

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 20564 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Approved for Reporting	Yes	No
		✓

M/S CAMINO HERBAL REMEDIES PVT. LTD.

Versus

PR COMMISSIONER OF INCOME TAX, VADODARA 1 & ANR.

Appearance:

KRUTARTH K DESAI(9662) for the Petitioner(s) No. 1

KARAN G SANGHANI(7945) , SR.STANDING COUNSEL for the
Respondent(s) No. 1,2**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**Date : 15/07/2025****ORAL JUDGMENT**
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Krutarth Desai for the petitioner and learned Senior Standing Counsel Mr.Karan Sanghani for the respondents.

2. **Rule**, returnable forthwith. Learned Senior



Standing Counsel Mr.Karan Sanghani waives service of notice of rule for and on behalf of the respondents.

3. By way of this petition, the petitioner has challenged the order dated 12.7.2023 passed by the Principal Commissioner of Income Tax, Vadodara-1 while exercising jurisdiction under Section 119(2)(b) of the Income Tax Act, 1961 (for short 'the Act') rejecting the application dated 16.10.2022 filed by the petitioner to condone the delay in filing Form 10-IC along with the return of income by considering the Form 10-IC filed within due date for Assessment Year 2020-2021.

4. Considering the controversy in narrow compass, the matter is heard finally with the consent of the learned Advocates of the parties.



5. The brief facts of the case are that the petitioner is a Private Limited Company incorporated under the provisions of Companies Act, 1956 and filed its return of income under the provisions of Section 139(1) on 4.11.2020 declaring total income of Rs.1,16,230/- for the Assessment Year 2020-2021.

5.1. The petitioner exercised the option under Section 115BAA of the Act while filing the return of income to pay the reduced rate of tax at 22% excluding the surcharge and education cess.

5.2. It is the case of the petitioner that the requirement of filing of Form 10-IC is on or before filing due date of Return under section 139(1) of the Income Tax Act 1961. However, the Central Board of Direct Tax, vide its circular dated 06/2022 dated 17.03.2022



has condoned the delay in filing the Form 10-IC till 30.06.2022 or from the end of month in which the circular is issued. The conditions stated in the circular are stated as under:

- The return of Income for the Assessment Year 2020-21-has been filed on or before the due date specified under section 139(1) of the Act.
- The assessee company has opted for taxation u/s 115BAA of the Act in (e) of "Filing Status" in "Part-AGEN" of the Form of Return of Income ITR-6 and
- Form 10-IC is filed electronically on or before June 30, 2022 or 3 months from the end of the month in which this Circular is issued, whichever is later.

5.3 It is the case of the petitioner that the Chartered Accountant of the petitioner had



made compliance of all the requirements as stated in Circular No. 6/2022 dated 17.3.2022. The petitioner company has inadvertently failed to electronically file Form 10-IC along with the return of income under the provisions of Section 139(1) of the Act. It was bonafide belief of the Chartered Accountant being statutory auditor of the petitioner Company that he had already filed form 10-IC. However, after having realised the fact of its non-filing, the Chartered Accountant had filed Form 10-IC on 15.9.2022 i.e. after two and half months of specified dated 30.6.2022.

5.4 It is also the case of the petitioner that they realised the fact that benefit of concessional rate of tax of 22% has not been given due to non-filing of Form 10-IC. Therefore, the petitioner made an application before the Office of respondents under the



provisions of Section 119(2) (b) of the Act. However, the respondent rejected the application under Section 119(2) (b) of the Act on the ground that he was not empowered to condone delay in view of the Circular No. 6/22 and therefore the same cannot be considered and, therefore, the application was rejected. This has led to filing of the present petition under Article 226 of the Constitution of India.

6. Learned advocate Mr. Krutarth Desai for the petitioner submitted that the respondents had adopted a pedantic, hypertechnical and narrow approach while considering the Application filed by the petitioner to treat the Form 10IC filed for Assessment Year 2021-2022 as if the same is filed for Assessment Year 2021 so as to enable the petitioner to take the advantage of option of payment of



reduced rate of tax as opted by the petitioner in the return of income. However, it was due to mistaken belief and human error of Chartered Accountant of the petitioner that the Form 10IC was filed after two and half months.

6.1. It was therefore submitted that respondent No.1 ought to have considered the Form 10IC and the application filed by the petitioner for Year 2021-2022.

6.2. Learned advocate Mr. Krutarth Desai in support of his submissions referred to and relied upon the decision of this Court in case of *V.M.Procorn Private Limited Versus Assistant Director of Income Tax and Another* in Special Civil Application No.9707 of 2024 rendered on 23rd August, 2024 wherein, in similar facts, when the assessee in the said



case could not opt for an option in the return of income, was permitted to file Form 10IC so as to take the benefit of reduced rate of tax under Section 115BAA of the Act.

6.3. Learned advocate Mr. Krutarth Desai further referred to and relied upon the decision of this Court in case of *Gujarat Electric Company Limited versus Commissioner of Income Tax* reported in [2002] 255 ITR 396 (Guj) wherein, after taking into consideration the decision of the Madras High Court in case of *R. Seshammal vesus Income Tax Officer and Another* reported in [1999] 237 ITR 185 held that in view of the provisions of 119(2) (b) of the Act, the phrase "genuine hardship" should have been construed liberally.

6.4. It was therefore submitted that the



respondent No.1 ought to have condoned the delay in filing Form 10IC by considering the Form filed for Assessment Year 2021-2022 as that for Assessment Year 2021 so as to enable the petitioner to take the benefit of reduced rate of tax as per the provisions of Section 115BAA of the Act.

7. On the other hand, learned Senior Standing Counsel Mr.Karan Sanghani for the respondent-Authority submitted that admittedly the petitioner has not filed any Form 10IC as required under the provisions of Sub-section (5) of Section 115BAA of the Act in the prescribed manner and therefore, the petitioner has failed to comply with the twin conditions of filing Form 10IC along with the return of income under Section 139(1) of the Act for the Assessment Year 2021.



7.1. In support of his submissions, reliance was placed on the decision of the Hon'ble Apex Court in case of *Principal Commissioner of Income Tax versus Wipro Limited* reported in [2022] 446 ITR Page 1 (SC) wherein, in the facts of the said case, the Hon'ble Apex Court did not permit the assessee to exercise the option as per provisions of Section 10B(8) of the Act at the time of filing of the revised return under Section 139(5) of the Act. It was submitted that the language of the Section 10B(8) of the Act is pari materia to that of the Sub-section (5) of Section 115BAA of the Act. It was therefore submitted that the respondent No.1 has rightly rejected the Application filed by the petitioner to consider the Form 10IC filed for Assessment Year 2021-2022 as that of Assessment Year 2021.



7.2. It was further submitted that the petitioner has also not provided any document/evidence in support of the reason which has been furnished by the petitioner which would justify that the circumstances were beyond the control of the petitioner and therefore, the respondent No.1 has rightly relied upon the Circular No.6 of 2022 issued by the CBDT to hold that the petitioner has no case of genuine hardship.

8. Considering the submissions made by the learned Advocates for both the sides and on perusal of the facts and material available on record, it is revealed from the return of income filed by the petitioner in Form ITR-6 that the petitioner had adopted the option for taxation under Section 115BAA of the Act which is further fortified from the intimation



issued under Section 143 of the Act, computation of income of the petitioner placed on record wherein also, the petitioner has computed the tax payable at the rate of 22% instead of 30% as well as the intimation issued by the CPC under Section 143(1) of the Act accepting the return of income.

9. The relevant provisions of Section 115BAA of the Act reads as under :

"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.

115BAA(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. As per the provisions of Sub-section (5) of Section 115BAA of the Act, the option is required to be exercised in prescribed manner at the time of filing of return of income under Section 139(1) of the Act. The



prescribed manner is provided in Rule 21AE of the Rules for filing of Form 10IC to avail the benefit of provisions under Section 115BAA of the Act.

11. Considering the confusion and technical issues, the CBDT has issued the Circular No.6 of 2022 on 17.3.2022 permitting the assesseees to file Form 10IC for the Assessment Year 2021 meaning thereby, the filing of Form 10-IC is only to confirm that the petitioner has exercised the option while filing the return of income under Section 139(1) of the Act as prescribed in Rule 21AE of the Rules which was relaxed by the CBDT. The Circular No.6 of 2022 reads as under :

"Sub: Condonation of delay under section 119(2) (b) of the Income-tax Act, 1961 in filing of Form 10IC 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 subsection (5) of section 115 BAA of the Act read with Rule 21AE 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 w/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 10) 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 rear of fling of this form. It has been requested that the delay in filing of form 10- may he condoned.

3. On consideration of the matter, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 11SBAA of the Act, the Central Board of Direct Taxes, In excreise 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 AY 2020-21 has been filed on or before the due date o 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) Forn 10-1C is filed clectronically on or before 30.06.2022 or 3 months from the end of the month in which this Circular is issued, whichever is later."

12. On perusal of the above circular, it appears that on receipt of the representation, the CBDT has exercised the powers under



Section 119(2)(b) of the Act to avoid the genuine hardships to the domestic companies in exercise of the option under Section 115BAA of the Act on fulfilling the above three conditions. The petitioner, however, could not file the Form electronically on or before 30th June, 2022 because of genuine mistake of Chartered Accountant. The petitioner, however, was entitled to file the Form as per the aforesaid Circular but the petitioner has not filed the Form 10IC for the Assessment Year 2021-2022. The petitioner therefore had no option but to make an application under Section 119(2)(b) to treat the Form 10IC filed for Assessment Year 2021-2022 as if the same is filed for Assessment Year 2021 as per the aforesaid Circular.

13. The contention raised on behalf of the



respondent that in view of the decision of the Hon'ble Apex Court in case of *Wipro Limited (Supra)*, the petitioner is not entitled to file Form 10IC belatedly after the filing of the return under Section 139(1) of the Act is concerned, the said aspect is taken into consideration by this Court in case of *Commissioner of Income Tax versus Gujarat Energy Development Agency* by considering the decision of the *Wipro Limited (Supra)* vis-a-vis the filing of Form 10B to claim the exemption under Sections 11 and 12 of the Act as under :

"5. Reliance placed by the learned advocate for the appellant on the decision of *M/s.Wipro Limited (supra)* would not be applicable in the facts of the case, as in the facts of the present case, the assessee has claimed the exemption under Section 11 read with Section 12A(1)(b) of the Act which required the assessee to file audit



report in Form of 10B which has nothing to do with claiming 100% exemption of total income in respect of newly established 100% Export Oriented Undertakings under Section 10B. Section 10B(8) requires the assessee to file an undertaking before the due date of furnishing of return of income under sub-section (1) of Section 139 before the Assessing Officer in writing that the provision of Section 10B may not be made applicable to him, otherwise the provision of this Section shall not apply to him for any of the relevant assessment year.

6. Considering the language of the provision of Section 10B(8) of the Act, the Hon'ble Supreme Court held that it was mandatory on part of the assessee to file declaration before the due date of filing of return under sub-section (1) of Section 139 of the Act, whereas in the facts of the said case the assessee filed such undertaking along with the revised return under sub-



section (5) of Section 139 of the Act and in such facts the Hon'ble Supreme Court held that the twin conditions prescribed under Section 10B(8) of the Act was mandatory to be fulfilled and it cannot be said that though the declaration is mandatory, the filing of such declaration within the due date of filing of return under sub-section (1) of Section 139 would be directory.

7. Reference to the aforesaid decision has no connection whatsoever remotely to the facts of the present case and therefore, in the facts of the present case, the Tribunal has rightly followed the decision of this Court in case of Sarvodaya Charitable Trust v. Income Tax Officer (Exemption) in Special Civil Application No.6097 of 2020 decided on 09th December, 2020 as well as the decision in case of Social Security Scheme of GICEA (supra) to uphold the decision of the CIT (Appeals), wherein this Court has held that the approach of the authority in

such type of cases should be equitable, balancing and judicious and respondent No.2 might be justified in denying the exemption under Section 11 of the Act being a technical in nature by rejecting such application. But, in the facts of the case, when the assessee has already uploaded the audit report in Form 10B as required under Section 10(23)C read with Section 12A(1)(b) of the Act before the Assessing Officer prior to the original assessment order under Section 143(3) passed on 06th April, 2021."

14. Learned advocate Mr.Krutarth Desai for the petitioner also invited the attention of the Court to paragraph No.10 of the decision of the Hon'ble Apex Court in case of **Wipro Limited (Supra)** wherein, the Hon'ble Apex Court has held as under :

"10. Even the submission on behalf of



the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B (8) can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B (5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B(5).



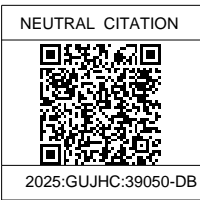
Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B(5) would become falsified and would stand to be nullified."

15. On perusal of the above observation of the Hon'ble Apex Court, it is also apparent that the Hon'ble Apex Court has considered the significance of filing declaration under Section 10B(8) of the Act considering the provisions of Section 10B(5) of the Act being a check to verify the correctness of the claim of deduction at the time of filing of return so that if an assessee claims an exemption under the Act by virtue of Section 10B of the Act, then the correctness of the claim has already been verified under Sub-section (5) of Section 10B and therefore, if the claim is withdrawn post the date of filing of return, the report of the Accountant filed under



Section 10B(5) of the Act would become falsified and would stand to be nullified. However, the provisions of Section 115BAA of the Act are in a way granting relief to the assessee-Companies to enable them to pay the reduced rate of tax at rate of 22% on exercise of the option on the various conditions mentioned therein.

16. In such circumstances, the respondent No.1 was required to consider the facts of the case by permitting the petitioner to file a fresh Form 10IC and condoning the delay in filing such Form by molding the prayer made by the petitioner to treat the Form 10IC filed by the petitioner for Assessment Year 2021-2022 to be treated as that of for Assessment Year 2021. The provisions of Section 119(2)(b) of the Act are meant for redressal of the grievance and



hardships caused to the petitioner as held by the Hon'ble Madras High Court in case of **R. Seshammal (Supra)** as under :

"This is hardly the manner in which the State is expected to deal with the citizens, who under anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund."

17. Considering the above facts as well as the



settled legal position, the petition succeeds and accordingly allowed. The petitioner is permitted to obtain Form 10IC for Assessment Year 2021 in the facts of the case and after obtaining such Form, the petitioner shall make a fresh Application to condone the delay for the same and the respondent No.1 is directed to consider such Application in light of the observations made in this Order within a period of twelve weeks from the date of filing of such Application by the petitioner. Rule is made absolute. No orders as to cost.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

SAJ GEORGE