961 is one of the "specified Acts" under the TOLA, and section 3 (1)(b) of TOLA, inter alia, provides as follows:

Relaxation of certain provisions of specified Act.

3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act,

and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

7. A plain reading of the above statutory provision shows that the time limit for filing of filing between 20th March 2020 and 31 December 2020 in respect of "filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act (i.e, the Income-tax Act, 1961)" stood extended to a date not earlier than 31st March 2021. There is no dispute that the original date of filing of income tax return fell within this period, and in terms of the provisions of rule 21AE, the option was to be exercised in the prescribed manner, i.e. by filing form 10-IC. The requirement of section 115BA(5) admittedly was that it is within this time limit that the option must be exercised. However, this extension of the time limit, in view of the relaxation provisions of section 3(1)(b) of the TOLA, stood extended to 31st March 2021. There is, however, an exception carved out to the aforesaid relaxation by clause (1) of the third proviso to section 3(1), which provides as follows:

Provided also that where the specified Act is the Income-tax Act, 1961 (43 of 1961) and the compliance relates to-

(1) furnishing of return under section 139 thereof, for the assessment year commencing on the

(a) 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted;

(b) 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of November, 2020" had been substituted;

8. A proviso, as is the well settled position, carves out an exception from the scope of the main section. The normal function of a proviso is to qualify something out of an

enactment that, but for the proviso, would be within the purview of the enactment. As stated by Justice Lush, in the classic case of *Mullins v. Treasurer of Surrey* [1880] 5 QBD 70, "when one finds proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included subject matter of the proviso" [See *Principles of Statutory Interpretation* by Justice GP Singh- 14th Edition & Page 215] Quite clearly, therefore, when the time limit for filing the income tax return under section 139 is specifically carved out of the scope of section 3(1), it is clear that the other time limits under the Income-tax Act, 1961, for the statutory filing obligations, were indeed covered by section 3(1) to which such an exception was carved out. There is thus clear segregation of time limits between what is covered by the specific exception set out in the proviso and what is not covered by the exception set out in the related proviso. In respect of what is not covered by the exception set out in the proviso, the provisions of section 3(1)(b) will apply, extending the relaxation to 31 March 2021 uniformly. The filing of the income tax return and the exercise of an option for the concessional regime of taxation under section 115BAA are two distinct obligations. When the overriding provisions of TOLA provide separate relaxations for the purpose of the legal obligations with respect to the filing of return vis-à-vis filing of other documents, to that extent, specific relaxation provisions under the TOLA must make way for rather general provisions with respect to various statutory obligations. If a relaxation provision, as the TOLA is, visualizes separate parameters of relaxation for the income tax returns vis-à-vis other documents, it cannot be open to the revenue to negate the same on the ground that the scheme of the Income-tax Act, 1961 treats the filing obligations in respect of the same at par. When the economic activities worldwide were seriously disrupted on account of the Covid pandemic, if more relaxations were required to be given, in the wisdom of the legislature, in respect of filing documents other than income tax returns, such statutory relaxations could not be declined on the ground that this differentiation is alien to the scheme of the Income-tax Act, 1961. The general scheme of timeframe prescribed under the Income-tax Act, 1961 has to make way for the specific relaxation provisions under the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act, 2020. The time permitted for filing of form 10-IC, by virtue of section 3(1)(b) of TOLA, must be treated as 31st March 2021, even as the time permitted for filing of the income tax return under section, in the light of third proviso to section 3(1) and read with subsequent notification, was only up to 15th February 2021. The plea of the assessee thus is indeed correct.

9. In any event, the short question before us relates to the interpretation of provisions with respect to relaxations to mitigate the hardships caused during the Covid pandemic period, by the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act, 2020, and it is our considered view that such relaxation provisions must be interpreted in a liberal and non-pedantic manner, and so as to give full effect to the relaxations permitted by the legislature. Viewed thus also, the proposition canvassed by the assessee is a reasonably possible view of the matter, and it merits acceptance. In view of all these discussions, and bearing in mind the entirety of the case, we uphold the plea of the assessee, and direct the Assessing Officer to accept the exercise of the option by the assessee for the concessional taxation regime under section 115BAA. The assessee must therefore get the relief, as admissible, on the application of the scheme of taxation under section 115BAA. Ordered, accordingly."

6. As the facts in the present case are identical, respectfully following the decision of the co-ordinate bench, we hold that the assessee is entitled to claim concessional rate of tax u/s. 115BAA of the Act having filed the Form No.10IC within the extended time allowed under the provisions of TOLA. We, therefore, find no infirmity in the order of Ld. CIT(A) which is, accordingly, upheld.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 06.08.2025.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 06.08.2025

दिव्या रमेश नांदगावकर/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/
ITAT, Bench, Mumbai.**