

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1665/Mum/2025
(Assessment Year: 2023-24)

Vashishtha Luxury Fashion Limited Unit No. 307-308-309, Sun Industrial Estate, Summill Compound, Lower Parel – 400013.	Vs.	Deputy Director of Income Tax/ITO Ward 8(3)(1), Mumbai
PAN/GIR No. AAICV9666Q		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Manish Agarwal(virtually appeared)
Respondent by	:	Shri Annavaram Kosuri, Sr. DR

Date of Hearing	:	17.10.2025
Date of Pronouncement	:	12.01.2026

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ADDL/JCIT (A)-2 Chandigarh ('Id. CIT(A)' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2023-24.

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

“1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in dismissing the appeal filed by the Appellant and thereby upholding the levy of tax and surcharge at 25% and 12%, respectively, instead of 22% and 10%, respectively, as prescribed under Section 115BAA of the Act.

1.1 On the facts and in the circumstances of the case and in law, The CIT(A) failed to appreciate that the Appellant had fulfilled all requisite conditions under the law



for AY 2023-24 and, therefore, ought to have been granted the option under Section 115BAA of the Act.

1.2 Whether opportunity of heard was given by CIT(A)?

1.3 On the facts and in the circumstances of the case and in law, The CIT(A) erred in law and on facts by holding that Form 10-IC was filed beyond the prescribed due date for AY 2023-24, despite the fact that it was filed on 31 October 2023, well within the prescribed due date of 31 October 2023.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred by relying on a circular issued by the Central Board of Direct Taxes ("CBDT") under Section 119(2)(b) regarding the condonation of delay in filing Form 10-IC (F. No. 173/32/2022-ITA-I) dated 18 November 2024, in the present case.

2.1 On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that the aforesaid circular applies only to cases involving a delay in filing Form 10-IC.

2.2 On the facts and in the circumstances of the case, and in law, the CIT(A) failed to appreciate that a circular issued by the CBDT cannot supersede legislative provisions by imposing additional conditions on assessee who have already fulfilled the requirements specified under the Act.

3 On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that the Centralized Processing Centre did not issue the mandatory statutory notice under Section 143(1)(a) of the Act before processing the return of income with a higher tax and surcharge rate.

The Appellant craves leave to add, to amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

The Appellant prays that appropriate relief be granted based on the said grounds of appeal and the facts and circumstances of the case."

3. Brief facts of the case are that the assessee is a limited company engaged in the business of designing and manufacturing distinctive collection of hand embroidered apparels and had filed its return of income for the year under consideration dated 02.11.2023, declaring total income at Rs. 1,27,35,880/- and had opted to be taxed u/s. 115BAA of

the Act which provides for reduced rate of tax applicable to companies that opt for this regime. The assessee's return was processed u/s. 143(1) of the Act, where the CPC had computed the assessee's tax liability under the normal provisions, thereby raising demand of Rs. 12,03,610/- without considering the assessee's option to be taxed u/s. 115BAA of the Act, vide intimation order dated 22.12.2023 u/s. 143(1) of the Act.

4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 10.01.2025 had dismissed the appeal filed by the assessee on the ground that the assessee had filed its return of income after the due date u/s. 139(4) of the Act and the same is in violation of the CBDT circular no. F.No.173/32/2022-ITA-1, dated 18th November, 2024, which condones the delay in filing form 10IC/10ID as per Section 119(2)(b) of the Act, dated 18.11.2024.
5. The assessee is in appeal before us, challenging the order of the Id. CIT(A).
6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has filed form 10IC within the prescribed time limit specified u/s. 139(1) of the Act which is the condition prescribed as per the provision of Section 115BAA of the Act and further contended that the assessee has complied with all the conditions specified by the CBDT in its circular for application of the concessional rate of tax u/s. 115BAA of the Act. The Id. AR further argued that the assessee cannot be denied the benefit of concessional tax rate u/s.115BAA merely because the assessee had filed its returns belatedly and that the CBDT circular relied upon by the Id. CIT(A) is not applicable to the assessee as there was no delay in filing Form-10IC. The Id. AR relied on the catena of decisions in support of the assessee's contention.

7. The learned Departmental Representative ('Id. DR' for short) for the revenue on the other hand controverted the said fact and stated that the CBDT circular is only clarificatory in nature which prescribes the condition specified in form 10IC and that it is a fundamental principle that the assessee will have to file its return of income u/s. 139(1) of the Act within the due date specified unless an extension is given for the purpose of claiming any deduction. The Id. DR vehemently contended that the case laws cited by the Id. AR are distinguishable on the facts of the present case.
8. We have heard the rival submissions and perused the materials available on record. The only issue that requires adjudication is whether the assessee is entitled to avail benefit of concessional tax regime as per Section 115BAA of the Act when it had filed its return belatedly u/s. 139(4) of the Act and not u/s. 139(1) of the Act and whether or not the CBDT circular which is for condoning the delay in filing form 10IC is applicable to the assessee. The assessee has filed form 10IC for claiming the benefit of Section 115BAA within the prescribed period of time but has filed the returns belatedly u/s. 139(4) of the Act. Before getting into the issue in hand, it is pertinent to peruse the provision of the Act which is cited herein under for ease of reference:

Tax on income of certain domestic companies.

115BAA. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under [section 115BA](#) and [section 115BAB](#), the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent, if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) For the purposes of sub-section (1), the total income of the company shall be computed,—

- (i) without any deduction under the provisions of [section 10AA](#) or clause (iia) of sub-section (1) of [section 32](#) or [section 32AD](#) or [section 33AB](#) or [section 33ABA](#) or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of [section 35](#) or [section 35AD](#) or [section 35CCC](#) or [section 35CCD](#) or under any provisions of Chapter VI-A other than the provisions of [section 80JJAA](#) or [section 80M](#);
- (ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);
- (iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under [section 72A](#), if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and
- (iv) by claiming the depreciation, if any, under any provision of [section 32](#), except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of [section 80LA](#), which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under [section 80LA](#) shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation.—For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

(5) 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 returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that in case of a person, where the option exercised by it under [section 115BAB](#) has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

11. On perusal of the above provision, it is observed that section 115BAA is applicable for a domestic company where the assessee opts for being computed @ 22% subject to satisfaction of the conditions specified in sub section (2) which again prescribes that the total income of the company shall be computed without any deduction under certain provisions, without set off of any loss carried forward or depreciation from earlier assessment year, if the same pertains to any deduction referred to in clause (i), without set off of any loss or allowances for unabsorbed depreciation deemed so u/s 72A of the Act, if the same pertains to any deduction specified in clause (i) and by claiming depreciation, if any under any provisions of section 32 except clause (iia) of sub-section(1) of section 32 along with various other conditions. It is also observed that the provision prescribes that the assessee exercises the said option only when it is in the prescribed manner filed on or before the due date specified in sub section (1) of section 139 of the Act for furnishing of the return of income. Further, the third proviso to the said section states that the option exercised by the assessee becomes invalid when there is violation of condition prescribed in sub clause (ii) or (iii) or clause (a) or clause (b) of sub section (2). From this, we can infer that there has been no express bar for the assessee to claim the benefit of the provision, if there is a delay in filing the return i.e. return filed u/s 139(4) of the Act, though it says in sub section (5) that the assessee has to exercise the option in the prescribed manner on or before the due date specified under sub section (1) of section 139 of the Act.

12. The undisputed fact is that the assessee has filed form 10IC within the prescribed time limit specified in section 115BAA where the assessee shall exercise the option in the

prescribed manner on or before the due date specified u/s 139(1) of the Act for furnishing the return of income for any previous year relevant to the assessment year on or after first day of April 2020. Pertinently the Ld. CIT(A) has relied on the CBDT circular dated 18.11.2024 for condonation of delay u/s 119(2)(d), vide F.No.173/32/2022-ITA-1 which provides for delay condonation in filing from 10IC belatedly but according to the Ld. CIT(A) the assessee cannot take benefit of the same as it is applicable for A.Y. 2020-21, 2021-22 & 2022-23 and not for the impugned year under consideration which is for A.Y. 2023-24.

13. On perusal of the said CBDT circular it is observed that delay in filing form 10IC or form 10ID for exercising option u/s 115BAA of the Act r.w.r 21AE of the Rules or u/s 115BAB of the Act r.w.r 21AF of the Rules shall be condoned, if the assessee has satisfied the following conditions namely:

- (i) The return of income for the relevant assessment year has been filed on or before the due date specified u/s 139(1) of the Act.
- (ii) The assessee has opted for taxation u/s 115BAA of the Act in form 10IC/form 10ID and that the assessee was prevented by reasonable cause for filing said form before the expiry of time prescribed due to genuine hardships.

14. The Ld. CIT(A) has relied on this circular for disallowing the claim of the assessee on the ground that the said circular specifies that the return of income has to be filed on or before the due date prescribed u/s 139(1) of the Act which according to the Ld. CIT(A) is the criteria for availing the benefit of section 115BAA of the Act and only then the

condonation of delay in filing form 10IC could be granted. The Ld. CIT(A) hence, rejected the assessee's claim that the return was filed belatedly u/s 139(4) of the Act. Notably this is not a case where form 10IC was filed belatedly because the lower authorities have admitted to the fact that form 10IC was filed well within the prescribed due date. Therefore, we can safely rule out that the CBDT circular relied upon by the Ld. CIT(A) will not be applicable in assessee's case for the reason that there was no delay in filing form 10IC, where the intention of the Board was that the assessee cannot take advantage of filing the form 10IC/10ID as well as the return of income both beyond the prescribed period and has taken the liberty to seek for condoning the delay in filing form 10IC/10ID. The Board has decided to condone the delay in filing the form belatedly, provided the assessee has not faulted in filing the return of income on time. Therefore, we deem it fit to hold that the CBDT circular dated 18.11.2024 is in any way not applicable in assessee's case.

15. Having held so, the next issue for consideration is whether the assessee can claim the benefit of section 115BAA on a late return u/s 139(4) of the Act. The discussion on the provision of section 115BAA of the Act in the aforementioned paragraphs categorically states that the assessee will have to exercise the option in the prescribed manner which is by filing form 10IC on or before the due date for filing of the return which can be inferred that the provision does not mandate that the benefit will be applicable only when the assessee files the return within the due date prescribed. The assessee's claim is that not only has it exercised the option u/s 115BAA of the Act within the prescribed due date but has also filed the tax audit report well within the time, which establishes the fact that the

assessee intended to opt for the concessional tax regime u/s 115BAA of the Act. We also draw support from the judicial precedents relied upon by the Ld. AR where the co-ordinate Bench in the case of *Aprameya Engineering Ltd. Vs. ITO (2020) 164 taxmann.com 740 (Ahmedabad)* held that the assessee was entitled to a concessional tax regime even in case where both form 10IC as well as the returns were filed belatedly by observing that the assessee intended to opt for benefit u/s 115BAA of the Act which is evident from the tax audit report and further held that the delay in filing the same belatedly should not defeat the substantiate right of the assessee to avail benefit u/s 115BAA of the Act. It further held that the reliance placed on the Hon'ble Apex Court decision in the case of *Pr.CIT vs. Wipro Ltd. [2022] 140 taxmann.com 223* by the Revenue was also dealt with, wherein the Coordinate Bench had distinguished the decision of the Apex Court in *Wipro Ltd. (supra)* on the facts with the present issue in hand. It had also extensively dealt with various other decisions. The Tribunal thus, held that the delay in filing Form-10IC was a mere procedural requirement and the same should not deny the assessee's substantive right to the benefit of section 115BAA of the Act and if denied the same is against the principles of equity and justice in case where otherwise the assessee was entitled to avail concessional tax regime. As this issue in hand has already been decided by the Coordinate Bench, which had considered various decisions relied upon by both sides, we find no justification in deviating from the view which was taken in the case of *Aprameya Engineering Ltd. (supra)*, therefore by respectfully following the same, we deem it fit to allow ground No.1 and 2 raised by the assessee. Since, we have decided the issue in favor of the assessee on the merits, the



other grounds raised by the assessee requires no further adjudication and are hereby rendered academic in nature.

16. In the result, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 12.01.2026

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 12.01.2026

Kishore, Sr. PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai