IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2024

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.3425 of 2024
and
W.M.P.No.3688 of 2024

Axe Bpo Services Private Limited,
Door No.L-1, Type-II,
Dr.VSI Estate,
Thiruvanmiyur,
Chennai 600 041.
Represented by its Director,
Mr.R.Subramani. ...Petitioner

Vs.

1. Director (ITA-1),
Central Board of Direct Taxes (CBDT),
North Block,
New Delhi 110 001.

2. The Assessing Officer,
Corporate Ward I (1),
Aayakar Bhavan, New Building,
Chennai 600 034.

3. Deputy Commissioner of Income Tax (OSD)-I (ITA-1),
Central Board of Direct Taxes (CBDT),
North Block,
New Delhi 110 001.

.... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the First Respondent contained in its order dated 29.11.2023 bearing F.NO. 1917/ 2023- ITA-1 issued under Section 119(2)(b) of the Income Tax Act, 1961 for PAN AAECA3349M for Assessment Year (AY) 2020-21 and to quash the same as illegal, arbitrary, and unjust, and to consequentially direct the Respondent to condone the Petitioner's delay in filing Form 10IC for AY 2020-21.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel

ORDER

The present Writ Petition is filed challenging the order dated 29.11.2023 under Section 119(2)(b) of the Income Tax Act, 1961 (in short, 'the Act'), rejecting the application filed by the petitioner dated 24.01.2023.

2. The petitioner is a private limited company involved in the business of providing information and technology related services. The petitioner filed its Income Tax return for the Assessment Year 2020-2021 on 31.10.2020, declaring a total income of Rs.1,92,06,950/- and paid tax thereon of Rs.48,34,006/-. Normally, an assessee, who is similarly placed as the petitioner would be liable to tax @ 30% and entitled to claim deductions in

accordance with the Act. However, an option is provided under Section 115BAA of the Act, in terms whereof, an assessee may exercise an option for taxation under Section 115BAA of the Act. The assessee exercising such option, would be liable to tax @ 22% instead of 30%. However, an assessee on exercise of option would be subject to restrictions on claim of deductions /set off in terms of Sub Section (2) to Section 115BAA of the Act.

3. The petitioner had opted to discharge taxes at 22% under Section 115BAA of the Act. In view of the exercise of such option, the petitioner did not claim set off or deductions in terms of Sub Section (2) to Section 115BAA of the Act. It is stated that any domestic company claiming concessional rate of taxation under Section 115BAA of the Act, is required to file a 'Form 10-IC' by logging into the e-filing portal on or before the due date specified under sub section (1) to Section 139 for furnishing of return of income for previous year in terms of sub-section (5) to Section 115BAA of the Act. However, the petitioner did not file Form 10-IC within time stipulated under Section 115BAA of the Act. Resultantly the petitioner was denied the option to discharge tax under Section 115BAA of the Act.

3.1. Before proceeding further, it may be relevant to refer to the following facts:

The returns filed by the petitioner for the assessment year 2020-2021 on 31.10.2020, would reveal that the petitioner had clearly indicated that the petitioner-company is opting for discharge of taxes under Section 115BAA of the Act. The relevant portion of the return is extracted hereinunder:

Acknowledgement Number:689389151311020 Assessment Year 2020-21

ITR-6
[For Companies other than companies claiming exemption under section 11] (Please see rule 12 of the Income-tax Rules, 1962)
Schedule Part-A General (1)

.....

If filed, in response to a notice u/s 139(9)/142(1)/148/153A/153C or order under section 119(2)(b), enter unique number/Document Identification Number (DIN) and date of such notice/Order, or if filed u/s 92CD enter date of advance pricing agreement	
Unique number/Document Identification number (DIN)	
Date of such Notice or Order or if filed u/s 92CD enter date of advance pricing agreement	
Residential Status	RES-Resident
Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB? (applicable on Domestic Company)	**Section 115BAA**
Whether total turnover/gross receipts in the previous year 2017-18 exceeds 400 crore rupees? (Yes/No) (applicable for Domestic	

If filed, in response to a notice u/s 139(9)/142(1)/148/153A/153C or order under section 119(2)(b), enter unique number/Document Identification Number (DIN) and date of such notice/Order, or if filed u/s 92CD enter date of advance pricing agreement	
Company)	
Whether assessee is a resident of a country or specified territory with which India has an agreement referred to in section 90(1) or Central Government has adopted any agreement under sec 90A(1)	
In the case of non-resident, is there a permanent establishment (PE) in India	

3.2. Thereafter, a notice was issued on 06.08.2021 under Section 143(1) of the Act, raising a demand levying taxes at 30%, wherein it was indicated that the tax paid/discharged by the petitioner was Rs.48,34,006/-, instead what was computed in terms of Section 143(1) of the Act @ 30% worked out to Rs.64,22,852/-.

3.3. Importantly, even though the above notice proposed to levy the differential rate of tax, it was not indicated that the proposal was in view of dis-allowance of the option under Section 115BAA of the Act, for non-filing of Form 10-IC.

3.4. Thereafter, the petitioner filed a rectification petition dated

07.01.2022, wherein again the petitioner had *inter alia* indicated that he had opted for income tax at 22% under Section 115BAA of the Act, which is extracted below:

> “The Assessess is a private limited company and he had opted for Income tax @ 22% u/s 115BAA”

4. The rectification request was disposed of vide its proceedings dated 11.07.2022. It is submitted that the said rectification was not made available/served on the petitioner, though stated to be uploaded in the portal.

5. The option under Section 115BAA exercised by the petitioner was not accepted on the premise that the exercise of option was not supported by Form 10-IC. The petitioner was informed by the Assessing Officer vide order dated 29.11.2023 that the tax ought to be discharged at 30% instead of 22% under Section 115BAA of the Act. Thereafter, the petitioner filed a series of grievance petition commencing with 15.09.2022, followed by reminders dated 30.11.2022 and 10.01.2023. The above grievance petitions were also rejected. Here it may be relevant to point out that the petitioner had alternatively stated in its grievance petition that even if the option to discharge tax @ 22% is found unacceptable, nevertheless the levy of tax ought to be only @ 25%. The

petitioner thereafter vide letter dated 19.12.2022 once again reiterated the request to levy tax at 25% instead of 30%. The Assessing Officer vide its letter dated 19.12.2022, found that the petitioner was not entitled to the benefit of option under Section 115BAA of the Act. It is submitted that the above request viz., to tax @ 25%, if not 22% in terms of Section 115BAA of the Act, is yet to be disposed.

6. The petitioner thereafter submitted a representation under Section 119(2)(b) of the Act with the following prayers:

> "(a) Condone the delay in filing Form 10IC for AY 2020-21 for the class of assessees who had opted for taxation under Section 115BAA;
> (b) Consequently, direct relevant Assessing Officers to pass appropriate orders reducing the levied rate of tax to 22% as applicable to the class of assessees who had opted for taxation under Section 11BAA of the Act."

7. The said prayers were rejected vide impugned order dated 02.11.2023, after receiving the report from the Assessing Officer. The first respondent has proceeded to pass the impugned order rejecting the request under Section 119(2)(b) of the Act, on the premise that the petitioner has not put forward any reasonable cause beyond its control which prevented it from

filing Form 10-IC for the Assessment Year 2020-2021. It was also found that the petitioner had no valid reasons to justify the delay. The relevant portion is extracted hereunder:

> “b. With respect to the submission of the applicant that it has filed three grievance petitions it is stated that these are not related to filing of Form 10-1C and filed after the extended date of filing Form 10-IC (Le., 30.06.2022).
>
> 8. It is noted that no reasonable cause has been shown or established to justify the claim of genuine hardship under section 119(2)(b) of the Act. The legislature has provided time limits for certain obligation under the act and these time limits have to be observed to be able to claim certain deduction, allowance and avoid interest and penalty. Statutory time limits fixed have to be adhered to as it ensures timely completion of assessments. Discipline on time limits regarding filing of returns/forms have to be complied and respected, unless compelling and good reasons are shown and established for grant of condonation. It is the duty of the applicant to explain the delay with cogent evidences. Therefore, the limitation of time limit is one of the cornerstones of proceedings under the Income Tax Act, 1961. Hence, condonation of delay is allowable in limited cases of genuine hardship only. The applicant wants to claim benefit of concessional tax rate without having any regard to the statutory timelines laid down in this regard.
>
> 9. In view of the facts and circumstances stated above, it is clear and evident that the applicant has not put forward any reasonable cause beyond its control which prevented it from

filing of Form 10-1C for A.Y 2020-21. The applicant has no valid reasons to justify consideration of condoning the delay. In view of the above discussion and careful consideration of the matter, the applicant's petition/application dated 24.01.2023 seeking condonation of delay under section 119(2)(b) of the Act in filing Form 10-IC for A.Y. 2020-21 is hereby rejected.

10. This issues with the approval of Member (IT&R), Central Board of Direct Taxes."

8. Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing for the respondents submitted that the impugned order dated 29.11.2023 does not warrant interference inasmuch as the petitioner ought to have filed Form-10IC on or before the due date specified under sub section (1) to Section 139 for furnishing of return of income for previous year in terms of sub-section (5) to Section 115BAA of the Act. While opting under Section 115BAA of the Act, Form 10-IC is mandatory for the assessee to be entitled to the benefit under Section 115BAA of the Act. Having failed to comply with the above mandatory requirement, the petitioner cannot now claim the benefit of Section 115BAA of the Act. It is also submitted that the power under Section 119(2)(b) is discretionary and therefore ought not to be interfered with lightly.

9. Heard the learned counsel on either side and perused the materials

available on record. Before, I proceed further it would be relevant to extract Section 119(2)(b) of the Act, which reads as follows:

> "(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 Joint Commissioner (Appeals) or] 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;"

10. Section 119(2)(b) vests power in the Board to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the period specified under the said Act, for making such application or claim, if it is considered by the Board to be desirable or expedient so to do for avoiding genuine hardship in any case or class of cases.

11. On a reading of Section 119(2)(b) of the Act, in particular, the enabling words "may" employed therein, would suggest that power conferred is *prima facie* discretionary. However, if the object for which the power is conferred is for the purpose of effectuating a right, there may be a duty cast upon the done of the power to exercise it for the benefit of those who have that right when required on their behalf if the conditions warranting exercise of such

power is shown / found to exist.[2] In other words, if the circumstances set out under Section 119(2)(b) of the Act exist, a duty is cast on the Assessing Officer to exercise its power under Section 119(2)(b) of the Act. It is trite law that vesting of power in an authority results in imposition of duties on that authority to exercise that power in a manner which would advance the purpose for granting/vesting of such power. In other words, this Court is of the view that the power under Section 119(2)(b) though seemingly an enabling provision, conferring discretionary power, such power is coupled with duty. I say so, for it is trite law that when a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are *prima facie* enabling, the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a public right or private right of a citizen. [1] .

12. Keeping the above legal principles in mind, it appears that the enquiry to be made for exercise of power under Section 119(2)(b) of the Act, is

2. *Lord Blackburn observed in Julius v. Bishop of Oxford, reported in 1880 5 AC 214*

1. *L. Hirday Narain v. ITO, reported in* (1970) 2 SCC 355

whether the admission of a claim for exemption, refund or other relief after expiry of the period specified for making such claim of exemption, refund or other relief is "desirable", or "expedient" to avoid "genuine hardship". In other words while exercising the power under Section 119(2)(b) of the Act, the Authority in the present case ought to have taken into account whether the request to admit the claim of option under Section 115BAA of the Act , after the expiry of the period specified under Sub Section(2) to Section 115BAA, is "desirable" or "expedient" to avoid "genuine hardship"

13. The expression "genuine hardship" had come up for consideration on more than one occasion before various Court, including this Court and the Apex Court. It appears that it has been consistently held that the power conferred under Section 119(2)(b) of the Act, ought to be exercised liberally provided circumstances set out therein exist. Here it may be relevant to keep in view the decision of the High Court of Bombay in the case of Pankaj Kailash Agarwal v. CIT, reported in (2024) 464 ITR 65, wherein it was held that no assessee would stand to benefit by lodging its claim late. More so, where the assessee would get tax advantage/benefit. It was held that the fact that an assessee feels that he would be paying more tax if he does not get the advantage

of deduction will certainly constitute "genuine hardship". The phrase "genuine hardship" used in section 119(2)(b) of the Act should be construed liberally. The Legislature has conferred the power to condone the delay to enable the authorities to do substantial justice to the parties by disposing of the matters on merits.

14. This Court is of the view that there is a gross mis-direction by the respondent inasmuch as there is non-application of mind as to whether the failure to consider the claim of option to discharge tax under Section 115BAA of the Act would result in genuine hardship. Instead, the enquiry was directed towards whether there is any justification for the delay in filing the Form 10-IC. The need to invoke Section 119(2)(b) of the Act, itself would arise only if there is a delay and the enquiry ought to be whether that delay if let un-condoned would result in "genuine hardship" and therefore it is "desirable" and "expedient" to admit the claim in this case, option to discharge taxes under Section 115BAA of the Act.

15. In the present case, I also find on the facts that the petitioner had acted bonafide in claiming the option of discharging tax under Section 115BAA

of the Act, inasmuch as while filing the return, the petitioner made it clear that option to pay tax under Section 115BAA is exercised. Importantly, tax has also been remitted/discharged at 22% in accordance with provisions of Section 115BAA. Secondly, there was a proceeding under Section 143(1) of the Act, wherein again there was no express indication that the taxes were sought to be levied at 30% rejecting the petitioner's request at 22%, only on the basis that Form 10-IC was not filed in support of its option to discharge tax under section 115BAA of the Act. Importantly, due to Covid pandemic, the timeline for filing the Form 10-IC was extended until 30.06.2022. Now the following events viz., (a) filing of returns indicating option to discharge taxes under Section 115BAA of the Act; (b) Payment of taxes at 22% by the petitioner and (c) Proceeding under Section 143(1) of the Act wherein it was proposed to tax @30%, without disclosing that the levy at higher rate @ 30% instead of 22 % in terms of Section 115 BAA of the Act was only for want of filing of FORM 10-IC, are prior to 30.06.2022. Had the petitioner been put on notice of non-filing of Form 10-IC, as being the reason for not accepting the option under Section 115BAA of the Act, even during the course of proceedings under Section 143 of the Act the petitioner could have possibly complied with the requirements by filing the Form 10-IC, before the expiry of the extended period i.e., on

30.06.2022.

16. I also find that, there has been substantial compliance of the requirement under Section 115BAA of the Act, as evident from the fact that while filing the returns, it was declared / stated by the petitioner that the option to discharge the tax was exercised under Section 115BAA of the Act and taxes were in fact paid @ 22% without claiming deductions as contemplated under Section 115BAA of the Act. In this regard, it may be relevant to refer to the Hon'ble Supreme Court, in the case of **Dilip Kumar (2018) 9 SCC ,** wherein while deciding the Doctrine of Substantial Compliance held as under:

> *"33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted."*

17. In the circumstances this Court is of the view that the Respondent

Authority/Board has completely mis-directed itself in not-examining if the failure to consider the claim of option to discharge tax under Section 115BAA on the ground of failure on the fact of the petitioner to file Form 10-IC within the period stipulated under Section 115BAA would cause "genuine hardship" to the petitioner/assessee and thus it is desirable as expedient to permit the petitioner to file Form 10-IC in support of its option under Section 115BAA and deal with the same on merit. The facts narrated supra leaves no room for doubt that the rejection of the petition under Section 119(2)(b) to permit the petitioner to file Form 10-IC in support of its exercise of option under Section 115BAA of the Act would cause genuine hardship and it is desirable and expedient to permit the petitioner to file Form 10-IC in support of its claim / option under Section 115BAA of the Act and deal with such claim on merits in accordance with law.

18. In view thereof, the impugned order is set-aside, the respondent shall keep the portal open to enable the petitioner to upload the Form 10-IC and the petitioner shall file the Form 10-IC within a period of four weeks from the date of receipt of a copy of this order, thereafter the respondent shall proceed to deal with the claim of the petitioner under Section 115BAA on merit and in

accordance with law.

19. Accordingly, the Writ Petition stands disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

13.11.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd

To:

1. Director (ITA-1),
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MOHAMMED SHAFFIQ, J.
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