

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
(By Virtual Mode)**

**BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.184/JAB/2024
A.Y. 2023-24

Jabalpur Entertainment Complexes Private Limited, 36/4, South Avenue Mall, Adjoining Perfect Pottery, Narmada Road, Madhya Pradesh	vs.	DCIT, CPC, Bengaluru & DCIT, Circle-2(1), Jabalpur
PAN:AABCJ6495J		
(Appellant)		(Respondent)

Assessee by:	Sh. Apoorva Rajesh Mehta, C.A.
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	19.08.2025
Date of pronouncement:	28.08.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.

This is an appeal filed by the assessee against the orders of the Id. JCIT(A), Patna, passed under section 250 of the Income Tax Act, 1961 on 04.10.2024, dismissing the appeal of the assessee against the intimation under section 143(1), issued by the DCIT, CPC, Bengaluru, wherein the assessee was denied the benefit of taxation under section 115BAA of the Income Tax Act, 1961. The grounds of appeal are as under: -

"1. On the facts and in the circumstances of the case and in law, the Ld. Joint Commissioner of Income Tax (Appeals), Patna ('the Ld. Jt. CIT(A)') has erred in confirming the action of the Ld. Deputy Commissioner of Income Tax, Centralized Processing Centre, Bengaluru ('the Ld. AO, CPC') by not allowing the benefit of taxation u/s. 115BAA of the Income Tax Act, 1961 ('the Act'), which is against the principles of natural justice.

2. On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT(A) has erred in upholding the Intimation u/s. 143(1) of the Act by not appreciating that the appellant company has duly mentioned Section 115BAA of the Act in the ITR Form filed for the year under consideration and not filing Form No. 10-IC is merely a technical lapse and benefit of taxation u/s. 115BAA of the Act cannot be

denied merely because of procedural error when other conditions are fulfilled by the appellant company.

3. On the facts and the in the circumstances of the case and in law, the Ld. Jt. CIT(A) has erred in not appreciating that the appellant company had inadvertently filed Form No. 10-IB instead of Form No. 10-IC, which is merely a technical error /mistake and benefit of taxation u/s. 115BAA of the Act, as claimed in the ITR, cannot be denied merely on technical grounds. Thus, the Intimation u/s. 143(1) of the Act is liable to be quashed and the claim of rates of taxation u/s. 115BAA of the appellant company may kindly be upheld.

4. On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT(A) has erred in upholding the action of the Ld. AO, CPC without appreciating that the appellant company had inadvertently filed Form No. 10-IB without appreciating that the appellant company was not even eligible to file Form No. 10-IB and as such, the same is merely a clerical mistake of filing of Form No. 10-IB instead of Form No. 10-IC and benefit of taxation u/s. 115BAA of the Act may kindly not be disallowed merely due to clerical mistake without any mala fide intention of the appellant company.

5. On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT(A) and the Ld. AO, CPC have erred in not appreciating that benefit of beneficial provisions enacted by the statute should not be denied merely by citing procedural lapses especially when other eligibility conditions have been fulfilled and thus, the claim of rates of taxation u/s. 115BAA of the Act, as claimed by the appellant company in its return of income, may kindly be upheld and the demand raised by the Ld. AO, CPC may kindly be deleted.

6. On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT(A) has erred in not providing proper opportunity of being heard, which is against the provisions of the Act and principles of natural justice. Thus, the Order u/s 250 of the Act passed by the Ld. Jt. CIT(A) is liable to be set aside.”

2. The facts of the case are, that the assessee filed its return of income for the A.Y. 2023-24 on 26.10.2023 declaring total income of Rs.3,46,60,130/-. The same was processed under section 143(1) on 27.05.2024 at the same returned income, but the refund of Rs.57,080/- was denied and instead a demand of Rs.33,55,310/- was determined, due to non-grant of benefit of new regime taxation opted by the assessee under section 115BAA of the Income Tax Act, 1961. The ld. JCIT(A) records that despite being given multiple opportunities through hearing notices dated 8.07.2024, 23.07.2024, 27.08.2024 and 4.09.2024, the assessee did not upload any written submission. However, along with the appeal filing documents, the assessee uploaded a written submission that was taken into account by him before finalizing the said order. The assessee had submitted, that the CPC had erred in passing the

intimation order under section 143(1) by not allowing the benefit of section 115BAA, solely on the ground that Form 10-IB was filed instead of Form 10-IC. It was submitted that the provisions of section 143(1) were quite clear in their requirement, that prior to the passing of an intimation order, the ld. AO must provide the tax payer with a reasonable opportunity to rebut the proposed adjustment. This had not been provided in the case of the assessee, which was against the principles of natural justice. Furthermore, as per the provisions of section 115BAA, domestic companies can opt to pay tax at the concessional rate of 22% plus applicable surcharge and cess, provided certain conditions are met, one of which is the filing of Form 10-IC. In the case of the assessee, due to an inadvertent error, Form 10-IB was filed instead of Form 10-IC and accordingly, the intimation under section 143(1) was issued, denying the assessee the benefit of new regime taxation which had been opted by the assessee under section 115BAA of the Act. In order to rectify above mistake, the assessee tried filing of Form 10-IC electronically but was unable to do so, as the e-filing portal did not allow it to file the said Form for the A.Y. 2023-24. The assessee submitted that various courts had held that the assessee could not be deprived of the benefit of section 115 BAA merely on account of non-filing / late filing of Form 10-IC. It was a settled principle that procedural lapses should not override substantive compliance with statutory provisions. The filing of Form 10-IC was a procedural matter and the substantive right of the assessee to avail the lower tax rate could not be denied on such technical grounds. Reference was invited to the judgment of the ITAT Ahmedabad Bench in the case of Aprameya Engineering vs. ITO, in ITA No. 456/AHD/2024 wherein the Hon'ble ITAT had allowed the appeal in favour of the assessee and granted it the benefit under section 115BAA, where the assessee did not file Form 10-IC within the due date, holding that the timing of filing of the form was directory. The ITAT had held that even if the claim was made during the assessment proceedings, such a claim was to be allowed, especially because there was no dispute regarding the assessee's eligibility for the lower tax rate. It was submitted that the assessee had duly complied with all other conditions mentioned in section 115BAA and hence was

eligible for claiming the benefit of concessional tax rate. Furthermore, the intent of the assessee for opting for the new regime taxation could be verified from the extract of income tax return wherein under 'PART-A' under filing status, the assessee had opted for the new regime taxation benefit under section 115BAA. It was submitted that legal precedents supported a liberal construction of provisions that grant tax incentives emphasizing substance over form and courts had consistently ruled in favour of the tax payer where substantive requirements for availing benefit were met despite procedural lapses. Accordingly, it was prayed that the demand raised in intimation under section 143(1) dated 27.05.2024 be annulled, the manually filed Form 10-IC be accepted and CPC / AO may be directed to update their records to reflect that the assessee was eligible for 115BAA. However, the Id. JCIT(A) quoted from the provisions of the Income Tax Act and held that it was quite clear from the above provisions, that to avail the benefits of section 115BAA of the Act, the option had to be exercised by the person in the prescribed manner, on or before the due date as 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 1st day of April, 2020. He pointed out that the prescribed manner for exercising the option is filling of Form No. 10-IC. In the instant case, Form 10-IC had not been filled by the assessee. Thus, the assessee had not fulfilled the basic condition for availing the benefit. The Id. JCIT(A) quoted from the decision of the Hon'ble Supreme Court in the case of PCIT-III, Bengaluru vs. Wipro Limited in C.A. No.1449 of 2022, wherein the Hon'ble Supreme Court vide its order dated 11.07.2024 had held that the High Court had committed a grave error in observing that the requirement of furnishing a declaration under section 10B(8) of the Act was mandatory, but the time limit within the declaration could be filed was not mandatory but was directory. The Court had held that this was erroneous because it was contrary to the unambiguous language contained in the section. Accordingly, the Hon'ble Supreme Court had held that the twin condition of furnishing a declaration before the Id. AO and before the due date of filing the original return of income under section 139(1) are to be satisfied and both are

mandatorily to be complied with. Relying upon the same, the Id. JCIT(A) held that the provisions for providing an exemption, concession or exception, as the case may be, had to be construed strictly and if the exemption was available on complying with certain conditions, the conditions must be complied with. The Id. JCIT(A) also quoted from the decision of the Hon'ble Supreme Court in the case of State of Jharkhand vs. Ambe Cements (2005) 1 SCC 368, wherein the Court had held that if the statute prescribes that a particular act is to be done in a particular manner, then it should be done in the manner prescribed and not in any other way therefore, the Id. JCIT(A) held that in view of the decisions of the Hon'ble Supreme Court, the assessee was not entitled to avail the concessional rate of tax as laid down in section 115 BAA.

3. The assessee is aggrieved with this decision of the Id. JCIT(A) and has accordingly come before us in appeal. Sh. Apoorva Rajesh Metha, C.A. (hereinafter referred to as the Id. AR) appearing before us argued that the Id. JCIT(A) had passed an *ex parte* order without giving due opportunity to the assessee of being heard. It was submitted that the filing of Form 10-IB instead of Form 10-IC was a mere technical lapse and the benefit of taxation under section 115BAA of the Act could not be denied merely because of procedural error, when all other conditions were fulfilled by the assessee company. It was further submitted that the Id. AO of the CPC had violated the provisions of section 143(1), by making the adjustment without serving a notice upon the assessee as laid down in the proviso to section 143(1)(a). It was, therefore, submitted, that the assessee had been deprived of its right of making a response to the proposed adjustment and had such a notice been issued to the assessee, the assessee could have corrected the anomaly by uploading Form 10-IC in response to the said notice of proposed adjustment. The Id. AR further submitted that various courts had held that the failure to file a declaration before the due date of filing of the return, could not by itself deny the assessee the right to be assessed under the concessional tax regime of section 115BAA, provided the same was filed during the course of assessment. In the instant case, the assessee

had reflected its option for opting for this concessional regime in its return, which was filed before the due dates and it was eligible for the same as per the provisions of the Act. Accordingly, the ld. CIT(A) was not justified in rejecting the claim of the assessee.

4. On the other hand, Sh. Alok Bhura, Sr. DR (hereinafter referred to as the ld. DR) pointed out that the ld. JCIT(A) had passed a speaking order and pointed out that the assessee was not eligible for the concessional rate of tax under section 115BAA, because it had not fulfilled the pre-condition of filing Form 10-IC before the due date of the return. Therefore, the ld. JCIT(A), by relying upon the orders of the Hon'ble Supreme Court which confirmed the principles that if conditions for availing exemption were laid down in the section, then those conditions had to be fulfilled for claiming the exemption and that if something was prescribed to be done in a particular manner, then it ought to be done in that particular manner to avail the benefits of the scheme, submitted that there was no occasion to accept the appeal of the assessee and he prayed that the disallowance may be confirmed.

5. We have duly considered the facts and circumstances of the case. It is seen that in the instant case, the assessee had inadvertently filed Form 10-IB before the due date of filing of the return, which is the prescribed form for availing the concessional rate of tax for manufacturing companies under section 115 BA, whereas it ought to have filed Form 10-IC which was the prescribed form for availing the concessional rate of tax under section 115BAA. However, in the income tax return that had been filed, the assessee had claimed the concessional rate of tax under section 115BAA. Thus, there was a contradiction between the form and the return, in the option exercised. At this point of time, had the assessee been given notice of adjustment, as per the proviso to section 143(1)(a), it would have realized its mistake and corrected the same. However, since no such notice was issued to the assessee, the assessee did not have opportunity to rectify this error. In its submissions before the ld. JCIT(A), the assessee has cited the decision of the Hon'ble Supreme Court in the case of CIT vs. Straw Board Manufacturing Company Limited

(1989) 177 ITR 431 (SC), wherein the Hon'ble Supreme Court held that the law providing for concession for tax purposes, to encourage industrial activity, should be liberally construed. The question before the Court in that case was whether Straw Board could be said to fall within the expression, 'paper and pulp' mentioned in the schedule relevant to the respective assessment years. The Court held that since the word, 'paper and pulp' was mentioned in the schedule, the intention was to refer to the paper and pulp industry and since Straw Board industry could be described as forming part of the paper and pulp, it was entitled to the benefit. In the case of Bajaj Tempo vs. CIT (1992) 196 ITR 188 (SC), the Hon'ble Supreme Court held, in the context of section 15C of the Income Tax Act, 1922, that the section was a provision directed towards industrialization, by permitting assessee setting up a new undertaking to claim a benefit on the capital employed, but the legislature had taken care to restrict such benefit, only to those undertakings which were new in form and substance, by imposing certain restrictions. The Court held that since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it has also to be construed so as to advance the objective of the section and not to frustrate it, but by construing the restriction clauses illiberally, the purpose behind the enactment of the section and the objective that it sought to achieve and the mischief that it intended to control, would be lost sight off.

6. We also observed that the CBDT has itself vide its Circular No.19/2023 dated 1.11.2023 directed that the delay of filing Form 10-IC as per Rule 21 AE for the assessment year 2021-22 was to be condoned in cases where the following conditions were satisfied.

- i. The return of income for the relevant year had been filed on or before the due date specified under section 139(1) of the Act.
- ii. The assessee company had opted for taxation under section 115BAA of the Act in Item (E) 'filing status' in PART-A-GEN of the form of return of income ITR-6 and

iii. Form 10-IC is filled electronically on or before 31.01.2024 or three months from the end of the month in which this Circular is issued whichever is later.

Thus, we observe that it has both been held by the Courts that procedural provisions are not to be observed so strictly so as to defeat the intention of the section itself and that the CBDT has, in the past, taken a broader view in allowing the concessional rate of tax to assessee's who fulfil the other conditions necessary for claiming the concessional rate of tax even if the Form 10-IC could not be filed on time. We also observe that the judgment in PCIT Bengaluru III vs Wipro Ltd (Supra) that has been relied upon by the assessee, would not fit with the facts of the assessee's case as in this case the assessee had filed the option to avail concessional rate of tax before the due date of return, albeit in the incorrect format and similarly since it had followed the scheme laid down under the Act, it would not be hit by the judgment in the case of State of Jharkhand vs Ambay Cements (supra). Therefore, in keeping with the observations of the Hon'ble Supreme Court in the case of CIT vs. Straw Board Manufacturing Company Limited (supra) and CIT vs Bajaj Tempo Ltd (supra) and the past actions of the Board in condoning delays in previous years, we hold that in a situation where the assessee had clearly indicated its intent to avail a concessional rate, the claim under section 115BAA ought not to have been disallowed to it only on account of a mistake in the format in which the option had been exercised, if it was otherwise eligible. We also note that the assessee has also taken the alternative plea before the Id. CIT(A), that even otherwise the CPC was in error in applying the normal rate of tax at 30% instead of 25%, even though the assessee satisfied the conditions of being a domestic company having a turnover of less than 400 Crores and we observe that this ground of appeal has not been decided by the Id. CIT(A). Therefore, in the interest of justice, we deem it fit to restore this matter back to the file of the Id. CIT(A), so that the Id. CIT(A) may examine the eligibility of the assessee for the concessional rate of tax under section 115 BAA in terms of the section, the earlier cited CBDT Circular No.19/2023 and the alternative claim for taxation at the reduced rate of 25%, in view of the fact that

the assessee was a domestic company having a turnover of less than 400 Crores. As the matter has been restored to the file of the ld. CIT(A), the appeal of the assessee is held to be allowed for statistical purposes.

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

Order pronounced on 28.08.2025 in the open Court.

Sd/-

[KUL BHARAT]
VICE PRESIDENT

DATED: 28/08/2025

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

By order
Sr. P.S.