

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “A”, PUNE

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

ITA No.1651/PUN/2024  
Assessment year : 2022-23

Akshay Nitin Malu 301, Mangalwar Peth, Madhavnagar, S.O. Sangli, Sangli – 416406	Vs.	ITO, Ward 1, Sangli
PAN: BWXPM6863P		
(Appellant)		(Respondent)

Assessee by : Shri Pramod S Shingte  
Department by : Shri Ramnath P Murkunde  
Date of hearing : 01-01-2025  
Date of pronouncement : 03-01-2025

**ORDER**

**PER R. K. PANDA, VP :**

This appeal filed by the assessee is directed against the order dated 25.07.2024 of the Ld. Addl./JCIT(A)-3, Ahmedabad relating to assessment year 2022-23.

2. Facts of the case, in brief, are that the assessee is an individual and engaged in business of manufacturing of cloth on looms. He filed his return of income on 20.07.2022. Before filing of his ITR the assessee had decided to opt for the new regime of taxation u/s 115BAC as applicable for assessment year 2022-23 and accordingly had filed Form No.10-IE on 18.07.2022 as per requirement u/s 115BAC(5)(i) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). However, while filing the return of income on 20.07.2022 i.e. after filing Form

No.10-IE, the assessee realized that the new regime of taxation u/s 115BAC is not beneficial to him for which he filed the return of income declaring total income at Rs.24,01,740/- as per the old regime. The Assessing Officer, CPC processed the return on 07.08.2023 determining the total income at Rs.64,41,940/- as per the new regime of taxation on the ground that the assessee had exercised the option by filing the requisite form i.e. Form No.10-IE.

3. The assessee filed an appeal before the Ld. Addl./JCIT(A), who held that as per provisions of section 115BAC of the Act, the said section does not provide for withdrawal of exercised option for the same year, it only provides for withdrawal of the option only for the year subsequent to the year of exercising of the option. He accordingly upheld the action of the CPC in making an adjustment of Rs.71,31,899/- by denying the claim of additional depreciation u/s 32(1A) of the Act. The Ld. Addl./JCIT(A) also upheld the action of the CPC in disallowing the deduction claimed under Chapter VI-A amounting to Rs.1,63,260/-.

4. Aggrieved with such order of the Ld. Addl./JCIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and circumstances of the case and in law the Addl. CIT(A), NFAC erred in confirming the action of the Asst. Director of Income Tax, CPC, Bengaluru (hereinafter referred to as the AO) of thrusting the new regime of taxation as prescribed under section 115BAC even though the appellant had not opted for the same in the ITR filed by him and thereby denying the following deductions to the appellant:*
  - a. *Additional Depreciation u/s 32(1A) on new plant machinery acquired and put to use during the year Rs.71,31,899*
  - b. *Deduction under Chapter VIA Rs.1,63,260*

*The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.*

5. The Ld. Counsel for the assessee at the outset submitted that the assessee had originally decided to opt for the new regime of taxation u/s 115BAC of the Act and accordingly had filed the Form No.10-IE. However, on realizing that the old regime of taxation is beneficial to the assessee, the assessee filed his return of income on 20.07.2022 declaring total income of Rs.24,01,740/-. He submitted that at the time of processing of the return, the assessee had already filed the return as per old regime of taxation and therefore, the CPC was not justified in not considering the return of income since the assessee had not fulfilled all the conditions laid down in section 115BAC of the Act. He submitted that the Ld. Addl./JCIT(A) without appreciating the provisions properly has upheld the action of the CPC which is not correct. He drew the attention of the Bench to the provisions of sub-section (5) of section 115BAC, which read as under:

*“115BAC(1)....*

*(5) Nothing contained in this section shall apply unless option is exercised in the prescribed manner by the person,—*

*(i) having income from business or profession, 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, 2021, and such option once exercised shall apply to subsequent assessment years;*

*(ii) having income other than the income referred to in clause (i), along with the return of income to be furnished under sub-section (1) of section 139 for a previous year relevant to the assessment year:*

***Provided*** *that the option under clause (i), once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option under this section, except where such person ceases to have any income from business or profession in which case, option under clause (ii) shall be available.*

*Provided further that the provisions of this sub-section shall not apply for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2024.”*

6. He submitted that when the assessee has not fulfilled all the conditions laid down in the said provision and has not filed the return of income under the new regime of taxation but has opted to file the return exercising its option for the old regime of taxation, the Ld. Addl./JCIT(A) was not justified in upholding the action of the CPC.

7. The Ld. DR on the other hand while supporting the order of the Ld. Addl./JCIT(A) submitted that section 115BAC of the Act does not provide for withdrawal of the exercised option for the same year, it provides for withdrawal of the option only for the year subsequent to the year of exercising of the option, therefore, the grounds raised by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. Addl./JCIT(A). It is an admitted fact that the assessee had decided to opt for the new regime of taxation u/s 115BAC of the Act as applicable for assessment year 2022-23 and accordingly had filed Form No.10-IE on 18.07.2022 as per requirement u/s 115BAC(5)(i) of the Act. However, we find the assessee filed his return of income on 20.07.2022 under the old regime of taxation declaring total income of Rs.24,01,740/-. We find the CPC vide order dated 07.08.2023 processed the return of income and determined the total income at Rs.64,41,940/- as per the new regime of taxation on the ground that

the assessee had exercised the option by filing the requisite Form No.10-IE. It is the submission of the Ld. Counsel for the assessee that although the assessee had filed the Form No.10-IE on 18.07.2022, however, the assessee exercised the option under the old regime of taxation and filed the return of income on 20.07.2022 which is much before processing of the return by the CPC i.e. 07.08.2023. It is also his submission that since the assessee has not fulfilled all the conditions as mentioned in section 115BAC, therefore, the Ld. Addl./JCIT(A) was not justified in upholding the action of the CPC in treating the return filed by the assessee as under the new regime of taxation.

9. We find some force in the above arguments of the Ld. Counsel for the assessee. It is an admitted fact that although the assessee had originally exercised the option for taxation u/s 115BAC by filing the Form No.10-IE on 18.07.2022, however, the assessee has filed the return of income on 20.07.2022 declaring total income at Rs.24,01,740/- under the old regime of taxation. It is also an admitted fact that the return was processed on 07.08.2023 which is much after the date of filing of the return. It is not a case that the assessee has filed Form 10-IE and also filed the return under the new tax regime and thereafter filed a revised return withdrawing the option which according to us is not permissible in the said previous year and the assessee can change the option only in the next year. However, in the instant case, the assessee after filing the Form 10-IE has opted for the old regime of taxation in the return filed. Therefore, we are of the opinion that the assessee cannot be forced to adopt for the new regime. We, therefore, find

merit in the arguments of the Ld. Counsel for the assessee that the Ld. Addl./JCIT(A) was not justified in upholding the action of the CPC in processing the return of income determining the total income at Rs.64,41,940/- under the new regime of taxation. Accordingly, the order of the Ld. Addl./JCIT(A) is set aside and the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 3<sup>rd</sup> January, 2025.

**Sd/-**  
(ASTHA CHANDRA)  
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 3<sup>rd</sup> January, 2025  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	01.01.2025		Sr. PS/PS
2	Draft placed before author	02.01.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			