



IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
&
SHRI GIRISH AGRAWAL (ACCOUNTANT MEMBER)

I.T.A. No. 4872/Mum/2024
Assessment Year: 2020-21

Getinge Medical India Private Limited Time Square, E Wing 9 th Floor, Mathuradas VasANJI Road, Persian Darbar, Marol Village, Andheri(E), Mumbai -400059 PAN: AADCM8545J	Vs.	DCIT 2(2)(1) Mumbai, Maharashtra
(Appellant)		(Respondent)

Appellant by	Shri Niraj Sheth, Advocate
Respondent by	Shri Bhagirath Ramawat – SR D.R.

Date of Hearing	21.01.2026
Date of Pronouncement	13.03.2026

ORDER

Per: Smt. Beena Pillai, J.M.:

Present appeal filed by the assessee arises out of the final assessment order dated 23.07.2024 passed by the NFAC for Assessment Year 2020-21 on following grounds of appeal:

“1. Ground 1: General

1.1 The Assessment Unit ('Ld. AO') / Hon'ble Dispute Resolution Panel, Mumbai ('Ld. DRP') has erred in determining the total assessed income of the Appellant at Rs. 27,45,19,720/-.

2. Ground 2: Amount of Rs. 3,93,46,016 not mentioned in Notice of Demand.

2.1 The Ld. AO has failed to mention the amount in the notice of demand issued under section 156 of the Act and hence, effectively there is no demand outstanding in case of the Appellant.

3. Ground 3: Erroneous income-tax rate of 30% (plus surcharge and cess) instead of concessional rate of 22% (plus surcharge and cess) under section 115BAA of the Act

3.1 The Ld. AO erred in computing the tax liability at the normal tax rate of 30% (plus applicable surcharge of 12% and education cess of 4%) without appreciating the fact that the Appellant is subject to tax rate of 22% (plus applicable surcharge of 10% and education cess of 4%)

3.2 The Ld. AO erred in ignoring the fact that the Appellant has filed Form No. 10-IC for claiming concessional tax rate under section 1158AA of the Act on 1 April 2021.

3.3 The Ld. AO erred in appreciating that delay in filing the Form 10-IC is a mere procedural lapse due to technical issue which does not debar / take away the right of the Appellant from opting to be taxed under section 115BAA of the Act.

3.4 The Ld. AO erred in appreciating the fact that the delay in filing the return of Income and Form No. 10-IC was on account of COVID-19 pandemic and the nationwide lockdown wherein the company's resources were either not available or were working from home.

3.5 The Ld. AO failed to appreciate that the details which are required to be filled in Form 10-IC were already contained in the return of income-tax return and the tax audit report of the Appellant and there is no loss to the revenue.

4. Ground 4: Addition of Rs. 6,10,030/- under section 41 of the Act

4.1 The Ld. AO / Ld. DRP erred in making an addition of Rs. 6,10,030/- to the total income of the Appellant and ignored the factual evidences submitted before the Ld. AO and Ld. DRP

4.2 The Ld. AO/ Ld. DRP erred in not appreciating the copy of ledgers submitted by the Appellant during the hearings and no opportunity of being heard was granted to the Appellant.

5. Ground 5: Short grant of Tax Deducted at Source of Rs. 1,08,275/-

The Ld. AO/Ld. DRP erred in granting credit of TDS of Rs. 1,24,82,097/- as against Rs. 1,25,90,372/- claimed by the Appellant in its return of income.

6. Ground 6: Interest charged under section 234A, 234B and 234C of the Act

The Id. AO erred in levying interest under section 234A, 234B and 234C of the Act.

7. Ground 7: Initiation of penalty under section 270A of the Act

The Id. AO erred in initiating the penalty proceedings under section 270A of the Act.

Brief facts of the case are as under:

2. The assessee is a company and filed its return of income for assessment year under consideration declaring total income of Rs.26,79,29,490/-. Subsequently, the case was selected for complete scrutiny. Accordingly, notice u/s 143(2) of the Act was issued to assessee along with notice u/s 142(1) of the Act. In response to the statutory notices, assessee furnished various requisite details as called for. As there was international transaction between assessee and associated enterprises that exceeded the threshold limit, reference was made to the Transfer Pricing Officer to determine the arms-length price of the international transaction. The Ld. TPO after considering various

submissions of the assessee in respect of the international transaction proposed an adjustment of Rs.6,85,66,040/- in respect of the AMP expenditure. Thereafter, the Ld. AO while passing the draft assessment order further made disallowance u/s 37 of the Act amounting to Rs.59,80,000/- on account of provisions for currency fluctuation and disallowance u/s 41(1)(a) amounting to Rs.6,10,230/-. Thereby determining the total income in the hands of the assessee at Rs.34,30,85,760/-.

2.1 Aggrieved by the draft assessment order, assessee preferred an appeal before the DRP. The DRP dismissed the contentions of the assessee in respect of the grounds raised therein and upheld the proposed addition made by the Ld. AO/TPO. Upon receipt of the DRP directions, the Ld.AO passed the final assessment order being the impugned order. The Ld. AO while computing the tax on the income, adopted normal rates as against the concessional rate opted by the assessee in its return of income u/s 115BAA of the Act.

Aggrieved by the order of Ld. AO, assessee is in appeal before this *Tribunal*.

3. Ground No.1 raised by the assessee is general in nature and do not require adjudication.

4. In Ground No.2 the assessee has challenged legal issue which assessee do not wish to press at this juncture and therefore is kept open to be agitated in an appropriate circumstance.

5. Ground No.3 raised by the assessee is against the computation adopted by the Ld.AO as per normal tax rate at 30% plus

applicable surcharge of 12% and education cess of 4% ignoring the fact that assessee had opted for concessional rate u/s 115BAA of the Act in its return of income.

5.1.The Ld.AR submitted that as per Section 115BAA of the Act, the assessee has to file Form 10-IC before the due date specified u/s 139(1) of the Act for furnishing the return of income. The Ld.AR submitted that the Notification dated 31.12.2020 issued by the CBDT extended the time to file return of income under section 139(1) of the Act and the due date to file the return of income till 15/02/2021.

The Ld.AR submitted that during the relevant period when the return of income was filed by the assessee, COVID-19 Pandemic was active in the country because of which there was a delay in filing the return of income as well as Form 10-IC. The Ld.AR submitted that the assessee filed its return of income on 31.03.2021 and Form 10IC on 01/04/2021, thereby causing delay of approximately 45 days.

5.2.The Ld.AR submitted that, Section 115BAA was introduced by Finance Act 2019 w.e.f. Assessment Year 2020-21 onwards. Due to the on-going pandemic there was no clarity and a confusion existed in respect of application and selection of the option provided under the section. The Ld.AR submitted that, assessee thus was in the process of understanding the applicability and impact of the provision which once opted cannot be reverted back in the case of the assessee, thereby, causing a small delay of about 40 days. He submits that assessee when filed its return of income on 31.03.2021 opted for the

concessional rate u/s 115BAA and also filed Form 10-IC on 01.04.2021. The Ld.AR thus submitted that assessee expressly indicated in its return of income that it was opting for the concessional rate as per Section 115BAA of the Act. The Ld.AO however, did not consider the same and taxed income of the assessee at normal rate which was contrary to the provisions of law.

The Ld. AR thus contended that the option under section 115BAA was expressly exercised in the return of income and the requisite Form 10-IC was also filed, albeit with a short delay. It was submitted that the provision was newly introduced by the Finance Act, 2019 and, during the pandemic period, there was genuine uncertainty regarding its application. The assessee acted bona fide in first evaluating the implications of opting for an irreversible regime and thereafter filed the return indicating the option and submitted Form 10-IC immediately on the following day. It was thus argued that the benefit of the concessional rate should not be denied on a mere technical delay, particularly when the intention to opt for section 115BAA was clearly manifested in the return of income. The Ld.AR placed reliance on decision of *Hon'ble Bombay High Court* in case of *Gem Nuts & Produce Exports Co. (P.) (Ltd) vs. PCIT* reported in (2025) 178 *taxmann.com* 256 and decision of *Hon'ble Delhi High Court* in case of *Sarla Holdings (Pvt.) (Ltd) vs. PCIT* reported in (2025) 179 *taxmann.com* 83. The Ld.AR submitted that the ratio of *Sarla Holdings (supra)* is that the benefit of section 115BAA cannot be granted where the assessee has not exercised the option in the return within the time prescribed, and a belated Form 10-IC or

CBDT circular cannot cure that substantive defect. However, the judgment implicitly accepts that where the option is exercised in the return, delay in filing Form 10-IC stands on a different footing, being procedural in nature.

5.3. On the contrary, the Ld. DR submitted that, there is no discussion regarding the applicability of Section 115BAA of the Act in either the final assessment order or the DRP directions. He submitted that this addition emanates from the intimation u/s.143(1) of the Act and therefore does not arise out of the present proceedings. The Ld. DR submitted that in any event for any delay of condonation in respect of filing of Form 10-IC has to be made before the CBDT u/s 119 of the Act. He also highlighted that an appeal is already pending before the Ld. CIT(A) on this very aspect which is filed by the assessee against the intimation u/s 143(1) of the Act. The Ld. DR in support of his argument has filed following written submission which is scanned and reproduced as under:

“1. Emphatic reliance is placed on the orders of CIT(A) and AO. These submissions are in furtherance of the oral arguments made in the course of the hearing of the matter on 21-01- 2026.

2. The dispute pertained to the disallowance of the concessional rate of taxation under section 115BAA. In respect of the same the following is submitted for kind consideration of Hon'ble Bench.

3. It is humbly submitted before Hon'ble Bench that there is no discussion of this ground in AO's order or DRP order, indicating this addition has been made in an intimation u/s 143(1) of the Income Tax Act. It is further submitted that as per the copy of the form 35, as received from the office of AO for AY 2020-21, an

appeal against the intimation under section 143(1), dated 23-10-2021 has already been filed before CIT(A). Further the copy of grounds of appeal, as provided by AO are attached to this letter. On perusal of this letter it may be noted that for AY 2020-21, Ground No. 4 pertains to this very ground of concessional rate of taxation under section 115BAA. Thus, it appears that an appeal has already been filed before lower authorities and appears to be pending for adjudication. This fact was brought to the attention of the assessee in the course of the hearing and no satisfactory reply or a claim that the facts as brought out by Departmental Representative were false has been made.

4. It is submitted for kind consideration of Hon'ble Bench that the same dispute cannot be raised before two authorities and hence the appeal of the assessee may be dismissed on this ground alone.

5. Further in the course of the hearing the assessee was also asked to clarify whether an application for condonation of delay in respect of the filing of form 10-IC has also been filed before jurisdictional Pr. CIT, and the same could not be clarified on behalf of the assessee. It is pointed out that the onus to clarify all the pending proceedings which would affect the ongoing proceedings is on the assessee and if an application for condonation of delay is already pending before jurisdictional Pr. CIT, then the assessee (whose appeal in respect of the ground pertaining to section 115BAA is in substance requesting condonation of delay only) can not make a similar application before Hon'ble Bench. Hence even on this ground, it is humbly prayed that the appeal of the assessee may be dismissed.

6. The current appeal of the assessee is against the order under section 143(3) r.w.s. 144C(13) r.w.s. 1443 of the Act, dated 23-

07-2024. In an appeal against the order under section 143(3), the additions/dis-allowances made in intimation under section 143(1) cannot be challenged, as there is no automatic merger of the 143(1) intimation with the order u/s 143(3). In respect of merger reliance is placed on the judgment of Hon'ble Mumbai Bench of ITAT in case of MSC Agency (India) Private Limited in ITA No. 927 of 2024 (a copy of which has already been submitted in the course of the hearing) and the relevant part from para 22 is reproduced below-

"On perusal of the rival contentions, it is observed that the Id. AO has nowhere in the assessment order passed u/s. 143(3) of the Act has discussed the issue of the nonreduction of profit on sale of fixed assets amounting to Rs. 10,85,026/- which was credited to the profit and loss account while determining the taxable income. The Id. CIT(A) has also not adjudicated these grounds of appeal for the reason that it does not form part of the assessment order. This fact has not been controverted by both sides. It is a settled proposition of law that the intimation u/s. 143(1) and the subsequent assessment order passed u/s. 143(3) would not merge with each other automatically, where the Id. AO has not adjudicated the issue on the merits which emanates from the intimation u/s. 143(1) and during the scrutiny assessment u/s. 143(3) of the Act. It is also evident that the assessee cannot challenge the addition made u/s. 143(1) in an appeal preferred against the order u/s. 143(3) of the Act merely for the reason that the Id. AO has concluded the assessment by incorporating the adjustments made vide intimation u/s. 143(1) of the Act. The doctrine of merger would not be applicable unless the assessment order is passed with the discussions on the

issues pertaining to the intimation u/s. 143(1) of the Act and the same has been adjudicated during the scrutiny assessment. When the issues are completely different in both the proceedings which are per se independent to each other, the doctrine of merger cannot be applied in such cases. We draw support from the coordinate bench decision in the case of Areca Trust vs. CIT(Appeals), [2024] 117 ITR (Trib.) 264 (ITAT Bang.) and Orient Craft Ltd. vs. DCIT [2024] 158 taxmann.com 1124 (Del. Trib.). The decisions relied upon by the ld. AR in the cases of Akbar Mohammad vs. ACIT in ITA Nos. 108 & 109/Jodh/2021, order dated 31.01.2022, National Stock Exchange of India Limited vs. DCIT, ITA No. 732/Mum/2023, order dated 22.09.2023 and M/s. Beyond Key Systems Pvt. Ltd. vs. DCIT, ITA No. 184/Ind/2022, order dated 19.01.2023 are distinguishable on facts and are not applicable to the present case in hand."

7. Thus, the appeal of the assessee may be dismissed since an appeal before CIT(A) is already pending in respect of the dispute at hand and the same dispute cannot be raised before two different judicial (or quasi-judicial) authorities.

8. In this respect it is further pointed out that the copy of the intimation under section 143(1) has never been submitted on behalf of the assessee, and the ground on which the disallowance of the concessional rate of taxation under section 115BAA has been made is not clear. However, without clearly bringing out the relevant facts on record, it has been argued on behalf of the assessee that the reason for such a disallowance is a delay in filing Form 10-IC. Since section 115BAA of the Act makes it mandatory to file the form 10-IC within the date specified, absence of that indicates that it is simply a case wherein the

claim under section 115BAA has not even been made as per the procedure given in the Act. Thus, in that sense the dispute predates even the intimation under section 143(1) which is merely communicates that the claim as mandated under the law has not even been made,

9. In light of the above and that allowing the appeal of the assessee herein would effectively amount to condonation of the delay in filing the relevant forms, the correct remedy available to the assessee in such a case is filing for condonation of delay under section 119(2)(b). The CBDT has already issued a circular No. 17 of 2024, dated 18-11-2024 (submitted during the course of the hearing), wherein the power to condone the delay has been delegated to jurisdictional Pr. CITs, subject to satisfaction of certain conditions. Hence filing an application in reference to the said circular is the correct remedy available to the assessee and the current appeal bypasses the mechanism given in the law.

*10. In this respect the attention is invited to the judgment of **Hon'ble Bombay High Court in case of Little Angels Educational Society Vs UOI in WP 1061 of 2020**, wherein, while discussing the order of CIT(Exemptions) which declined to condone the delay in filing of Form 10-B in respect of an educational trust, Hon'ble Court dealt with section 119(2)(b) and a circular vide which powers to condone delay were delegated to CITs. In para 18,19 and 20 Hon'ble Court noted provisions of Section 119(2)(b), the circular vide which CBDT delegated the authority to condone delay to jurisdictional CITs and that such a delegation was subjected to the conditions given in the circular.*

11. In para 23 and 24 Hon'ble Court noted that CIT(Exemptions) expressed his inability to condone the delay in light of the direction in the circular that a delay beyond 365 days can not be

condoned and Hon'ble Court noted that there is error or infirmity in the view taken by CBDT and the general order u/s 119(2)(b) can not be faulted. Hon'ble Court refused to interfere with the order noting the following in para 25-

"That being the position and having regard to the mandate of section 119(2)(b), we feel that even at this stage, petitioner may approach CBDT under the aforesaid provision seeking a special order to the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 which is beyond 365 days and thereafter to deal with the said claim on merit and in accordance with law."

12. Thus, Hon'ble Court affirmed the mandate of section 119(2)(b) and held that the CBDT's exercise of such a power is legally correct and in asking the assessee to submit an application back to CBDT, Hon'ble High Court affirmed that power to condone the delay is there with CBDT only. Accordingly, since allowing the appeal in the case would effectively amount to condonation of delay in filing of form 10-IC, and such a power is there with CBDT only (delegated to jurisdictional Pr. CIT in this case), it is humbly prayed that the only mechanism given in the act to deal with the dispute may not be bypassed and appeal of the assessee may be dismissed.

Assessee's reliance on order of Hon'ble Supreme Court in MA No. 21 of 2022 in Suo Moto Writ Petition (SMWP) (C) 3 of 2020, dated 10-01-2022-

13. While no such ground was there in the grounds of appeal raised on behalf of the assessee in the course of the hearing the assessee also referred to the said order of Hon'ble Supreme Court, wherein the time limits for filing appeals and other

proceedings before courts and tribunals were extended to 28-2-2022 and it was argued that the assessee filed Form 10-IC before the said date. The relevant parts from clauses I, II, III, and IV of Para 5 of the order of Hon'ble Supreme Court is reproduced below-

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the

court or tribunal can condone delay) and termination of proceedings."

14. The para 1 of the order specifically refers to filings in the course of judicial proceedings and is reproduced below-

"In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications / suits/appeals / all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID- 19 pandemic."

15. Hence the important question to be answered here is whether the directions of Hon'ble Supreme Court would apply only in respect of judicial/quai-judicial proceedings or would also apply in respect of filing of statutory forms where no proceedings (judicial or quasi- judicial proceedings) are pending.

16. The same has already been answered by **Hon'ble Bombay High Court in case of Mr. Naresh T. Jain vs Union of India in WP No. 1511 of 2021**, wherein after reproducing the above order of Hon'ble Supreme Court, Hon'ble Bombay High Court observed the following in paras 41 and 42-

"41. Admittedly, para 5(IV) of the Hon'ble Supreme Court's order dated 10 January 2022, on which Mr Pawar placed significant emphasis, does not mention PMLA. Instead, it refers to specific provisions of the Arbitration and Conciliation Act, 1996, the Commercial Courts Act, 2015, and the Negotiable Instruments Act, 1881. Even these provisions relate to initiating proceedings, setting out

limits for court or tribunal discretion regarding delay, and terminating proceedings.

42. Since the final order dated 10 January 2022 refers to certain specific provisions of the specified Acts but does not mention any provisions in PMLA, it is difficult to accept Mr Pawar's contention that the final order would govern the PMLA timelines as well. Furthermore, in the context of a reference to "other laws", the Hon'ble Supreme Court, in *S. Kasi (Supra)*, has clarified that these are laws which specify period(s) of limitation for initiating proceedings, outer limits (within which the court or tribunal can condone delay), and termination of proceedings. The provisions in Section 5 (1) of the PMLA do not fall into any of these categories."

17. Hon'ble Bombay High Court has clearly noted that the directions of Hon'ble Supreme Court would not apply to statutes not mentioned in the order and brought out the scope of the reference to "other laws" in the order of Hon'ble Supreme Court, to point out that the same include only some limited statutes. Further, in para 44, Hon'ble Bombay High Court pointed out that the applicability of the order in said SMWP has already been clarified by Hon'ble Supreme Court in case of *S Kasi vs State*, reported in 2021 (12) SCC 1 and the para 44 is reproduced below-

"44. The Hon'ble Supreme Court explained that the limitation for filing petitions/applications/suits/appeals/all other proceedings was extended to obviate lawyers/litigants from coming physically to file such proceedings in respective courts/tribunals. The order was passed to protect the litigants/lawyers whose petitions/applications/suits/appeals, and all other proceedings, would become time-barred, as they were unable to physically come to file such proceedings. The

order was for the benefit of the litigants who have to seek a remedy in law under the applicable statute to enforce a right. The law of limitation bars the remedy but not the right. When this Court passed the above order extending the limitation for filing petitions/applications/suits/appeals/all other proceedings, the order was intended to benefit those who have to seek a remedy or whose remedies may be barred by time because they were unable to come in person to file such proceedings."

18. It is clear from above observations of Hon'ble Bombay High Court that the said relaxation was in respect of filing of petitions/applications/suits/appeals, etc. who were in the nature of remedy and not a blanket relaxation. The petitioner also argued before Hon'ble Bombay High Court in the above case that the enactment of TOLA itself indicated that the scope of the directions of Hon'ble Supreme Court did not apply to fiscal statutes. In respect of the same Hon'ble Bombay High Court observed the following in para 63 of the same order-

"63. Mr. Chothani's reference to the provisions of TOLA is also relevant. If Mr. Pawar's argument that the orders made by the Hon'ble Supreme Court in SMWP would apply to all adjudicatory authorities, including the tax authorities and the PMLA authorities, were correct, then perhaps there was no need to issue an Ordinance followed by enacting TOLA to provide certain relaxations in timelines specified under eight statutes, including laws related to Benami properties or black money, etc. The lack of any reference to PMLA in TOLA, therefore, cannot be deemed insignificant."

19. In light of the above observations of Hon'ble Bombay High Court it is apparent that the directions of Hon'ble Supreme Court in the order in MA No. 21 of 2022 in Suo Moto Writ Petition (SMWP) (C) 3 of 2020, dated 10-01-2022 were not applicable in respect of filing of Income Tax Return or other statutory forms under the Income Tax Act and assessee's reliance on the order of Hon'ble Court may be rejected.

Relevant provisions are mandatory provisions-

20. Without prejudice to the arguments already forwarded in this submission it is humbly submitted before Hon'ble Bench that the sub-section (5) of section 115BAA, which mandates the filing of form 10-IC, is a mandatory provision and no relaxation in respect of the same can be provided. Had it been a mere directory provision, an argument on relaxing the time limit prescribed could be raised on behalf of the assessee but a mandatory provision would invite a strict compliance without relaxation. In this respect the attention is invited to the judgment of **Hon'ble Supreme Court in case of Nasiruddin and Ors. Vs Sitaram Agarwal in Civil Appeal No. 5077 of 1998**, wherein while discussing the mandatory versus directory provisions, on page 9 in 3rd last para Hon'ble Court observed the following-

"Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified."

21. Further in the para just above, the following was observed by Hon'ble Supreme Court-

"It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

22. Further **Hon'ble Supreme Court in case of the State of Uttar Pradesh & Ors vs Babu Ram Upadhya reported in [1961] 2 SCR 679** observed in para 36 that word shall in its ordinary import is obligatory.

23. In light of the above principles, the relevant part from Section 115BAA is reproduced below-

"(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:"

24. Thus, all the three criteria i.e. time limit in respect of a private party, use of negative connotations and use of word 'shall'; are satisfied, indicating that it is a mandatory provision and there is no relaxation from this provision. Accordingly, it is prayed before Hon'ble Bench that the appeal of the assessee may be dismissed.

We have perused the submissions advanced by both sides in the light of the records placed before us.

6. The issue arising for our consideration is whether the assessee is entitled to be taxed at the concessional rate under section

115BAA of the Act. The assessee contends that it had duly exercised the option for the said regime in its return of income and had computed its tax liability accordingly, and that the subsequent filing of Form 10-IC with a short delay is only a procedural requirement which cannot defeat the substantive claim. It is further submitted that the Assessing Officer erred in applying the normal rate of tax while framing the assessment, and that the Tribunal is competent to adjudicate the correct rate of tax in the present appeal. The Revenue, on the other hand, contends that the benefit of section 115BAA is not available in the absence of timely filing of Form 10-IC, that any delay can be condoned only under section 119(2)(b) by the competent authority, and that since the issue originated from the intimation under section 143(1) and an appeal is pending before the Ld. CIT(A), the same cannot be examined in the present proceedings. The dispute thus centres on the nature of Form 10-IC, the scope of appellate jurisdiction to determine the correct rate of tax, and the effect of the alleged procedural delay on the assessee's substantive entitlement under section 115BAA. Before we address the issues raised by both sides it is relevant to reproduce section 115BAA:

"115BAA. Tax on income of certain domestic companies.

(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 subclause (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 under the heading "C". Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(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 subsection (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 subsection, 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.

(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 subsection (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."

6.1.1. Sub-section (5) of section 115BAA prescribes the time and manner for exercising the option to be taxed at the concessional rate. It requires that the option be exercised on or before the due date under section 139(1) and in the prescribed form, namely Form 10 IC. The provision thus contains two components — the substantive act of opting for the new regime and the procedural requirement of furnishing the form as the mode of intimation. Where the assessee has clearly exercised the option in the return of income itself and computed its tax liability accordingly, the substantive requirement stands fulfilled, and the subsequent filing of Form 10 IC assumes the character of a procedural compliance. The section does not stipulate that the option would be invalid merely for delay in filing the form, nor does it contain any express bar on the appellate authorities from examining the correctness of the claim. In circumstances where the assessee has adhered to all the conditions of section 115BAA, has not claimed any ineligible deductions, and no prejudice is caused to the Revenue, the requirement of filing Form 10 IC within the prescribed time is to be regarded as directory. This position is also consistent with the later administrative recognition that such delays may occur for bona fide reasons and are capable of

condonation, thereby indicating that the time prescription is procedural and curable rather than a rigid substantive condition.

6.2. It is also relevant to consider the circular no.6/2022 dated 17/03/2022 that reads as under:

"Circular No.6/2022

*F.No.173/32/2022-IT A-1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, the 17th March, 2022

Sub: Condonation of delay under section 119(2)(b) of the Income Tax Act, 1961 in filing of Form 10-IC for assessment year 2020-21 - Reg

Section 115BAA of the Income Tax Act, 1961 (the Act) was inserted by the Taxation Laws (Amendment) Act, 2019 w.e.f. 01.04.2020. As per the Section, 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 subject to satisfaction of conditions contained in subsection (2) of the section.

1.2 As per sub-section (5) of section 115BAA of the act read with Rule 21AF of the Income Tax Rules, 1962 (the Rules), the assessee company is required to submit Form 10-IC electronically on or before the due date of filing of return of income u/s 139(1) of the Act and such option once exercised shall apply to subsequent assessment years.

1.3 Failure to furnish such option in the prescribed form on or before the due date specified u/s 139(1) of the Act results in denial of concessional rate of tax of twenty rate of tax of twenty-two per cent to such person.

2. Representations have been received by the Board stating that Form 10-IC could not be filed along with the return of income for AY 2020-21, which was the first year of filing of this form. It has been requested that the delay in filing of Form 10-IC may be condoned.

3. On consideration of the matter, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 115BAA of the Act, the Central Board of Direct Taxes, in exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that:-

The delay in filing of Form 10-IC as per Rule 21AE of the Rules for the previous year relevant to AY 2020-21 is condoned in cases where the following conditions are satisfied:

(i) The return of income for AY 2020-21 has been filed on or before the due date specified under section 139(1) of the Act.

(ii) The assessee company has opted for taxation u/s 115BAA of the Act in (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6 and

(iii) Form 10-IC is filed electronically on or before 30.06.2022 or 3 months from the end of the month in which this Circular is issued, whichever is later.

Sd/-

Sourabh Jain)

Under Secretary (ITA-1)"

6.2.1. Circular No.6/2022 (supra) lends further support to the view that the requirement of filing Form 10-IC within the due date is procedural in nature. The Circular was issued precisely to address cases where assesseees had exercised the option for taxation under section 115BAA in the return of income but had failed to file Form 10-IC within the prescribed time. Recognising the genuine hardship caused due to technical and procedural difficulties, particularly in the initial years of implementation of the provision, the Board permitted such assesseees to file Form 10-IC within an extended timeframe, subject to the condition that the option had been exercised in the return and the assessee had complied with all other substantive requirements of section 115BAA. The Circular thus makes a clear distinction between failure to exercise the option and delay in furnishing the prescribed form, and treats the latter as a curable procedural defect. This administrative clarification reinforces the interpretation that where the assessee has already opted for the concessional regime in the return of income and computed tax accordingly, a belated filing of Form 10-IC cannot be a ground to deny the statutory benefit.

6.2.2. Clause 3 of CBDT Circular No. 6/2022 dated 17.03.2022 specifically deals with the situation where an assessee has exercised the option for section 115BAA in the return of income but has failed to file Form 10-IC within the prescribed time. The Circular provides that in such cases, the delay in filing Form 10-IC shall be condoned and the assessee shall be allowed to file the form within the extended time, provided that the following conditions are satisfied:

1. the assessee has exercised the option under section 115BAA in the return of income filed within the due date specified under section 139(1);
2. the assessee has not claimed any deduction or exemption which is inconsistent with the provisions of section 115BAA; and
3. the assessee has computed its income and tax liability in accordance with the concessional regime.

6.2.3. The emphasis of Clause 3 is therefore on the substantive exercise of the option in the return, treating the filing of Form 10-IC as a procedural requirement capable of relaxation. The Circular does not contemplate any relaxation where the option itself was not exercised in the return, thereby drawing a clear distinction between a substantive defect and a procedural lapse.

6.2.4. Thus, Clause 3 supports the proposition that once the option is duly exercised in the return and the assessee has complied with all the conditions of section 115BAA, a delay in filing Form 10-IC does not invalidate the claim and is liable to be condoned. This administrative clarification reinforces the view that the requirement of filing Form 10-IC within the prescribed time is directory in nature and cannot be used to deny a substantive statutory benefit.

6.3. This *Tribunal* is therefore unable to concur with the contention of the Ld. DR that the delay in filing Form 10-IC is fatal to the assessee's claim for the concessional rate of tax. The requirement of filing the prescribed form within the due date is

thus procedural in nature and is intended to regulate the manner of exercising the option, and not to defeat a substantive right where the assessee has otherwise fulfilled all the conditions laid down under the Act. The material on record in the present facts clearly demonstrates that the assessee had, exercised the option within the prescribed time in its return of income and has consistently been assessed on that basis in subsequent years, and the delay in uploading the form is only a technical lapse without any revenue loss. The Ld. DR has not brought any provision which mandates automatic denial of the benefit in such circumstances, nor has any prejudice to the Revenue been demonstrated. In these facts, and following the settled principle that procedural requirements should not override substantive entitlement, this *Tribunal* finds no merit in the stand of the Ld. DR and holds that the benefit cannot be denied merely on account of delay in filing Form 10-IC.

6.4. The Ld. DR objected to the adjudication of the present ground on the premise that the assessee has already preferred an appeal before the Ld. CIT(A) against the intimation issued under section 143(1), wherein the issue of denial of concessional rate under section 115BAA is stated to be pending. It is contended that the assessee cannot agitate the same issue simultaneously before two fora. The said objection, in our considered view, is not sustainable.

6.4.1. At the outset, the present appeal arises from the assessment framed under section 143(3). Once a regular assessment has been completed and tax liability has been

determined therein, the computation of tax including the rate applied forms an integral part of the assessment order. The assessee is therefore entitled to challenge the correctness of the rate of tax adopted in the assessment order under appeal. The fact that a similar issue arose earlier at the stage of intimation under section 143(1) does not denude this *Tribunal* of jurisdiction to examine the legality of the final tax computation in the assessment order presently before it.

6.4.2. It is trite law that appellate jurisdiction is co-terminus with the subject matter of the order appealed against. The question of applicability of section 115BAA directly impacts the ultimate tax liability determined in the assessment under section 143(3). Hence, it squarely arises from the impugned order. The mere pendency of an appeal against the intimation does not operate as a statutory bar against adjudication in the present proceedings.

6.4.3. Further, the principle against parallel proceedings is intended to prevent conflicting decisions in respect of identical proceedings between the same parties. In the present case, the subject matter of the appeal before the Ld.CIT(A) is the intimation under section 143(1), whereas the present appeal concerns the assessment order passed under section 143(3). These are distinct proceedings governed by separate statutory provisions. There is no prohibition in the Act preventing an assessee from pursuing statutory remedies available against separate orders.

6.4.4. In any event, the *Tribunal's* determination of the correct rate of tax applicable in the assessment order will effectively settle the issue for the year, rendering the parallel proceedings academic. The existence of another pending appeal cannot restrict this *Tribunal's* duty to adjudicate grounds validly raised before it, particularly where the issue goes to the root of computation of tax.

6.4.5. Accordingly, the objection raised by the Ld. DR on the ground of alleged parallel proceedings is without merit and does not preclude this *Tribunal* from examining the assessee's entitlement to the concessional rate under section 115BAA in the present appeal.

6.5. Next objection of the Ld. DR is that any delay in filing Form 10-IC can be condoned only by the CBDT or the jurisdictional authority under section 119(2)(b) of the Act and, in the absence of such condonation, this *Tribunal* cannot grant the benefit of section 115BAA. The said objection proceeds on a misconceived understanding of both the controversy involved and the scope of section 119(2)(b).

6.5.1. At the outset, the assessee is not seeking condonation of delay under any circular issued under section 119(2)(b), nor is any relaxation of a statutory time limit being prayed for. The case of the assessee is that the option under section 115BAA stood validly exercised in the return of income itself and the tax liability was computed accordingly. The filing of Form 10-IC is merely the prescribed procedural mode for intimating such option. Once the

option is unequivocally exercised in the return, the substantive requirement of the provision stands fulfilled. The dispute, therefore, is not one of condonation of delay, but of recognition of a validly exercised statutory option on admitted facts.

6.5.2. Section 119(2)(b) is an enabling provision which empowers the Board to mitigate hardship in cases where a claim could not be made within the prescribed time. It does not operate as a fetter on the appellate jurisdiction of this *Tribunal* under section 254 to determine the correct tax liability in accordance with law. Where the material necessary for adjudication is already on record and the issue is purely legal, this *Tribunal* is fully competent to examine whether the assessee satisfies the conditions of section 115BAA and to grant the consequential relief. Such adjudication does not amount to usurping the power of condonation vested in the Board.

6.5.3. It is also relevant to note that, through various circulars extending the due date under section 139(1), the Board itself recognised the practical and systemic difficulties faced by taxpayers during the COVID-19 period. These administrative relaxations clearly reflect the legislative and executive intent that procedural lapses, particularly those not involving any dispute as to eligibility or any element of misuse, should not result in forfeiture of a substantive statutory benefit.

6.5.4. It is a settled principle that procedural prescriptions are intended to advance the cause of justice and not to defeat substantive rights, especially where there is no prejudice to the

Revenue and the intention of the assessee is manifest from the return of income. The maxim that “*procedure is the handmaid of justice*” squarely applies. The requirement of filing Form 10-IC within time is a procedural mechanism to evidence the exercise of option and cannot be elevated to the status of a mandatory substantive condition so as to deny the benefit of section 115BAA where all other conditions stand satisfied.

6.5.5. This position stands further fortified by Circular No. 17/2024 dated 18.11.2024 issued by the Board, whereby the power to condone delay in filing Form 10-IC has been delegated to the Pr. CIT. The very issuance of such a circular demonstrates that the time limit for filing the form is treated as directory and procedural, and that the legislative intent is to ensure that bona fide and technical delays do not defeat a substantive benefit.

6.5.6. Accordingly, the objection that relief can be granted only upon condonation under section 119(2)(b) is misplaced. The issue before this *Tribunal* is not one of condonation, but of correct application of section 115BAA on admitted facts. The reliance placed by the Revenue on section 119(2)(b) therefore does not advance its case.

6.6. The reliance placed by the Ld. DR on the decision of the *Hon’ble Bombay High Court in Little Angels Educational Society v. Union of India(supra)* is misplaced. The said judgment was rendered in the context of condonation of delay in filing Form 10B beyond the period prescribed in the CBDT circular issued

under section 119(2)(b), where the authority was held to have no power to condone delay exceeding the outer limit of 365 days.

6.6.1. The present facts does not involve any application for condonation under CBDT circular, nor does it concern eligibility to exemption dependent upon filing of an audit report. The assessee exercised the option under section 115BAA in the return of income and the filing of Form 10-IC is only a procedural intimation. The ratio of *Little Angels Educational Society v. Union of India(supra)*, deals with the limits of delegated condonation power in respect of Form 10B, and has no application to a case where substantive compliance stands established and the issue relates only to a procedural delay in filing Form 10-IC.

6.6.2. Thus reliance placed by the Ld. DR on above decision by *Hon'ble Bombay High Court* in case of *Little Angels Educational Society vs.UOI (supra)*, concerning condonation of delay in filing Form 10B is distinguishable. In such cases, the filing of the audit report is a foundational condition for claiming exemption, and the authority's power to condone delay was expressly circumscribed by a circular prescribing an outer time limit. In the present case, however, there is no statutory embargo providing that delayed filing of Form 10-IC, automatically invalidates an option already exercised in the return. The assessee's eligibility to opt for section 115BAA is not in dispute; only the timing of filing the prescribed form is in question. Thus, the controversy in the present facts does not involve enlargement of delegated condonation power, but interpretation of the substantive provision.

6.7. The reliance placed by the Ld. DR on the decision of this *Tribunal* in *MSC Agency (India) Pvt. Ltd (supra)*. is, in our considered view, misplaced and is factually distinguishable. In the said decision, this *Tribunal* examined the limited question whether, an addition made in an intimation issued under section 143(1), which was neither scrutinized nor adjudicated upon in the subsequent assessment framed under section 143(3), could be challenged in an appeal against the assessment order. This *Tribunal* held that in the absence of examination of that specific issue in the scrutiny assessment, there is no automatic merger of the intimation with the assessment order.

6.7.1. However, the present case stands on a materially different footing. The ground raised herein does not seek to independently challenge an adjustment made under section 143(1). Rather, the grievance pertains to the rate of tax applied while computing the final tax liability in the assessment order itself. Once an assessment under section 143(3) is framed and tax is computed therein, the rate adopted forms an integral part of the assessment order and is therefore subject to appellate scrutiny.

6.7.2. The doctrine of merger, as understood in law, is issue-specific and applies only to matters actually considered and decided in the subsequent proceedings. It cannot be invoked to preclude adjudication of a pure question of law relating to the correct computation of tax, especially when such issue arises from the assessment order under appeal. A procedural principle cannot operate to defeat a substantive statutory claim.

6.7.3. Further, the issue involved in the present case relates to the applicability of section 115BAA and the entitlement to a concessional rate of tax, which directly impacts the ultimate tax liability determined in the assessment. This is not comparable to a discrete addition confined to the intimation stage. Therefore, the factual matrix in *MSC Agency (India) Pvt. Ltd.* (supra) is clearly distinguishable and does not govern the present controversy. Accordingly, the reliance placed by the Ld. DR on the said decision does not advance revenue's case.

6.8. It is by now well settled that where the option for a concessional regime is clearly exercised in the return of income and the tax has been computed in accordance therewith, the mere delay in filing the prescribed form does not invalidate the exercise of such option. The form is only a procedural mode of intimation and cannot override the substantive act of exercising the option in the return. *Hon'ble Bombay High Courts* in case of *Gem Nuts & Produce Exports Co. (P.) Ltd.* (supra) and *Sarla Holdings (P.) Ltd.* (supra) have recognised that a procedural requirement relating to filing of a form cannot defeat a substantive statutory benefit where the intention to opt for the concessional regime is manifest from the return and all eligibility conditions are fulfilled.

6.9. It is equally settled that the appellate powers of this *Tribunal* under section 254 are wide and are intended to determine the correct tax liability in accordance with law. Where all the relevant facts are on record and the issue is purely legal, this *Tribunal* is competent to grant a statutory benefit even if the claim was not

made in the prescribed manner, provided the assessee is otherwise eligible. This principle has been consistently recognised in several decisions following the ratio of the *Hon'ble Supreme Court* that the purpose of assessment proceedings is to compute the correct income and tax liability in accordance with law and not to deny relief on technical grounds.

6.10. Further, in the present case, there is no prejudice whatsoever caused to the Revenue. The option under section 115BAA results in a lower tax rate but simultaneously entails the forfeiture of specified deductions and incentives. Once the assessee has computed its income in accordance with the provisions of section 115BAA and has not claimed any ineligible deductions, the tax liability stands crystallised strictly in terms of the statutory scheme. There is therefore neither any loss of revenue beyond what the statute itself permits nor any possibility of misuse. The doctrine that procedural lapses which cause no prejudice to the Revenue should not defeat substantive rights squarely applies to the present facts of the case.

6.10.1. In these circumstances, the delay in filing Form 10-IC being purely procedural, the option having been exercised in the return of income, and there being no prejudice to the Revenue, the assessee cannot be denied the benefit of section 115BAA.

6.10.2. It is also relevant to note that the return of income itself was filed on 31.03.2021, which was beyond the due date of 15.02.2021 as extended by the CBDT vide notification dated 31.12.2020. However, this period is squarely covered by the

orders of the *Hon'ble Supreme Court* in “Cognizance for Extension of Limitation, whereby all statutory timelines stood extended up to 30.06.2021 owing to the COVID-19 pandemic. Therefore, both the filing of the return of income and the subsequent filing of Form 10-IC on 01.04.2021 fall within the extended period recognised by the *Hon'ble Supreme Court*. In such circumstances, the delay cannot be viewed in isolation or treated as non-compliance with the statutory requirement, and the same stands sufficiently explained and liable to be condoned.

6.11. In view of the foregoing discussion, this *Tribunal* holds that, the delay in filing Form 10-IC is purely procedural and does not invalidate the substantive exercise of option under section 115BAA, which was clearly made in the return of income and acted upon by the assessee while computing its total income. Having regard to the fact that all the conditions prescribed under section 115BAA stand duly complied with and there being no prejudice caused to the Revenue, the delay in filing Form 10-IC is condoned. The Ld.AO is accordingly directed to accept the assessee's option under section 115BAA and recompute the tax liability at the concessional rate in accordance with law.

Accordingly, the ground No.3 raised by the assessee stands allowed.

Ground No.4 is on the issue raised by the assessee against the addition of Rs.6,10,030/- under section 41 of the Act.

Ground No.5 raised by the assessee is against short grant of TDS at Rs.1.08.275/-.

The Ld.AR submitted that this issue needs verification having regard to the evidences furnished by the assessee

Accordingly, this issue is remitted to the Ld.AO to consider the claim of the assessee having regard to the evidences filed by the assessee in accordance with law.

Accordingly, the ground No.5 raised by the assessee stands allowed for statistical purposes.

Ground No.6 & 7 are consequential in nature and therefore do not require adjudication.

In the result, appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 13/03/2026

Sd/-

**(GIRISH AGRAWAL)
Accountant Member**

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai:
Dated: 13/03/2026
Ashwani Rao
Sr. Private Secretary

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt.Registrar)
ITAT, Mumbai