



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on: 28.05.2025

+ **W.P.(C) 325/2024 & CM APPL. 1485/2024**

SARLA HOLDINGS PRIVATE LIMITED PETITIONER
Versus

PR COMMISSIONER OF INCOME TAX
DELHI-7 NEW DELHI & ANR. RESPONDENTS

Advocates who appeared in this case

For the Appellant : Ms P L Bansal, Sr Advocate with
Mr Shivang Bansal, Advocate.

For the Respondent : Mr Anant Mann, JSC for Mr. Ruchir Bhatia,
SSC and Mr. Abhishek Anand, Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 29.11.2023 [**impugned order**] passed by the Principal Commissioner of Income Tax, Delhi – 07 [**PCIT**] rejecting the petitioner's application for revision of the assessment order dated 21.09.2022 [**impugned assessment order**] passed by the Assessment Unit [**AU**] under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [**the**



Act] in respect of Assessment Year [**AY**] 2020-21.

2. The petitioner is essentially aggrieved by the denial of the benefit of paying tax at lower rate in terms of Section 115BAA of the Act, which was introduced by the virtue of Taxation Laws (Amendment) Act, 2019 with effect from 01.04.2020. The petitioner had not opted for paying tax at a lower rate as it had not indicated so in the affirmative against the requisite box in its return. The petitioner claimed that the same was an inadvertent error and accordingly, filed its revised return. However, the respondents have not accepted the change in option and this led the petitioner to file the present petition.

PREFATORY FACTS

3. The petitioner had filed its return of income for the AY 2020-21 on 13.02.2021 declaring the total income of ₹60,93,780/- after setting off an amount of ₹5,10,04,486/-. The petitioner also reflected its book profits as ₹3,14,41,630/-. The petitioner had, in its return, not opted for taxation under Section 115BAA of the Act which was introduced by the virtue of Taxation Laws (Amendment) Act, 2019 with effect from 01.04.2020.

4. The petitioner claims that at the material time its chartered accountant and finance officer were affected by COVID-19. Notwithstanding the same, they had filed the petitioner's return despite both suffering "under Corona." The return was filed on 13.02.2021, within the extended deadline of 15.02.2021. The petitioner contends that this was the first assessment year where the benefit of lower taxation under Section 115BAA of the Act could be availed. There was some confusion regarding the manner to claim the



same and the petitioner failed to select the option for lower taxation under Section 115BAA of the Act. It is stated that soon thereafter, the finance officer of the petitioner recovered from Covid-19 and verified the return. He became aware that the petitioner had not opted for the option under Section 115BAA of the Act, and, therefore, filed a revised return on 26.03.2021 in respect of relevant assessment year and also surrendered the depreciation on the goodwill. The petitioner had not filed the Form 10-IC, which was prescribed for availing the benefit under Section 115BAA of the Act. Several other assesseees also did not file the Form 10-IC due to the prevailing conditions at the material time.

5. In view of the confusion regarding the requirement of filing Form 10-IC within the prescribed period and the mitigating circumstances arising on account of the outbreak of Covid-19, the Central Board of Direct Taxes [CBDT] issued a Circular No.6/2022 dated 17.03.2022 whereby it was directed the Assessing Officers [AO] to condone the delay in filing the Form 10-IC for AY 2020-21. The said circular notes that it was issued pursuant to the representation received by the CBDT as a large number of assesseees had failed to furnish the requisite Form 10-IC within the prescribed period.

6. The petitioner filed the Form 10-IC on 26.04.2022 to avail the benefit of the CBDT Circular No.6/2022. Thereafter, the AO sent the draft assessment order determining the petitioner's income at ₹3,14,41,630/- under Section 115JB of the Act. The petitioner objected to the draft assessment order on the ground that it had availed the option under Section 115BAA of the Act by filing its revised return and it had also furnished the Form 10-IC within the period as extended by the CBTD's Circular



No.6/2022 dated 17.03.2022. However, the petitioner's objection was not accepted and the AU passed the impugned assessment order under Section 143(3) read with Section 144B of the Act, determining the petitioner's income for the AY 2020-21 at ₹3,14,41,630/- under Section 115JB of the Act. The AU also issued the demand notice under Section 156 of the Act raising the demand of ₹62,17,050/- and initiated the penalty proceedings under Section 270A of the Act.

7. The petitioner filed the revision petition before the PCIT, which was rejected by the impugned order.

REASONS AND CONCLUSIONS

8. Ms Bansal, the learned senior counsel appearing for the petitioner contended that there was no column for selecting the option to avail the benefit of Section 115BAA of the Act in the return and therefore, the petitioner cannot be faulted for its return not reflecting this option. She also submitted that the error was occasioned due to confusion at the material time and coupled with the fact that the petitioner was facing severe difficulties in regard to the statutory compliances, on account of the disruptions caused by the outbreak of Covid-19. She submitted that in the aforesaid context, the CBDT had decided to extend the time period for the assesseees who had not complied with the requirements of availing the benefit of Section 115BAA of the Act in the prescribed manner. Accordingly, the CBDT had issued the Circular granting the assesseees time to file the same. And, the petitioner had filed the requisite form – Form 10-IC within the extended time to avail the benefit as granted by the CBDT.

9. At the outset, it would be relevant to refer to Section 115BAA of the



Act. The same is set out below:-

“115BAA. Tax on income of certain domestic companies.

(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 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.

(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.”

10. There is no ambiguity in the language of Sub-section (5) of Section 115BAA of the Act. It clearly provides that the section would not be applicable unless (a) an option is exercised by the person in the prescribed manner; and (b) before the due date specified under Section 139(1) of the Act for furnishing the return of income.

11. In the present case, the petitioner had not exercised its option before the due date for filing the return of income in respect of AY 2020-21. Admittedly, the time for filing the return under Section 139(1) of the Act was extended till 15.02.2021 on account of outbreak of Covid-19. The petitioner had filed its return on 13.02.2021, which was within the time as prescribed, however, the petitioner had expressly indicated that it was not opting for taxation under Section 115BAA of the Act. The relevant extract of the return filed by the petitioner, setting out the ‘filing status’ is reproduced below:-

“Filing Status			
Filed u/s or Filed in Response to notice u/s		139(1)-On or before due date	
If revised/in response to notice for		Date of filing original return (DD/MM/YYYY)	



Defective/ Modified, then enter Receipt No.			
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)		None of above.	
Whether total turnover/ gross receipts in the previous year 2017-18 exceeds 400 crore rupees? (Yes/No) (applicable for Domestic Company)		No.”	

12. It is clear from the above that against the entry whether the petitioner has opted for taxation under Section 115BA/115BAA/115BAB, the petitioner had responded “none of above”. The contention that there was no specific box (space) in the return to reflect the option, as contended on behalf of the petitioner, is clearly erroneous.

13. The contention that the petitioner had in fact opted for the lower taxation under Section 115BAA of the Act, but inadvertently not indicated its option, is also unpersuasive. It is not in dispute that the petitioner’s



computation of depreciation was not strictly in accordance with the terms of Sub-section (2) of Section 115BAA of the Act. However, in our view, the same would be of a little relevance considering the petitioner had expressly indicated that it was not opting for taxation under Section 115BAA of the Act.

14. The reliance placed by the petitioner on the CBDT Circular No.6/2022 is also misplaced. The CBDT had extended the time for filing the Form 10-IC, but the CBDT had not relaxed the condition of assessee exercising its option in the affirmative before the prescribed time for filing the return under Section 139(1) of the Act. The Circular No.6/2022 issued by the CBTD is set out below:-

“

Circular No.6/2022
F.No.173/32/2022-IT A-1
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 subsection (2) of the section.



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

- i) The return of income for AY 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)”

15. Paragraph no.2 of the above Circular indicates that the same was issued pursuant to the representations received by the CBDT to the effect that the delay in filing the Form 10-IC, which was required to accompany with the returns, be condoned. The CBDT had considered the hardship faced by the domestic companies and decided to condone the delay in cases where certain conditions as specified in paragraph 3 of the circular were satisfied. Clause (ii) of paragraph no.3 of the Circular makes it explicitly clear that the delay in filing the Form 10-IC could be condoned only in cases where the assessee company had opted for lower taxation under Section 115BAA of the Act [“Part A-GEN” of the Form of Return of Income].

16. In the present case, the petitioner does not satisfy this condition as it had not opted for availing the lower taxation under Section 115BAA of the Act in its return.

17. In view of the above, we find the petitioner’s challenge to the impugned assessment order or the impugned order, is unmerited. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 28, 2025

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