

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1085 of 2022

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RAJKAMAL HEALDS AND REEDS PVT. LTD.

Versus

ASSISTANT DIRECTOR OF INCOME TAX

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Appearance:

MR ASHUTOSH S DAVE(8865) for the Petitioner(s) No. 1

MR JYOTINDRASINH J VALA(10975) for the Petitioner(s) No. 1

MS NAMRATA A DOSHI(11002) for the Petitioner(s) No. 1

M R BHATT & CO.(5953) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 20/01/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

By this writ-application under Article 226 of the Constitution of India, the writ-applicant, an assessee, has prayed for the following reliefs :

(a) Direct the respondent to permit the petitioner to file the Form 10-IC electronically as provided under Section 115BAA of the Act read with Rule 21 AE of the Rules for the A.Y 2020-21 and further be pleased to direct the respondent to re-process the return of income of the petitioner for A.Y 2020-21 in accordance with the provisions of Section 115BAA of the Act by condoning the delay occurred in filing the said Form;

(b) Pending admission, hearing and final disposal of the petition, the Hon'ble Court be pleased to stay the operation, execution implementation of the demand of Rs 1,05,18,030/-

against the petitioner arising out of the impugned intimation dated 20.12.2021 communicated by the respondent under Section 143(1) of the Act for the A.Y 2020-21;

(c) any other and further relief deemed just and proper be granted in the interest of justice;

(d) to provide for the cost of this petition;

2. The controversy involved in the present litigation is in a narrow compass. It appears that the writ-applicant filed his return of income for the A.Y. 2020-2021 invoking the provisions of Section 115BAA of the Income Tax Act,1961 (for short "the Act 1961) but in the absence of the Form 10- IC which the writ-applicant was obliged to file electronically. In the absence of the Form 10-IC, the return was assessed in a regular form and a intimation under Section 143(1) of the Act came to be served upon the writ applicant raising a demand of Rs. 1,05,18,030/-. In such circumstances, referred to above the writ applicant is here before this Court with the present writ-application.

3. Mr. Ashutosh Dave, the learned counsel appearing for the writ-applicant submitted that his client i.e the writ-applicant falls within the ambit of a domestic company. In such circumstances, the writ applicant is entitled to avail the benefits under Section 115 BAA of the Act. Section 115 BAA of the Act reads thus :

115BAA. (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 ⁷⁸[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 (28 of 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.

4. Mr. Dave would submit that it was the first return of the writ-applicant filed in accordance with the provisions of section 115 BAA and inadvertently the Chartered Accountant missed filing the form 10 IC electronically. He would submit that if the form 10 IC would have been submitted electronically then the assessment would have been accordingly and the liability could not have been as determined and intimated under Section 143(1) of the Act.

5. He would submit that the omission on the part of the writ-applicant in filing the Form 10 IC electronically was not a deliberate act on his part and is going to prove very costly as the tax liability has been determined to the tune of Rs 1,05,18,030/-. He would submit that it is a high pitched assessment.

6. In such circumstances referred to above, Mr. Dave, made a fervent appeal to this Court to issue an appropriate direction to the authority concerned to now permit him to file the Form 10 IC electronically and re-process the return of income for the A.Y. 2020-21.

7. On the other hand Mr. M.R Bhatt, the learned Senior Counsel has opposed this writ-application pointing out that the statutory legal remedy available to the writ-applicant is to make a request to the Principal Chief Commissioner or the Chief Commissioner in accordance with Section 119 (2)

(b) of the Act. Mr. Bhatt pointed out that the Board has delegated its powers under Section 119(2) (b) to the Principal Chief Commissioner/ the Chief Commissioner. Mr. Bhatt would submit that if the Chief Commissioner is convinced that having regard to the circumstances in which the Form 10 IC could not be filed at the relevant point of time then it is within his power to permit or admit an application or claim for any exemption, deduction, refund or any other relief under the Act, even after the expiry of the period specified by or under the Act.

8. Mr. Bhatt also laid much emphasis on Sub Section 5 of Section 115 BAA of the Act which reads thus “

“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.”

9. According to Mr. Bhatt nothing in Section 115 BAA of the Act would apply to the assessee unless the option is exercised by the assessee in the prescribed manner. One of the prescribed manners of availing the benefit of Section 115 BAA of the Act is to file the Form 10 IC electronically. It is only upon filing of such Form 10 IC electronically that the department would be in a position to give effect to the provisions of Section 115 BAA of the Act and process the return of income accordingly.

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.

13. With the aforesaid this writ application stands disposed of.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

MARY VADAKKAN