

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1997/Mum./2022

(Assessment Year : 2020-21)

Bholanath Precision Engineering Pvt. Ltd.
11, Kembros Industrial Estates
Sonapur Lane, Bhandup West
Mumbai 400 078 PAN – AACCB6076G

..... Appellant

v/s

Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre, Delhi

.....Respondent

Assessee by : Shri Nihar A. Mehta
Revenue by : Shri Chetan M. Kacha

Date of Hearing – 21/11/2022	Date of Order – 23/11/2022
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ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 07/07/2022 passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*'learned CIT(A)'*], which in turn arose from the intimation dated 18/12/2021, issued under section 143(1), for the assessment year 2020-21.

2. In this appeal, the assessee has raised the following grounds:

"1. The Learned CIT(A) has erred in confirming the Intimation order u/s 143 (1)(a) of learned ITO, CPC by not allowing the rate of tax as per Sec 115BAA of 22% on grounds of non-filing of form 10-1C

2. Without prejudice to ground no 1, The Learned CIT(A) has erred in confirming the Intimation order u/s 143 (1)(a) of learned ITO, CPC by applying the normal rate of tax @ 30% whereas the correct rate is 25% since the turnover of the company in financial year 18-19 and in the current financial year is less than 400 crores."

3. The issue arising in ground No. 1, raised in the assessee's appeal, is pertaining to applying the concessional rate of tax @ 22% under section 115BAA of the Act.

4. The brief facts of the case pertaining to this issue are: The Assessee is a domestic company. For the year under consideration, the assessee filed its return of income on 15/01/2021 declaring a total income of Rs. 20,71,870. The Assessing Officer ('AO') vide intimation dated 18/12/2021 issued under section 143(1) of the Act determined the total income of the assessee at Rs. 23,01,890, inter-alia, after making certain adjustments. Further, the AO computed the tax liability of the assessee @ 30%.

5. In its appeal before the learned CIT(A), the assessee, inter-alia, challenged the computation of tax liability @ 30% instead of 22% as available under section 115BAA of the Act. However, the learned CIT(A) vide impugned order, inter-alia, dismissed the appeal filed by the assessee on this issue on the basis that the mandatory requirement as prescribed under section 115BAA (5) r/w Rule 21AE, i.e. of filing the Form 10-IC before the due date of

furnishing the return of income, has not been fulfilled by the assessee. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative (*'learned AR'*) submitted that due to the intervening Covid period the assessee could not file Form 10-IC before the due date of filing the return of income. The learned AR further submitted that subsequently due to delay, Form 10-IC was not getting submitted on the Department website for reasons beyond assessee's control. Learned AR also submitted that the assessee has approached CBDT for condonation of delay in filing Form 10-IC in order to claim the beneficial rate of tax provided under section 115BAA of the Act.

7. On the other hand, the learned Departmental Representative (*'learned DR'*) vehemently relied upon the order passed by the lower authorities.

8. We have considered the rival submissions and perused the material available on record. Section 115BAA was introduced in the Act by the Taxation Laws (Amendment) Act, 2019, with effect from 01/04/2020, for the purpose of granting benefit of reduced corporate tax rate for the domestic companies. In order to avail the benefit, such companies will have to exercise the option in the prescribed manner on or before the due date specified under section 139(1) for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 1st day of April 2020. As per Rule 21AE of the Income Tax Rules, 1962, such option can be exercised by the domestic company in Form 10-IC in the manner prescribed under the said Rules. It is undisputed that for the relevant assessment year the due date for

filing the return of income was extended to 15/02/2021, and the return of income was filed by the assessee on 15/01/2021. However, the assessee did not file Form 10-IC before the due date of filing the return of income, i.e. 15/02/2021, in the present case, which is mandatory condition for claiming the option available under section 115BAA of the Act.

9. In support of its plea that Form 10-IC can be filed even after the due date prescribed for furnishing the return of income, the learned AR placed as upon the decision of coordinate bench of Tribunal in Suminter India Organics Private Ltd vs DCIT, in ITA No. 889/Mum/2022, vide order dated 26/07/2022 for the assessment year 2020-21. From the careful perusal of the aforesaid decision we find that the coordinate bench of the Tribunal held that the time permitted for filing Form 10-IC by virtue of section 3(1)(b) of Taxation and Other Laws (Relaxations and Amendment of Certain Provisions) Act, 2020, must be treated as 31/03/2021, even as the time permitted for filing the income tax return under aforesaid section, in light of the 3rd proviso to section 3(1) of said Act and read with subsequent notification, was only up to 15/02/2021. The learned AR, during the hearing, fairly submitted that in the present case Form 10-IC has not been filed by the assessee till date. Thus, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. We may, however, clarify that our findings on this issue shall not affect any other alternative remedy available/pursued by the assessee. Accordingly, ground No.1 raised in the assessee's appeal is dismissed.

10. The issue arising in ground No. 2, raised in the assessee's appeal, is pertaining to applying the rate of tax @25% since the total turnover of the company in financial year 2018-19 is less than Rs. 400 crore.

11. The assessee, vide ground No.2, has raised without prejudice ground that instead of computing the rate of tax @ 30, rate of tax @ 25% be applied. In this regard, the learned AR referred to the relevant provisions of Finance Act 2019, which is applicable to the Financial Year commencing on 01/04/2019. The learned AR by referring to Paragraph E of Part I of Finance Act, 2019 submitted that where the total turnover or the gross receipt in the previous year 2016-17 does not exceed Rs. 250 crore, the rate of income tax shall be 25% of the total income. The learned AR by referring to the profit and loss account for the year ending 31/03/2017 submitted that the gross revenue from operations of the assessee was Rs. 10.82 crore and thus in view of the aforesaid provision the rate of tax applicable in case of assessee should be 25%. On the other hand, learned DR submitted that this aspect, now raised by the assessee, be remanded to the AO for factual verification.

12. In view of the submissions made by both sides and having perused the material available on record, we deem it appropriate to remand this issue to the file of AO for necessary verification. We further direct that the tax liability of the assessee be computed by applying the rate of tax as per the applicable provisions of law. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to the assessee. Accordingly, ground No. 2 raised in the assessee's appeal is allowed for statistical purposes.

13. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 23/11/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 23/11/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai