

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad

Before Shri R.K. Panda, Vice President
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.478/Hyd/2023		
Assessment Year: 2020-21		
M/s. Qvantel Software Solutions Ltd, Hyderabad PAN:AAACQ1480D	Vs.	Income Tax Officer Ward 16(3) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri Kumar Pal Tated, CA	
Revenue by:	Shri Shakeer Ahmed, CIT(DR)	
Date of hearing:	08/11/2023	
Date of pronouncement:	23/11/2023	

ORDER

Per R.K. Panda, Vice-President.

This appeal filed by the assessee is directed against the order dated 10.08.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2020-21.

2. Facts of the case, in brief, are that the assessee is a company incorporated under the Companies Act 1956 and is engaged in the business of software development, system architecture, design, implementation, integration, verification, maintenance and other services in the field of computing, software engineering, instrumentation and telecommunication systems.

3. For the A.Y 2020-21, the assessee filed its return of income on 31.12.2020 declaring total income of Rs.12,51,74,586/-. The assessee opted for taxation u/s 115BAA of the I.T. Act, 1961 while filing the tax return for the A.Y 2020-21 by selecting option as 'yes' for whether opting for section 115BAA (yes or No) (applicable on Domestic Company) under which the tax liability was calculated at the effective tax rate of 25.17 per cent which is amounting to Rs.3,15,03,941/- and which was duly charged by way of advance taxes. However, at the time of filing return of income, the relevant Form 10 IC could not be filed as the DSC for signatory was not appearing while signing the said form online on the web portal of the I.T. Department.

4. Subsequently, the assessee received an intimation u/s 143(1) of the Act with a demand of Rs.1,57,70,770/- in which the effective tax rate of 34.95 per cent has been considered. The assessee responded to the above intimation order within due date stating that the company has opted for tax u/s 115BAA of the Act with effective tax rate of 25.17 per cent and therefore is not required to pay the tax at effective rate of 34.95 per cent as calculated u/s 143(1) of the Act. However, the assessee was unsuccessful.

5. In appeal, the learned CIT (A) NFAC dismissed the appeal filed by the assessee holding that for opting section 115BBA while filing the return of income, the relevant Form 10IC was not duly filed by the assessee. Filing of Form 10 IC for opting section 115BAA is a mandatory provision and as

the assessee failed to do so, the CPC rightly denied the claim u/s 115BBA.

6. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

“1. The CIT(A) erred in sustaining the order of AO u/s 143(1) of the Act dated 24.12.2021 wherein the benefit of provisions of section 115BAA has not been provided to the assessee.

2. The CIT(A) erred in observing that the taxation u/s 115BAA is not applicable to the case of the assessee as Form 101C was not duly filed by the assessee.

3. The CIT(A) ought to have appreciated the fact that the CBDT vide their circular in 06/2022 dated 17.03.2022 has condoned the filing of Form 10 IC for claiming taxation u/s 115BAA of the Act.

4. The CIT(A) ought to have appreciated the fact that the AO in the complete scrutiny proceedings u/s 143(3) r.w.s. 144B of the Act dated 20.08.2022 have taxed the income of the assessee u/s 115BAA of the Act.

5. The CIT(A) ought to have appreciated the fact that the intimation order u/s 143(1) of the Act does not survive after the passing of assessment order u/s 143(3) r.w.s. 144B of the Act.

6. The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

7. The learned Counsel for the assessee at the outset submitted that the Assessing Officer in the order passed u/s 143(3) dated 28.08.2022 has computed the tax at the lower rate. However, since the order of the learned CIT (A) NFAC is against the assessee, therefore, he has no objection if the matter is restored to the file of the learned CIT (A) NFAC with a direction to consider the CBDT Circular No.6/22, dated

17.03.2022 and pass necessary order to avoid any future difficulties for the assessee.

8. The learned DR fairly conceded that the CBDT vide circular No.6/22, dated 17.3.2022 has directed to condone the delay in filing Form 10 IC subject to certain conditions. He accordingly submitted that he has no objection, if the matter is restored to the file of the learned CIT (A) NFAC for adjudication of the issue in the light of the CBDT Circular cited (Supra).

9. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the assessee while filing the return of income had not filed the relevant Form 10IC for opting lower rate of tax as per provisions of section 115BAA. Therefore, the CPC denied the claim made u/s 115BBA. We find the CBDT has issued circular No.6/22 dated 17.03.2022 condoning the delay in filing of Form 10 IC for A.Y 2020-21. The relevant portion of the circular reads as under:

‘Circular So. 6 /2022
F.No.173/32/2022-ITA-I
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 sub-section(2) of the Section.

1.2 As per sub section (5) of section 115 BAA of the Act read with Rule 21A 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-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 A Y 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 A. Y 2020-21 is condoned in cases where the following conditions are satisfied:

- i) The return of income for A Y 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)"*

10. We find the Assessing Officer in the order passed u/s 143(3) has allowed the claim for opting lower rate of tax as per provisions of section 115BAA. We find the learned CIT (A) NFAC in appeal against intimation passed u/s 143(1) has rejected the same on the ground that the assessee has not filed Form 10 IC while filing the return of income which according to the CPC is a mandatory provision for claiming 115BBA benefit.

Although the CBDT Circular was available at the time of passing of the order, we find the learned CIT (A) NFAC, has not considered the same. Under these circumstances and as agreed by both the sides, the matter is restored to the file of the learned CIT (A) NFAC with a direction to pass appropriate order keeping in mind the CBDT Circular No.6/22 dated 17.03.2022 which is binding on the Revenue. Needless to say, the learned CIT (A) NFAC shall give due opportunity of being heard to the assessee and decide the issue as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 23rd November, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 23rd November, 2023.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 16(3),IT Towers, AC Guards, Masab Tank, Hyderabad 500004
3	Pr. CIT-, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order