

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2602/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2023-24

Rajeev Pandurang Kamat, Flat No. E3 & E4 Harshada Garden Apartments, Paud Road, Mahaganesh Colony, Pune-411038  PAN : ABEPK3431E	<b>Vs.</b>	Income Tax Officer, Ward – 3(3), Pune
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

Assessee by :	Shri Sharad Shah
Department by :	Shri Arvind Desai
Date of hearing :	05-02-2025
Date of Pronouncement :	05-05-2025

**आदेश / ORDER**

**PER ASTHA CHANDRA, JM :**

The appeal filed by the assessee is directed against the order dated 21.11.2024 of the Ld. Additional/Joint Commissioner of Income Tax (Appeals)-1, Ludhiana [**“Addl./JCIT(A)”**] pertaining to Assessment Year (**“AY”**) 2023-24.

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

- “1) The Ld. CPC erred (CIT (A) in confirming) in denying the benefit u/s 115BAC of the IT Act & thereby erred in raising demand of Rs.87,160/- by calculating the tax under old regime.
- 2) The Ld. CPC erred (CIT (A) in confirming) in not appreciating the fact that belated form 101E was already filed in AY 22-23.
- 3) The Ld. CPC erred (CIT (A) in confirming) in not appreciating the fact that filing form 101E is directory in nature and not mandatory.
- 4) The appellant craves for to leave, add, alter, modify, delete above grounds of appeal before or at the time hearing, in the interest of natural justice.”

3. Briefly stated the facts are that the assessee is an individual. For AY 2023-24, the assessee filed its return of income on 27.07.2023 declaring a total income at Rs.26,07,690/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (**the “Act”**) on 10.01.2024 by the CPC, Bengaluru/ Assessing Officer (**“AO”**) accepting the income of Rs.26,07,690/- returned by the assessee and charging tax liability under the old tax regime whereas the assessee had claimed taxation option u/s 115BAC of the Act as per new tax regime.

4. Aggrieved by the denial of benefit of new tax regime opted by the assessee in the intimation order passed u/s 143(1) of the Act, the assessee filed appeal before the Ld. Addl./JCIT(A). Before the Ld. Addl./JCIT(A) the appeal was filed with a delay of which was condoned by the Ld. Addl./JCIT(A) and the appeal was admitted for adjudication. During the course of appellate proceedings, in response to the notice issued by the Ld. Addl./JCIT(A), the assessee filed its written submissions which were duly examined and taken into consideration by the Ld. Addl./JCIT(A). The Ld. Addl./JCIT(A) however dismissed the appeal of the assessee on the ground that the assessee though opted for the scheme of taxation under section 115BAC in his return of income but failed to file Form 10IE for the AY under consideration i.e. AY 2023-24 and that the claim of the assessee is in continuity to the claim made in the preceding AY, whereof the said claim was not allowed by the Department. The relevant findings and observations of the Ld. Addl./JCIT(A) is reproduced below :

*6.2 During the appellate proceeding, appellant submitted that claim of benefit of taxation under section 115BAC of the Act is in continuity to the claim made by it in the preceding Assessment Year (i.e. 2022-23), whereof such claim for taxation under section 115BAC of the Act was not allowed by the revenue authorities based on the Form No. 10-IE has been filed belatedly on 20.09.2022 for the A.Y. 2022-23. From the perusal of the Intimation order u/s 143(1) of the Act for the A.Y. 2022-23 of the appellant, it is seen that the appellant has not opted for taxation under new tax regime as per provisions of section 115BAC of the Act. In view of the above facts, it is clear that the rate of taxation opted by the appellant as per the provision of section 115BAC for the A.Y. 2022-23 has not been opted by the appellant and the same was accepted while processing of ITR u/s 143(1) of the Act. Once the taxation as per the provisions of section 115BAC of the Act has been accepted/exercised for in any previous year based on the Form No. 10IE filed by the appellant then it will be operative for subsequent Assessment Years also. Admittedly for the year under consideration, the appellant has opted for the scheme of section 115BAC in his income tax return but not filed Form 10-IE for the year under consideration.*

6.3 Thus, claim of benefit of taxation under section 115BAC of the Act is in continuity to the claim made by the appellant in the preceding Assessment Year, whereof such claim for taxation under section 115BAC of the Act was not allowed by the revenue authorities based on the Form No. 10-IE has been filed 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 and such option once exercised shall apply to subsequent assessment years. Since, the valid option has not been exercised under section 115BAC for A.Y. 2022-23, the assessee is not eligible for lower rate of tax for the subsequent assessment years also subject to the other conditions provided under the Act. Hence, based upon the facts, the appellant's plea is rejected and the action of the A.O of charging tax under old tax regime is hereby upheld and confirmed. Thus, the grounds of appeal are hereby dismissed.”

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

6. The Ld. AR submitted that the Ld. Addl./JCIT(A) has dismissed the appeal of the assessee merely on technical ground. The assessee filed Form 10IE for AY 2022-23 on 20.09.2022 but the same was not accepted by the Ld. AO since it was belatedly filed (pages 1 to 3 of the Paper Book refers). He submitted that the Ld. Addl./JCIT(A) therefore erred in confirming the order of the Ld. AO without appreciating the fact that belated Form 10IE was already filed in previous AY 2022-23. He further submitted that IT portal does not allow filing of Form 10IE again once it has already been uploaded on the portal. This is a technical issue due to which the assessee could not furnish Form 10IE for the relevant AY under consideration. The Ld. AR also contended that filing of Form 10IE is directory in nature and not mandatory. In support thereof, the Ld. AR placed reliance on the decision of the Jurisdictional Pune ITAT in the case of Akshay Devendra Birari Vs. DCIT, ITA No. 782/PUN/2024 for AY 2023-24, dated 05.06.2024 and the decision of Delhi Bench of the Tribunal in the case of Indo British Garments Pvt. Ltd. Vs. DCIT, ITA No. 2400/Del/2024 for AY 2021-22, dated 29.11.2024.

7. The Ld. DR, on the other hand, supported the order of the Ld. Addl./JCIT(A) and Ld. AO.

8. We have heard the Ld. Representatives of the parties, perused the material on record and the Paper Book filed by the Ld. DR on behalf of the assessee. Admittedly, the assessee filed his return of income on 27.07.2023 which processed on 10.01.2024 under section 143(1) of the Act

by the Ld. AO denying the benefit of new tax regime claimed by the assessee under section 115BAC of the Act as the assessee failed to submit the prescribed Form 10IE before the due date for filing of the return of income. The Ld. CIT(A) rejected the claim of the assessee for the relevant AY 2023-24 under consideration for the reason that the assessee filed Form 10IE on 20.09.2022 for AY 2022-23 claiming benefit of taxation u/s 115BAC of the Act in continuity to his claim made in the preceding AY 2022-23 wherein the claim of the assessee was not allowed by the revenue authorities due to the belated filing of return of income. It is the contention of the Ld. Counsel for the assessee that the observation/ finding of the Ld. CIT(A) is not correct on account of the fact that the assessee's Form 10IE was already available on record while processing the return of income under section 143(1) of the Act. It was not technically possible for the assessee to once again upload Form 10IE on the portal for the relevant AY under consideration. Filing of Form 10IE is only directory and not mandatory in nature. Before us, the Ld. AR submitted that his aforementioned arguments are well supported by the decisions of the coordinate benches of the Tribunal wherein the Tribunal has decided the impugned issue in favour of the assessee under similar set of facts.

8.1 The Pune Tribunal in the case of Akshay Devendra Birari (supra) has decided the impugned issue in favour of the assessee allowing the benefit of new tax regime to the assessee under the similar set of facts. The relevant observation and finding of the Tribunal is reproduced below:

*“7. We heard the ld. Sr. DR and perused the relevant material on record. The solitary issue that arises for our consideration in the present appeal is whether the CPC was justified in denying the benefit of New Tax Regime. Admittedly, the appellant had failed to submit the prescribed Form No.10IE in order to claim the benefit of New Tax Regime before the due date for filing the return of income. However, the appellant had filed the said form on 10.01.2024 on which date the CPC had processed the return of income u/s.143(1)(a) denying the benefit of New Tax Regime. In any event, it is not a mandatory requirement for filing of Form No.10IE but directory in nature. The Form No.10IE was very much available with the CPC and the CPC ought to have considered the same allowing the benefit of New Tax Regime. Therefore, we direct the CPC to amend the intimation by taking into consideration the Form No.10IE, as the same was available with the CPC at the time of processing the return of income. We order accordingly.”*

8.2 The case of the assessee also finds support by the decision of the Delhi Bench of the Tribunal in Indo British Garments Pvt. Ltd. (supra). The said decision was rendered in the context of section 115BAA of the Act and

filing of Form 10IC as a pre-requisite therein. The Tribunal observed that once the assessee opted for concessional tax rate in the preceding AY it shall also apply to subsequent AY and cannot be withdrawn. The relevant observations and findings of the Tribunal are reproduced below:

*“5. We have perused the intimation passed u/s 143(1) of the Act and the first appellate order thereon. The denial of benefits under s. 115BAA is in controversy.*

*6. The assessee company is engaged in the business of manufacturing of garments. The company also has branch operations in Johannesburg, South Africa. The assessee filed its return of income for AY 2021-22 electronically on 11.03.2022, declaring total income at INR 2,18,68,649/-. An intimation u/s 143(1) of the Act was issued by the Centralized Processing Center (“CPC”) on 17.10.2022 in which the total income returned by the assessee was increased from INR 63,48,872/- to INR 75,74,915/-. The tax liability was also increased as the CPC while processing the return of income, has denied the benefit of provision of section 115BAA of the Act.*

*7. Aggrieved, the assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the additions made by the AO on the ground that the assessee company has not filed Form 10IC for the current AY 2021-22 and thus, justified the denial of benefit of provisions of section 115BAA of the Act.*

*8. As per the grounds of appeal and statement of facts filed on behalf of the assessee, the assessee has opted for section 115BAA of the Act from AY 2020-21 and onwards. The assessee further pointed out before the Ld. CIT(A) that it has filed Form 10IC on 31.12.2020 for the preceding AY 2020-21. The assessee also pointed out that as per the Frequently Asked Questions (“FAQs”) issued by the Income Tax Department for Form 10IC, the said form once filed will not be required to be filed in every assessment year. The said form once filed, will apply to subsequent AY as well.*

*9. Challenging the denial of relief by the Ld. CIT(A), the assessee preferred appeal before the Tribunal.*

*10. As per section 115BAA of the Act, domestic companies have the option to pay new cooperate concessional tax rate @ 22% and applicable surcharge and cess provided they do not avail specified deduction and incentives. The companies can opt for the concessional rate from AY 2020-21 onwards if they file Form 10IC within prescribed time limit.*

*11. A bare reading of section 115BAA of the Act provides that once the assessee opts for concessional tax rate, it shall also apply subsequent AY as well and cannot be withdrawn. The FAQ on Form 10IC issued by the Income Tax Department also suggests the same.*

*12. A perusal of tax regime under provision of section 115BAA of the Act gives a infallible impression that exercise of option to avail concessional tax rate provided under section 115BAA of the Act, creates a substantive right on the assessee. The option once exercised in any previous year cannot be withdrawn in later year. Once the assessee opted for taxation under section 115BAA of the Act and exercised, there can be no reason to deny the benefit in the years subsequent to the AYs in which the option was first exercised. Where the statute itself provides for incapacity of the assessee to withdraw the exercise of option, the requirement of filing Form 10IC in the subsequent year, in our considered view becomes an irrelevant consideration.*

13. The reasons are not far to seek. Once the assessee loses its right to deviate from the option exercised in the earlier year, no further obligation by way of filing Form 10IC can be fastened. This is so for the reason that if the assessee is allowed to not exercise the option by not filing prescribed Form 10IC, it will mean that the assessee has a gateway to not exercise the option in the subsequent AYs. This is plainly contrary to the express language of the Act which will defeat the plain intent and purpose of fastening the obligation on the assessee for availing the benefit of section 115AAB of the Act. Thus, where the option has already been exercised in AY 2020-21, such option exercised in the preceding AYs cannot be allowed to be deviated for non-filing of the prescribed Form 10IC.

14. Thus, in accord with the position of law, we remit the matter back to the file of AO. The AO shall verify as to whether the claim of the assessee to avail benefit of section 115BAA of the Act in previous year relevant to A.Y. 2020-21 has been duly acknowledged and concurred by the Income Tax Department. Where the Income tax Department has duly accepted the stand of the assessee seeking exercise of option under section 115BAA of the Act in AY 2020-21, the obligations fastened by section 115BAA will continue and shall not be dependent on the filing or non-filing of Form 10IC or belated filing thereof in AY 2021-22 per se. It shall be open to the assessee to produce corroborative evidences qua the AY 2020-21 in support of its stand towards exercise of section 115BAA of the Act in that year and furnish such further explanations as may be considered expedient to support its case. The AO shall pass the order in accordance with law.”

9. In light of the factual and legal position enumerated above and respectfully following the decision(s) of the co-ordinate bench of the Pune Tribunal and Delhi Tribunal (supra) and in the absence of any contrary material brought on record by the Revenue, we set aside the order of the Ld. Addl./JCIT(A) and direct the Ld. AO to allow the claim of the assessee taking into consideration Form 10IE already available on record of the department. The grounds raised by the assessee are accordingly allowed.

10. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 05th May, 2025.**

Sd/-  
(R.K. Panda)  
**VICE PRESIDENT**

Sd/-  
(Astha Chandra)  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 05<sup>th</sup> May, 2025.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune