

Gujarat HC reserves liberty for Taxpayer to seek condonation of delay in filing Form 10-IC to claim benefit under section 115BAA

Snapshot

Hon'ble Gujarat High Court holds that when taxpayer has failed to file Form 10-IC under section 115BAA within prescribed due date, it should immediately approach the prescribed income tax authorities under section 119 of the Act by filing an application and requesting them to allow the benefit of concessional rate of tax after considering the facts of the case.

This is a welcome ruling for the Taxpayers who claimed the concessional rate of tax under section 115BAA in the return of income and / or tax audit report but whose claim was not entertained in the intimation under section 143(1) on account of non-filing of Form 10-IC on or before the due date.

Background

Government of India, with an objective of reducing corporate tax rate for domestic companies, has introduced provisions of section 115BAA and section 115BAB in the Income-tax Act, 1961 ('the Act'). The said sections were introduced in the statute book through Taxation (Amendment) Ordinance 2019.

Section 115BAA of the Act inter-alia provides for concessional rate of tax for domestic companies (i.e., 22%) which shall be further increased by surcharge of 10% and health and education cess of 4%. Availing said concessional rate of tax by domestic Taxpayer is subject to various conditions that the Taxpayer shall not allowed to claim certain specific types of deductions or exemptions or losses.

Amongst the various conditions, section 115BAA of the Act provides that option of concessional tax rate can be exercised only upon electronic filing Form 10-IC on or before the due date of filing return of income as specified under section 139(1) of the Act. Once the option is exercised by filing Form 10-IC, the same shall continue to apply for subsequent assessment years.

A question has arisen whether benefit under section 115BAA of the Act can be allowed in a case where the Taxpayer filed a return of income claiming benefit of section 115BAA of the Act, but failed to submit Form 10-IC electronically, on or before the due date of filing return of income. In such cases, we have seen that Centralised Processing Centre ('CPC'), while processing such return of income and while issuing intimation under section 143(1) of the Act, is not granting the

benefit of concessional rate of tax claimed by the Taxpayer in its return of income and computes tax at the rate of 30% (not even 25% in some eligible cases). In some of the cases, even intimations are not issued by CPC for making such proposed adjustment, which is mandatory under section 143(1) of the Act. This results into raising a huge tax demand and interest liability. Consequently, the Taxpayer will not have any recourse except approaching appellate authorities for providing relief.

Recently, Gujarat High Court in the case of **Rajkamal Healds and Reeds Private Limited v. ADIT** has dealt with this issue.

Facts of the case

The Taxpayer has opted for concessional rate of tax under section 115BAA of the Act while filing a return of income for AY 2020-21 but failed to file Form 10-IC electronically. The fact that the Taxpayer has opted for concessional rate of tax is also reported in return of income and tax audit report. However, in absence of filing Form 10-IC, return of income of the Taxpayer was processed without granting benefit of concessional rate of tax and results into a tax demand.

Court room exchange

Against the intimation issued, the Taxpayer has filed a writ petition under Article 226 of the Constitution of India before the Hon'ble Gujarat High Court.

Taxpayer's contentions

During the course of hearing, it was submitted by the learned counsel that the Taxpayer / CA inadvertently failed to file Form 10-IC electronically. He further submitted that omission on the part of the Taxpayer in non-filing of Form 10-IC was not a deliberate act and non-granting the benefit of concessional rate may results into punishing the Taxpayer with a huge tax demand to which he is otherwise not liable for.

The Taxpayer asked for remedy from the Hon'ble Court requesting for giving an appropriate direction to allow belated filing of Form 10-IC and reprocess the return of income.

Revenue's contentions

On the other hand, learned counsel appearing on behalf of Revenue opposed the writ application on the ground that the Taxpayer has a statutory legal remedy available to make a request to the PCCIT or CCIT in accordance with the provisions of section 119(2)(b) of the Act. Under the said section, Board has delegated certain powers to PCCIT or CCIT to allow claim of exemption / deduction / refund and providing relief to the Taxpayer in certain situations. In the present case, if such authorities are convinced that having regard to the circumstances of the case, Form 10-IC could not be filed within due date, then subject to powers conferred upon the authorities, they may permit or admit an application for granting relief under section 115BAA of the Act. Further, revenue has pointed out that nothing contained in section 115BAA of the Act would apply unless the Taxpayer exercised such option by filing Form 10-IC electronically, within a prescribed due date. Hence, filing of Form 10-IC is compulsory for claiming benefit of concessional rate of tax.

High Court Ruling

After taking into the account the contentions put forth by the Taxpayer and Revenue, the Hon'ble Court has held that the Taxpayer, at the earliest should file an appropriate application in writing addressed to the PCCIT or CCIT, making a request to permit him to file Form 10-IC after condoning the delay so that return of income can be reprocessed or assessment can be framed accordingly.

Lastly, it was also held that in case recovery proceedings are initiated by the AO, Taxpayer had an option to file an application before the AO,

requesting him to stay the entire demand till the time application filed under section 119 was disposed of by the prescribed authority.

Accordingly, writ petition has been disposed of by reserving the Taxpayer's right under section 119 of the Act.

Our analysis

Under the Act, for claiming certain types of exemptions / deductions, filing of forms / reports / certificates etc. is a prescribed condition given under the Act and / or Rules. However, at the same time, over number of years, judiciary has also held that whenever any section mandates for filing of any forms / reports / certificates, the same should be treated as procedural in nature and non-complying or delay in complying with such procedural requirement should not preclude Taxpayer from claiming genuine deduction or exemption to which he is otherwise entitled for. Hon'ble Judiciary has also held that filing of such forms / reports / certificates after filing return of income but before completion of assessment would also be treated as sufficient compliance with the provisions of the Act and Rules.

Hon'ble Supreme Court, in the case of **G. M. Knitting Industries (P.) Ltd vs CIT [2016] 71 taxmann.com 35 (SC)** has held that where form of claiming a specified deduction was not filed within due date, but if the same is filed even during the assessment proceedings, the same shall be treated as sufficient compliance and specified deduction should not be denied to the Taxpayer. In addition to this, there are plethora of judgement given by various Courts and Tribunals from time to time, where benefits of specified deduction or exemption have been granted even in a case where forms / reports / certificates are not furnished or there is a delay in furnishing such forms / reports / certificates etc.

On the subject matter of section 115BAA, there was no direct judgement till date dealing with granting of benefit of concessional rate of tax when the Taxpayer has not filed Form 10-IC before the due date of filing return of income. This judgment will provide a much need relief to the Taxpayers who have not filed Form 10-IC. Key takeaways are:

This is a welcome ruling delivered by the Hon'ble Gujarat High Court by not expressly denying the benefit of concessional rate of tax, even in absence of filing Form 10-IC within prescribed due date.

In this ruling, it is interesting to note that Revenue itself has provided a solution or way forward that the Taxpayer should approach prescribed authority under section 119 of the Act.

There are various cases where the Taxpayer failed to file Form 10-IC and the intimation has been processed without granting benefit of concessional tax rate and raised with huge tax demands. Further, section 115BAA clearly provides that where Taxpayer failed to satisfy the relevant conditions of the section, other provisions of the Act will apply, and total income and tax liability has to compute as per other provisions of the Act (for e.g. granting deductions / exemptions not claimed pursuant to section 115BAA, applying tax rate of 25% instead of 30% in certain cases etc.). However, while processing the return of income, intimation is not taking care of all such things due to computerized processing.

In all such cases, Taxpayer has a liberty to file an application under section 119 before the prescribed authority and prescribed authority, subject to powers conferred upon them, may allow condonation in delay in filing Form 10-IC to grant the benefit of concessional rate of tax. This may be more convenient and faster way of getting relief as compared to the traditional route of litigation.

- Hon'ble Court has specifically directed the PCCIT / CCIT to consider genuine hardship which the Taxpayer would have to face if he was not permitted to file the Form 10-IC electronically. Section 119(2)(b) talks about granting benefit of exemption or deduction or relief in order to avoid genuine hardships to the Taxpayer. What constitutes genuine hardships is a matter of facts and may vary in each case.
- In various judicial precedents delivered earlier in this context, the Revenue took a plea that ignorance of law (missed to file Form 10-IC) was not an excuse. However, in the present case, the Hon'ble Court has not dealt with the same.
- Form 10-IC is to be filed online. We understand that at present, portal does not allow to file Form 10-IC for FY 2019-20. In case the condonation is granted for belated furnishing of Form 10-IC, it may require tax authorities to make changes in the system functionality to allow Taxpayer to belated filing of Form.
- While filing an application before the prescribed authority, Taxpayer should clearly mention that option of concessional tax rate has been exercised and the same has been duly reported in return of income and tax audit report. This will help the Taxpayer to substantiate its claim.
- This judgment may also pave way for claiming other deductions / exemptions which are dependent upon filing of certain online forms, for example, Form 67 for claiming Foreign Tax Credit.

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