



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9707 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

V M PROCON PVT LTD

Versus

ASSISTANT DIRECTOR OF INCOME TAX & ANR.

Appearance:

MS SHRUNJAL T SHAH(10617) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

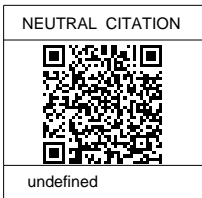
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 23/08/2024

ORAL JUDGMENT

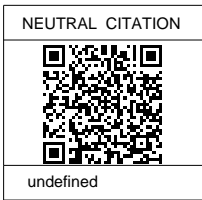
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Ms.Shrunjal Shah
for the petitioner and learned Senior



Standing Counsel Mr. Varun Patel for the respondent.

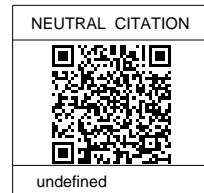
2. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Varun Patel waives service of notice of rule for the respondent No.2.
3. Having regard to the controversy involved which is in narrow compass, with the consent of the learned advocates for the parties, the matter is taken up for hearing.
4. By this petition under Article 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 22.02.2024 passed under section 119(2) (b) of the Income Tax Act



(for short 'the Act'] for Assessment Year 2021-22 and further direction to the respondent to permit the petitioner to file Form 10-IC electronically as provided under section 115BAA of the Act read with Rule 21AE of the Income Tax Rules, 1962 [for short 'the Rules'] for the Assessment Year 2021-22 and re-process the return of income filed by the petitioner to give the benefit of reduced rate of tax.

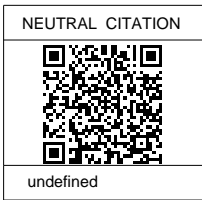
5. Brief facts of the case are that the petitioner had filed original return of income for Assessment Year 2021-22 on 15.12.2021 declaring total income of Rs. 1,98,03,950/-.

6. By Taxation (Amendment) Ordinance, 2019, section 115BAA was inserted in the Act



wherein, existing as well as newly formed companies were given liberty to opt for concessional rate of tax at the base rate of 22% with caveat that such assessee-company shall forego all deductions available to it as stated under section 115BAA of the Act.

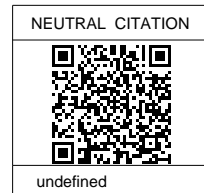
7. It is the case of the petitioner that to avail such concessional rate of 22% of the tax, the petitioner has complied with all the conditions as per section 115BAA of the Act. However, due to oversight of the accountant and as the petitioner was applying the said provision of the Act for the first time, the accountant did not file Form 10-IC electronically under section 115BAA(5) of the Act on or before



the due date for furnishing the return of income as per Rule 21AE of the Rules.

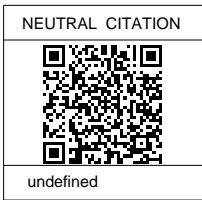
8. Due to non-filing of the Form 10-IC, the Return of Income of the petitioner for Assessment Year 2021-22 was processed by the respondent under section 143(1) of the Act without giving the benefit of lower rate of tax of 22% and tax liability under section 115BAA was ascertained at Rs. 74,43,791/- and the petitioner was liable to pay additional amount of Rs. 20,48,040/- as per the intimation dated 13.11.2022 issued under section 143(1) of the Act.

9. The petitioner, after failing to upload Form 10-IC electronically at multiple times on e-portal of the Income Tax



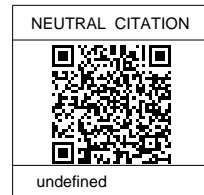
Department, made an application on 23.01.2023 under section 119(2)(b) of the Act before respondent No.2-Chief Commissioner of Income Tax to condone delay in filing Form 10-IC and to permit the petitioner to file the same electronically. It was also submitted that the extreme financial hardship would be caused to the petitioner, if an additional amount of Rs.20,48,040/- is to be paid due to technical mistake of not electronically filing Form 10-IC as the substantive provisions of the Act have been complied with by the petitioner and therefore, the petitioner was eligible to claim reduced lower rate of taxation @ 22%.

10. The petitioner thereafter, received an intimation letter dated 27.09.2023 to



remain present for hearing on 16.10.2023. The petitioner filed written submissions dated 11.10.2023 wherein reliance was placed on Circular No. 6/2022 issued by the CBDT on 17.03.2023 for Assessment Year 2020-21 wherein, in order to avoid genuine hardship to the domestic companies, in exercising the option under section 115BAA of the Act, for Assessment Year 2020-21, the CBDT directed to condone the delay in filing Form 10-IC pursuant to decision rendered in Special Civil Application No. 1085/2022 by the High Court of Gujarat.

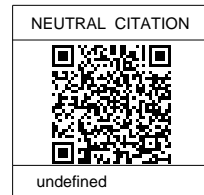
11. The respondent No.2 passed order dated 13.10.2023 under section 119(2)(b) of the Act, rejected the application of the petitioner stating that Central Board of Direct Taxes [CBDT] had issued circular for Assessment



Year 2020-21 but the case of the petitioner pertains to Assessment Year 2021-22.

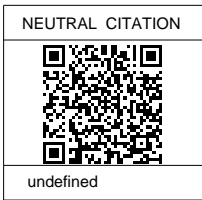
12. It is the case of the petitioner that though the hearing was fixed on 16.10.2023, the order for rejecting the application was filed prior thereto on 13.10.2023.

13. Thereafter, on 23.10.2023, the Circular No. 19/2023 was issued by the CBDT to condone the delay under section 119(2)(b) of the Act in filing Form 10-IC for Assessment Year 2021-22. The petitioner therefore, filed review application dated 31.10.2023 before the respondent No.2 pointing out that now the petitioner fulfills the condition as submitted in Circular No. 19/2023.



14. The respondent No.2 provided hearing on 10.01.2024 to the petitioner and during the course of hearing, the petitioner explained to the respondent No.2 that in the statement of income, the petitioner has opted for tax under section 115BAA of the Act, however, due to some technical glitch, it appears that in Form ITR-6, the boxes are itself not visible and therefore, merely on the basis of the technical glitch, the petitioner should not be deprived of the benefit of lower tax of rate for non-filing of the Form 10-IC.

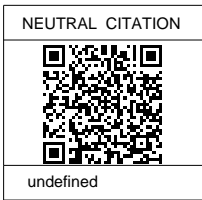
15. However, the respondent No.2, by impugned order dated 22.02.2024, rejected the application of the petitioner holding that the petitioner did not put any remark



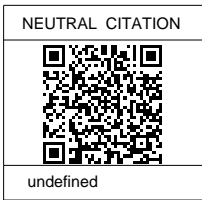
against Column (e) meant for giving option for taxation under section 115BAA of the Act and therefore, the condition of CBDT Circular No. 19 of 2023 is not satisfied. The petitioner has therefore, approached this Court challenging the impugned orders dated 13.10.2023 and 22.02.2024.

16. Learned advocate Ms. Shrunjal Shah for the petitioner submitted that the petitioner has opted for option in the statement of income filed along with return of income and has computed the tax payable as per the provision of section 115BAA of the Act.

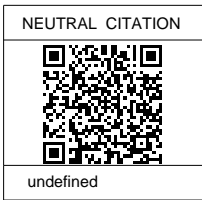
17. Learned advocate for the petitioner invited the attention of the Court to Column(e) in return of income in Form ITR-6 providing for option for taxation under



section 115BAA of the Act applicable to domestic company at page 45 of the Paper Book to point out that no box for exercising option is provided in the said Form. It was therefore, submitted that as per Circular No. 19/2023, when the petitioner has computed tax payable in the statement of income as per the provision of section 115BAA of the Act, it cannot be said that the petitioner has not exercised option for lower rate of tax. It was also pointed out that the petitioner has not claimed any deduction as per the provision of section 115BAA of the Act which clearly shows that the petitioner is eligible for lower rate of tax and delay ought to have been condoned as per the CBDT Circular No. 19/2023 as all the conditions are fulfilled by the petitioner.

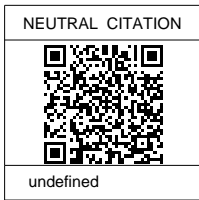


18. On the other hand, learned Senior Standing Counsel Mr. Varun Patel submitted that as per the factual report called for by the respondent No.2 in connection with the application of the petitioner under section 119(2) (b) of the Act to condone the delay in filing the Form 10-IC for Assessment Year 2021-22, a report was submitted by PCIT-3, Ahmedabad on 20.09.2023 along with copy of the report of the Assessing Officer dated 06.07.2023 and report of the Joint Commissioner of Income Tax, Range 4(1), Ahmedabad, dated 07.07.2023 for rejecting the claim of the petitioner on the ground that there is nothing on record to show any genuine hardship on the part of the petitioner and therefore, the case of the petitioner does not fall under the criteria of condonation



of delay under section 119(2)(b) of the Act. It was further submitted that before passing order dated 20.02.2024, factual report was called for from PCIT-3, Ahmedabad, by respondent No.2 as per the report dated 22.12.2023 with regard to condonation of delay as per Circular No. 19/2023. It was observed that the petitioner-company did not put any remarks against Column (e) meant for giving option for taxation under section 115BAA of the Act and therefore, the delay in filing Form 10-IC cannot be condoned and review application was rightly rejected.

19. Considering the submissions made by learned advocate for the parties and on perusal of the material documents placed on record by the petitioner, it appears

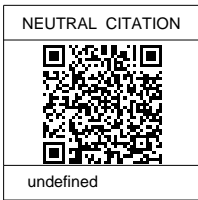


that the petitioner has filed the return of income under section 139(1) of the Act before the due date by applying the provisions of section 115BAA of the Act.

20. The petitioner has computed the income as per the statement of income by applying the reduced rate at 22% under section 115BAA of the Act applying the conditions prescribed in the said section which reads as under:

"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

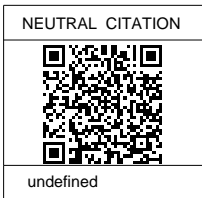


the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied:

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 sub-clause (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;



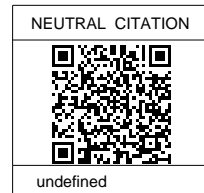
(ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(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 sub-section (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

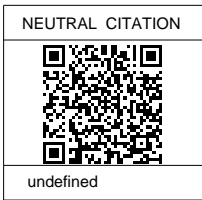


adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.

(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 sub-section, 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 sub-section (1) of section 139 for furnishing the returns of income for any previous

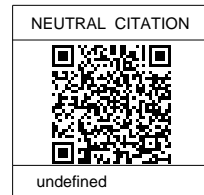


year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

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:

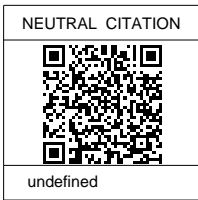
Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year."

21. The reason for rejecting the application to condone delay on the ground that the petitioner has not exercised any option in the return of income in Form 10-IC could not have been the basis for rejection as on perusal of the Form 10-IC at page 45 of the paper book, Column (e) providing for



option to be exercised by the assessee does not give any box for the option to be exercised by the assessee. It is evident that similar boxes are provided for other columns and assessee has exercised the option by ticking such boxes. It appears that Form of return of income ITR-6 is faulty in absence of any box provided for exercising option by the assessee for taxation under section 115BAA of the Act.

22. The impugned order passed by the respondent No.2 in the review application filed by the petitioner in view of the Circular No. 19/2023 issued by the CBDT in Form 10-IC as per Rule 21AE of the Rules for Assessment Year 2021-22, on fulfilling following condition, the delay ought to have been condoned.

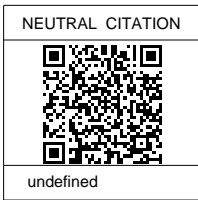


“(i) The return of income for relevant assessment year has been filed on or before the due date specified under section 139(1) of the Act;

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

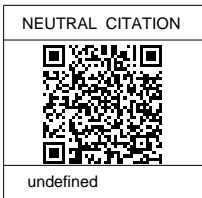
(iii) Form No. 10-IC is filed electronically on or before 31.01.2024 or 3 months from the end of the month in which this Circular is issued, whichever is later.”

23. The petitioner has fulfilled condition Nos. 1 and 3 but, so far as condition No.2 is concerned, in absence of any provision to opt for taxation under section 115BAA of the Act, item (e) “Filing Status” in “Part A-GEN” of the Form of Return of Income ITR-6, the same could not have been complied with by the petitioner. However, on perusal of the computation of total income of the petitioner, it is not in



dispute that the petitioner has exercised the option under section 115BAA of the Act. Therefore, technical consideration cannot be applied to prevent the substantial justice. This Court in case of *Rajkamal Healds and Reeds Pvt. Ltd vs. Assistant Director of Income Tax* in Special Civil Application No. 1085 of 2022 after considering the provision of section 115BAA observed as under:

"10. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the writ-applicants should at the earliest file an appropriate application in writing addressed to the Principal Chief Commissioner/ Chief Commissioner making a request to permit him to file the Form 10 IC electronically after condoning the delay in that regard so that the return of the writ-applicant can be re-processed or regular assessment can also be framed accordingly and the liability can be determined.



Section 119 of the Act falls under Chapter XIII. Section 119(1) reads thus :

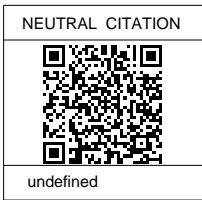
"The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board.

Sub section (2) (b) of Section 119 reads thus :

(2) Without prejudice to the generality of the foregoing power

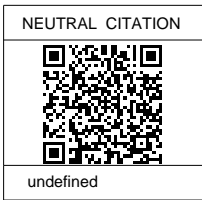
(a) xxxxx

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise [any income-tax authority, not being a Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act



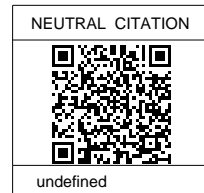
for making such application or claim and deal with the same on merits in accordance with law.

11. At this stage Mr. Dave the learned Counsel appearing for the writ-applicant submitted that the intimation under Section 143(1) has already been issued to his client fixing the liability. In such circumstances, the next step in the process would be the recovery of the said amount. He would submit that but for the omission on the part of the writ-applicant in filing the Form 10 IC electronically, the liability would not have been as determined as reflected in the intimation under Section 143 (1) of the Act. In this regard we may only observe that if any steps are taken by the A.O towards recovery it is always open for the writ-applicant to file an application with a request to the AO to keep the demand in abeyance against such an assessment order and pray for stay of the recovery atleast till the time the application that may be filed by the writ-applicant under Section 119 before the Chief Commissioner is decided one way or the other.



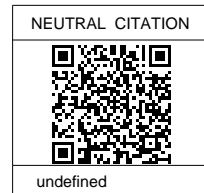
12. In view of the aforesaid, we dispose of this writ application reserving the liberty for the writ applicant to file an appropriate application addressed to the Chief Commissioner Income Tax under Section 119 (2) (b) of the Act referred to above with a request to permit him to file the Form 10 IC electronically. If any such application is filed then the Chief Commissioner shall look into it expeditiously and may exercise his discretion in accordance with law more particularly keeping in mind the object behind Section 119 (2) (b) of the Act. The Chief Commissioner/ Commissioner shall also consider the hardships that the writ-applicant may have to face in the event if he is not permitted to file the Form 10 IC electronically."

24. After the aforesaid order was passed by this Court on 02.01.2022, the CBDT has issued Circular No. 6/2022 in exercise of powers conferred under section 119(2) (b) of the Act for Assessment Year 2020-21 and after considering that representation, the



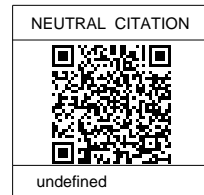
Form 10-IC could not have been filed for Assessment Year 2021-22 within the due date or extended due date and to avoid genuine hardship to the domestic companies in exercising option under section 115BAA of the Act, the CBDT issued Circular No. 19/2023 in exercise of powers conferred under section 119(2) (b) of the Act.

25. Considering the above facts, respondent No.2 ought to have condoned the delay in filing Form 10-IC by the petitioner instead of rejecting the review application filed by the petitioner on technical ground as in substance, the petitioner has exercised the option for lower rate of tax under section 115BAA of the Act which is clear from the computation of income available on record. Even in Form ITR-6, the petitioner has

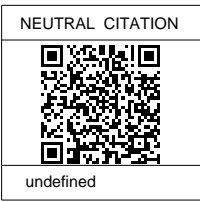


filled in the details by computing the tax as provision for current tax in Column 54 at Rs.49,58,000/- by applying lower rate of tax meaning thereby, the petitioner has exercised option merely because in absence of any provision for exercising the option in Column (e) as per the Circular No. 19/2023, the petitioner cannot be deprived of lower rate of tax and the delay in filing Form 10-IC ought to have been condoned by respondent No.2 so as to fulfill the condition prescribed in sub-section (5) of section 115BAA of the Act read with section 21AE of the Rules providing for procedure for filing Form 10-IC.

26. In view of the foregoing reasons, the impugned order dated 13.10.2023 passed



under section 119(3)(b) of the Act and intimation under section 143(1) of the Act dated 13.11.2022 are hereby quashed and set aside and the matter is remanded back to the respondent No.2 to pass appropriate order condoning delay in filing Form 10-IC by the petitioner for exercising the option of lower rate of tax under section 115BAA of the Act as per the return of income filed by the petitioner in Form of Return of Income i.e. ITR-6 so as to enable the Assessing Officer or the Central Processing Center (CPC) to re-process the Return of Income filed by the petitioner applying provision of section 115BAA of the Act for lower rate of tax at 22% instead of regular rate of tax applicable to the domestic company. Such exercise shall be completed within twelve



weeks from the date of receipt of copy of this order by the respondent No.2.

Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

JYOTI V. JANI

