



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



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Order u/s 250 of Income Tax Act,1961

Instituted on 19/08/2024 from the order of **BPL-W-(61)(1)** dated 19/07/2024

Appeal No	NFAC/2022-23/10395458
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	Others
Section under which the order appealed against was passed	154
Date of Order under which the order appealed against was passed	19/07/2024
Income/Loss Assessed (in Rs .)	2630360
Tax/Penalty/Fine/Interest Demanded (in Rs.)	0
Date of Hearing(s)	As per record(s)
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

This appeal was migrated to National Faceless Appeals Centre in terms of Notification No. 76/2020 Dated 25.09.2020 issued vide F.No. 370142/33/2020-TPL/SO-3296(E) by Central Board of Direct Taxes. Subsequently, the case transferred to the work list on 16-05-2025 under e-appeal scheme 2023 and in terms of notification SO.2352 (E)no.33/2023/vide 370142/10/2023-TPL dated 29-05-2023.Tax effect, in the case, is within the jurisdictional monitory limit provided in section 249(6) of the Income tax Act 1961(here in after mentioned as Act)r.w. notification Vide FNO 3701149/2023-TPL dated 16-06-2023 (up to 10 lakh) and F. No.279/Msc/M-53/2025/ITJ dated 17-09-2025.

Note: If digitally signed, the date of digital signature may be taken as date of document.

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

* DIN- Document identification No.

2. The appellant filed ITR-3 for the A.Y. 2023-24 on 30-09-2023, declaring income of Rs. 26,30,360/- and was processed online on 04-03-2024 under section 143(1) assessing Income of Rs. 26,30,360/-.

3. This appeal is filed against the order passed under section 154 of the Act on 19-07-2024 by the CPC for the F.Y 2022-23 relevant to A.Y 2023-24. The application in prescribed form no. 35 was filed on 19-08-2024 in accordance with procedure laid down under section 246(1) of the Act, enclosing statement of facts and ground of appeal, as provided in section 249(1), r.w.s.s(1a) of the Act. Statutory appeal fees Rs.1000 was paid on 19-08-2024. The notice of demand u/s 156 of the Income Tax Act, 1961 in the case is the rectification order u/s 154 which was served on 19-07-2024 and accordingly, it was requested to pay the entire demand of Rs. 91,450/- within 30 days of receipt of the order u/s 154.

4. The appellant is a resident individual, had filed return of income for the assessment year 2023-24 by declaring total income at Rs. **26,30,360/-** and paid taxes of Rs. 5,59,681/-.

5. The grounds of appeal filed by the appellant is as under;

Grounds of appeals:

1. That on the facts and circumstances of the case and in law, the CPC Bangalore erred in raising a demand of rs. 91,450/-.
2. That on the facts and circumstances of the case and in law, the CPC Bangalore erred in not processing the return under the New Tax Regime as claimed by the appellant while filing the return of income.
3. That on the facts and circumstances of the case and in law, the CPC Bangalore erroneously processed the return under the Old Tax Regime, contrary to the return of income filed by the appellant.
4. That on the facts and circumstances of the case and in law, the CPC Bangalore erred in not allowing deductions under Chapter VIA while processing the return under the Old Regime.
5. That on the facts and circumstances of the case and in law, the rectification u/s 154 passed by CPC Bangalore is arbitrary, unwarranted, and not supported by the facts on record or the law, and it violates the principles of natural justice.
6. That in facts and circumstances of the case and in law, the rectification order passed u/s. 154 dated 19.07.24 is incorrect, bad in law and liable to quashed.

7. The appellant further prays that the consequential interest under sections 234B and 234C be recomputed.

8. For that the appellant craves leave to add, amend, alter vary and or withdraw any or all the above grounds of appeal.

9. For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that this respected authority may be pleased to:

a. Accept the return filed by the appellant filed under the new regime.

b. Recompute the consequential interest under sections 234B and 234C.

c. Alternatively, if the return filed by the appellant under the New Regime is not accepted, allow the deductions under Chapter VIA under the Old Regime.

d. Delete the demand of Rs. 91,450/-.

e. Pass such other orders as this respected authority may deem fit.

6. Details of hearing, opportunities given to the appellant.

All the notices and communication were served digitally on official mail id on records and in accordance with the procedure laid down in e-appeal scheme. The appellant did not object validity and deny service of notice to him. The appellant attended the proceeding through virtual hearing in pursuance of notification SO.2352 (E)no.33/2023/vide 370142/10/2023-TPL dated 29-05-2023. The first notice under section 250(1) was issued by my predecessor and due to change of incumbent notice under section 250(1) issued afresh to the appellant. Details of notices issued and reply received is as under: -

Notice issued and served	Date of hearing	Status of reply, (if no, reasons furnished).
17-06-2025	02-07-2025	02-07-2025
15-12-2025	22-12-2025	20-12-2025

The appellant was given proper opportunities and sufficient time to collect evidences and prepare explanations. The reply of the appellant and evidences were examined.

7. Reply of the appellant

“The appellant submitted his reply dated 02.07.2025 on which is reproduced below:

1. The present appeal pertains to Assessment Year (AY) 2023–24 and is filed against the rectification order passed under Section 154 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) dated 19.07.2024 and the demand raised therein of Rs. 91,450/- by the Deputy Director of Income Tax, CPC, Bangalore (**Annexure-1**).

2. Until F.Y 2022–23, taxpayers were required to file Form 10-IE only once to exercise the option to avail the concessional tax rates under the New Tax Regime (Section 115BAC). However, from FY 2023–24 onwards, the New Tax Regime has become the *default regime*. Thus, to opt for the Old Regime, a taxpayer is now required to file Form 10-IE for opting out.

3. The appellant had opted for the New Regime in AY 2021–22 by duly filing Form 10-IE on 14.02.2022 (**Annexures 2 and 2.1**), as was required under the law at the time.

4. For AY 2023–24, the appellant intended to continue under the default New Regime. However, due to an **inadvertent error by the staff of her former consultant**, who incorrectly believed Form 10-IE had to be filed annually, and he again submitted Form 10-IE on 30.09.2023, inadvertently resulting in an opt-out by the appellant. (**Annexures 3 and 3.1**).

4. (i) Whether option under clause (i) of sub-section (5) of section 115BAC has been exercised in Form 10-IE for any earlier previous year/ years and is now being withdrawn?	Yes
(ii) Previous year in which option was exercised -	2021-22
(iii) Date on which option exercised in Form 10-IE -	14-Feb-2022

5. On 30.09.2023, while filing the Income Tax Return (ITR), the appellant

correctly computed the tax liability under the New Regime, paid the tax accordingly, and filed the return under the intended New Regime. This is clearly discernible from the return of income filed and the tax audit report. **[Annexure-4 and Annexure-5 respectively].**

6. That the relevant snapshot of Audit Report is enclosed for kind perusal:

8(a). Whether the assessee has opted for taxation under section 115BA / 115BAA / 115BAB / 115BAC(1A) / 115BAD / 115BAE ?	Yes
Section under which option exercised	115BAC

7. That the relevant snapshot of ITR form is enclosed for kind perusal:

Acknowledgement Number : 37305621300923 Date of Filing : 30-Sep-2023*

FORM ITR3	INDIAN INCOME TAX RETURN (For individuals and HUFs having income from profits and gains of business or profession) (Please see Rule 12 of the Income-tax Rules, 1962) (Please refer instructions)		Assessment Year 2023-24
PART A - GENERAL			
PERSONAL INFORMATION			
(A1) First Name ROLEE	(A2) Middle Name	(A3) Last Name DAGA	(A4) PAN AMKPD1373M
(A5) Status Individual	(A6) Flat/ Door/ Block No. G-1	(A7) Name of Premises / Building / Village CLASIC HOME	
(A8) Road/ Street/Post office 13/14, SHAKTI NAGAR	(A9) Area/ Locality -	(A10) Town/ City/ District INDORE	
(A11) State 18-Madhya Pradesh	(A12) Country /Region 91-INDIA	(A13) Pin code / Zip Code 452018	
(A17) Residential / Office Phone Number with STD code / ISD code		Mobile No. 1 91 9425061139	
Mobile No. 2		(A18) Email Address - 1 (self) roleedaga@gmail.com	
Email Address -2		(A14) Date of Birth/ Formation (DD/MM/YYYY) 10/02/1978	
(A15) Date of Commencement of Business (DD/MM/YYYY)		(A16) Aadhaar Number (12 digits)/Aadhaar Enrolment Id (28 digits) (if eligible for Aadhaar No.) 8xxx xxxx 7958	
(A19)(a)	i) Filed u/s (Tick) [Please see instruction] (ii) Or Filed in response to notice u/s		139(1)- On or Before due date
(b)	Have you ever opted for new tax regime u/s 115BAC in earlier year ?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Assessment Year in which said option was exercised		2021-22
	For opting, please furnish date of filing of form 10-IE (DD/MM/YYYY) along with Acknowledgement number		14/02/2022 189870260140222
	Have you ever opted out of section 115BAC in earlier years?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Assessment Year in which said option was opted out		
	Please furnish date of filing of form 10-IE (DD/MM/YYYY) along with Acknowledgement number		
b(ii)	Option for current assessment year		Continue to opt

8. That while processing the return, the Centralized Processing Centre (CPC) in Bangalore processed it under the Old Regime, and raised a demand of Rs.90,580/- through an intimation under section 143(1) **(Annexure-6)**. This is

contrary to the appellant's intended and selected option of the New Regime while filing the return and the Audit report, solely due to the technical error of filing Form 10-IE.

9. Aggrieved by this intimation order, the appellant filed a rectification application under Section 154 on 31.03.2024 with CPC Bangalore(Annexure-7).

10. That the CPC Bangalore did not consider the facts of the case and issued a rectification order on 19.07.2024, raising the demand to Rs. 91,450/-(annexure-1)

OUR SUBMISSIONS:

11. That it is settled law that filing Form 10-IE is only directory, not mandatory, particularly when the ITR and audit report clearly reflect the computation under the New Regime and were available to CPC at the time of processing. Therefore the CPC ought to have allowed the intended new regime. This view is fortified by binding judicial precedents:

1. **Akshay Devendra Birari vs. CPC** – [2024] 164 taxmann.com 58 (ITAT Pune)
2. **Akshay Nitin Malu vs. ITO** – ITA No. 1651/PUN/2024 – AY 2022–23 – Order dated 03.01.2025
3. **Harbans Singh vs. AO** – [2024] 165 taxmann.com 146 (Amritsar Tribunal)

12. These cases consistently held that the **substance of the ITR should prevail over a technical error**, and when an assessee clearly intends and files returns under the New Regime, demand under the Old Regime is unjustified.

Humble Prayers:

In light of the above facts and judicial precedents, it is most humbly prayed that this Hon'ble Authority may be pleased to:

- a) Accept the **returned income as declared**;
- b) Delete the **consequential demand of ₹91,450/-**;
- c) **Set aside the rectification order** u/s. 154 dated 19.07.2024;
- d) Re-compute interest under Sections **234A, 234B, 234C, and 234F** appropriately;
- e) Direct CPC to pass a **Rectification Order under Section 154** deleting the demand accordingly;
- f) **Alternatively**, in the event that the New Regime is not accepted, permit eligible **Chapter VI-A deductions** under the Old Regime;
- g) Pass such other or further orders as may be deemed just and proper in the interest of justice.”

8. Decision

The facts of the matter have been verified from the documents on record.

8.1 Ground No.1-3, 5, 6 and 9 (a) : In these grounds, the appellant has contested that the Centralised Processing Centre has passed an erroneous order u/s 154 treating the return of income on the basis of the old tax regime instead of the New Tax Regime.

The assessee has claimed the benefits of new Tax Regime based on the filing of Form-10IE for A.Y. 2021-22. The assessee has mainly focused and drawn interpretation that from F.Y. 2023-24, the New Tax Regime has become the default regime. Thus, to opt for the Old Regime, a taxpayer is now required to file Form-10IE for opting out.

From the factual matrix of the case, following is observed-

1. It is seen that for AY 2021-22, the assessee filed Form-10IE opting for section 115BAC on 14-02-2022.
2. For AY 2022-23, from the material available on records it is seen that on the basis of same Form -10IE the claim of Appellant for section 115BAC was

accepted.

3. For AY 2023-24, in the ITR the Appellant has submitted that it has opted in earlier years for section 115BAC. In Audit report also, the same thing has been mentioned. However, it is seen that the Appellant has filed a new Form 10IE on 30.09.2023 for opting out of section 115BAC.

The Appellant has claimed that this opting out was done by mistake. This claim of Appellant seems plausible specially when the ITR is filed claiming 115BAC as also the same has been mentioned in audit report. Both these have been filed on 30.09.2023. Therefore, there is a little possibility that on same day option of withdrawn of same will be filed.

In its support the Appellant has quoted the following case laws-

1. **Akshay Devendra Birari vs. CPC** – [2024] 164 taxmann.com 58 (ITAT Pune)
2. **Akshay Nitin Malu vs. ITO** – ITA No. 1651/PUN/2024 – AY 2022–23 – Order dated 03.01.2025
3. **Harbans Singh vs. AO** – [2024] 165 taxmann.com 146 (Amritsar Tribunal)

The substance of above case laws is also that the Form 10IE is directory in nature and it is support the claim under section 115BAC not to block the same.

Moreover, in the case of Figtree foundation v/s ITO (exemption) ward-1, Bangaluru [ITA no. 1485/BANG/2025], it has been held recently by ITAT Bangaluru that revenue cannot take the advantage of the mistakes committed by the assessee. In other words, the deduction claimed by the assessee cannot be denied on account of some clerical errors on the part of the assessee.

In view of above discussion, considering the fact that for AY 2022-23 already the Appellant has been granted the claim under section 115BAC as also the factual circumstances of the case and following the above judicial precedences, the claim of Appellant to be treated under section 115BAC for AY 2023-24 also, is hereby allowed and AO is directed to give effect to the same after verification. Accordingly, these grounds of appeal raised by appellant are allowed.

8.2 Ground No. 4 & 9c- These grounds of Appeal are alternate grounds of Appeal. Since the main grounds of Appeal have been decided as above, These grounds are

dismissed as infructuous.

8.3 The other grounds are consequential in nature to the above discussed grounds of Appeal, and the same are decided accordingly and AO to give effect to the same based on above decision.

In result, the Appeal of the assessee is hereby partly allowed.



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