

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

I.T.A. No. 2793/Mum/2023
(Assessment Year: 2020-21)

Traxit Engineers Pvt. Ltd. 406, Solaris 2, opp. L and T Gate No.6, Saki Vihar Road, Powai, Mumbai-400072 PAN : AA ACT9131G.	Vs.	The Assessing Officer, CPC, Bangalore/ITO-11(3)(1), Room No. 430, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Sanjay Parikh
Revenue/Respondent by : Shri P.D. Chougule (Addl.CIT)

Date of Hearing : 05.12.2023
Date of Pronouncement : 06.12.2023

ORDER

Per Padmavathy S, AM:

This appeal is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre dated 20.06.2023 for the Assessment Year (AY) 2020-21. The assessee raised the following grounds:

“A) Applicability of section 115BAA - Rate of Tax
1) The hon'ble Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [CIT(A)] having held that the appellant was prima facie

eligible to claim the lower tax regime u/s. 115BAA and having held that this being the first year of applicability of section 115BAA and difficulties were faced by assessee's in filing Form 10IC for claiming lower tax regime u/s. 115BAA, erred on facts and in law in directing the AO to verify whether Form 10IC was submitted by the appellant or not and to allow lower tax option as per the provisions of section 115BAA if the appellant has filed the said form.

2) The learned CIT(A) erred on facts and in law in not giving a reasonable and sufficient opportunity of being heard before passing the order u/s. 250.

3) The learned CIT(A) failed to appreciate that the appellant was prevented by a reasonable and sufficient cause from replying to notices issued.

4) The learned CIT(A) failed to appreciate that the appellant having opted to be taxed at a lower rate as per section 115BAA in the Return of Income, the filing of Form 10IC could not be the only criteria to be governed by the new tax regime specially as there were difficulties in uploading the said form on the portal.

5) Appellant prays that your honour hold that the appellant is governed by the lower tax regime as per the provisions of section 115BAA and direct the AO to tax the appellant as per the provisions of section 115BAA.

B) General

6) The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.”

2. The assessee is a private company and filed the return of income for AY 2020-21 on 14.10.2020 declaring a total income of Rs. 1,06,77,810/- and had paid tax at Rs. 26,87,391/- under section 115BAA of the Income Tax, 1961 (the Act). The return was processed under section 143(1) and the CPC has worked out tax at Rs. 35,64,680/-. Aggrieved the assessee filed its appeal before the CIT(A). The CIT(A) issued notices dated 17.01.2023, 23.03.2023, 31.05.2023 and 06.06.2023 to the assessee and since the assessee did not file any response the

CIT(A) concluded the assessment allowing the appeal for statistical purposes by holding that

“15. According to the above circular, the assessee can upload electronic Form No. 10-IC on or before 30.06.2022. In the absence of response from the appellant, whether he had filed the Form No. 10-IC within the due allowed u/s 139(1) or on or before 30.06.2022 is uncertain. The digital record accessible to this office is not showing any such filing of Form for the said AY 2020-21. In view of this, there is no possibility to give a clear finding on the grounds raised in appeal. In the light of the above facts, the decision on the grounds of appeal can be taken by way of giving proper directions for the Jurisdictional AO to examine the factual information and give effect to this order.

16. The AO is directed to verify whether the Form No.10-IC submitted by the assessee is available on electronic record of the Department i.e., in e-filing portal or not for the AY 2020-21. If the Form No.10-IC is available, allow the lower tax option as claimed by the assessee in the return of income and compute the tax according to the provisions Sec. 115 BAA of the Act. If no Form No. 10-IC is submitted within the time allowed according to the time extended by the circular (supra), the Jurisdictional AO is directed to compute the tax as per the normal provisions of the Act without considering the option exercised by the assessee in the return u/s 115BAA. Subjected to the above discussion, the grounds of appeal filed by the appellant are partly allowed for statistical purposes.”

3. Before us, the ld. AR submitted that the assessee has filed its submissions before the CIT(A) on 19.06.2023 (page no. 91 to 93 of PB) and that the CIT(A) had not considered the submissions of the assessee and concluded the appeal vide order dated 20.06.2023. The ld. AR on merits submitted that the assessee has filed Form10-IC as per Rule 21AE of the Income Tax Rules subsequently and therefore, is eligible for concessional rate of tax under section 115BAA of the Act. Accordingly, the ld. AR prayed that the demand raised vide order passed under section 143(1) be deleted.

4. The Id. DR on the other hand, submitted that the assessee has not appeared before the CIT(A) inspite of giving several opportunity. The Id. DR drew our attention to the findings of the CIT(A) to submit that the CIT(A) has correctly remanded the issue to the AO to examine the claim that Form 10IC is filed on or before 30.06.2022 and allow the concessional rate as per law. Therefore, the Id. DR submitted that there is no infirmity in the order of the CIT(A).

5. We have heard the parties and perused the material on record. The assessee filed a return of income and has claimed concessional rate of tax under section 115BAA of the Act. Since Form 10IC was not filed along with the return of income filed under section 139(1) of the Act, while passing order under section 143(1), the CPC has denied the concessional rate of tax and has levied tax at normal rates. We noticed that during the appellate proceedings the assessee did not respond to the notices issued by the CIT(A) calling for details dated 17.1.2023 and 23.03.2023. It is also noticed that the assessee in response to notice dated 31.05.2023 sought adjournment to appear on 06.06.2023. The CIT(A) on 06.06.2023 gave a final opportunity to the assessee to appear by 19.06.2023. It is submitted by the Id. AR that a response was filed on ITBA portal on 19.06.2023 which have not been considered by the CIT(A) while deciding the appeal. On perusal of the said response we noticed that the submissions were made contending that the concessional rate of tax under section 115BAA of the Act cannot be denied while processing the return under section 143(1) of the Act. It is also noticed that the assessee has not made any submission with regard to belated filing of Form 10IC. We also notice from the relevant findings of the CIT(A) as extracted the earlier part of this order, the CIT(A) has relied on the Circular No. 6/2022 dated 17.03.2022 and has directed the AO to

verify whether the assessee has filed the Form 10IC on or before 30.06.2022 and that the fact could not be verified due to non-appearance of the assessee before the CIT(A). During the course of hearing, the ld. AR claimed that Form 10IC has been subsequently filed by the assessee and according to the above referred circular, the assessee should be allowed to apply tax at concessional rate under section 115BAA of the Act. However no documentary evidence in support of the claim is submitted before this. Since, he claim of the assessee that Form 10IC has been filed needs factual verification, we are remitting the appeal back to the CIT(A) to examine the claim of the assessee based on evidences that may be submitted and allow the claim in accordance with law. The assessee is directed to furnish the relevant details in support of the claim of applications of concessional rate of tax under section 115BAA and co-operate with the appellate proceedings. It is ordered accordingly.

6. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 06-12-2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(MS. PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

