

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 722 of 2023**

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PRINCIPAL COMMISSIONER OF INCOME TAX 1

Versus

KGY GLASS INDUSTRIES (P) LTD

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Appearance:

MR NIKUNT RAVAL, LD.ADVOCATE FOR MRS KALPANA K RAVAL(1046)

for the Appellant(s) No. 1

for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

and

**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

**Date : 18/10/2023**

**ORAL ORDER**

**(PER : HONOURABLE MRS. JUSTICE MAUNA M. BHATT)**

1. This Appeal by the Revenue under section 260A of the Income Tax Act, 1961 ('the Act' for short) is directed against the order dated 11.05.2023 passed by the Income Tax Appellate Tribunal, Surat in ITA No.316/SRT/2022 for A.Y.2020-2021.

2. The assessee is in the business of textile, filed its return of income for the A.Y.2020-21 on 15.01.2021 declaring income as NIL. The assessee while filing return of income opted to be taxed as per provisions of Section 115BAA of the Income Tax Act,1961 (for short "the Act"). The return of income was processed by the Central Processing Centre, Bengaluru (for



short “CPC”) on 20.12.2021 and the income of assessee was taxed as per Section 115JB of the Act. The assessee was taxed as per section 115JB of the act for the reason that it had not filed Form No.10-IC, on or before the due date of filing of return of income.

3. Aggrieved by the order of A.O.s not assessing the assessee at concessional rate of tax under section 115BAA of the Act, it preferred an appeal before Ld.CIT (Appeal). The Ld.CIT (Appeal) vide order dated 11.10.2022 confirmed the order of Assessing Officer on the ground that filing of Form No.10-IC electronically, on or before the due date of filing of return is the mandatory requirement as per sub-section (5) of section 115BAA of the Act read with Rule 21AE of the Income-Tax Rules,1962.

4. Against the order of Ld.CIT (Appeal), the assessee preferred appeal before the Ld.ITAT and Ld.ITAT vide order dated 11.05.2023 allowed the appeal of the assessee. Aggrieved by the same, the present appeal is filed, proposing following substantial questions of law :

- (i) Whether on facts and in the circumstances of the case and in law, the Ld. Tribunal was justified in allowing the appeal of the Assessee without



appreciating the meaning and applicability of section 115BAA of the I.T. Act.?

(ii) Whether on facts and in the circumstances of the case and in law, the Ld. Tribunal was justified in allowing the relief claimed by the Assessee by totally ignoring the provisions of section 115BAA of the Act as well as the Circular No. 06/22 dated 17/03/2022 issued by the CBDT which is mandatory?

(iii) Whether on facts and in the circumstances of the case and in law, the Ld. Tribunal was justified in not appreciating that relief claimed under section 115BAA of the I.T. Act cannot be allowed when the Assessee failed to submit Form 10-IC electronically on or before 30.06.2022 or 3 months from the end of the month in which the Circular is issued?

5. Heard learned Senior Standing Counsel Mr.Nikunt Raval for the appellant – revenue. Learned counsel submitted that section 115BAA of the Income-tax Act, 1961 was inserted by Taxation Laws (Amendment) Act, 2019 w.e.f. 01.04.2020. As per the said section, the income tax payable in respect of the total income of a person, being a domestic company, for any



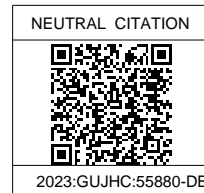
previous year relevant to the assessment year beginning on or after the 1<sup>st</sup> day of April,2020, shall, at the option of such person be computed at the rate of twenty-two percent, subject to satisfaction of conditions contained in sub-section (2) of Section 115BAA.

As per sub-section (5) of Section 115BAA of the Act read with Rule 21AE of the Income-Tax Rules,1962, the assessee company is required to submit Form 10-IC electronically on or before the due date of filling of return of income under section 139(1) of the Act and once such option is exercised, the same shall apply to subsequent assessment years.

Learned counsel submitted that failure to furnish Form 10-IC, in the prescribed Form on or before the due date specified under section 139(1) of the Act results in denial of concessional rate of tax of twenty-two percent to such person and therefore, there is no illegality in the order of Assessing Officer, confirmed by the Ld.CIT (Appeal). He placed reliance on the findings recorded by the Ld.CIT (Appeal).

6. The ITAT in the order dated 11.05.2023 has held as under:

“7. We have considered the submissions of both the parties and gone through the orders of the lower authorities. There is no dispute that the



assessee is a domestic company engaged in the business of textile and eligible to avail the benefit to be taxed under Section 115BAA of the Act, provided the assessee fulfilled the requisite condition for availing such benefit. The only objection of lower authorities are that the assessee has not filed Form 10-IC electronically before due date for filing return of income under Section 139(1) of the Act. The case of assessee is that Form 10-IC could not be uploaded on ITBA Portal due to technical error and it was the first year of availing such benefit. The assessee furnished such Form 10-IC on 29/01/2022, copy of acknowledgment of furnishing Form is filed on page No. 14 and 15 of the paper book. The only question for our consideration is whether non-filing of Form 10-IC on ITBA Portal is fatal to the assessee or not in availing the benefit of section 115BAA.”

7. From the findings recorded by the Tribunal, it is noticed that the assessee while filing return of income opted to be taxed as per provisions of Section 115BBA of the Act. However, it could not upload Form No.10-IC on account of technical problem on ITBA portal at the relevant time. During relevant period, the time to file Form 10IC was extended up to



30.06.2022. The assessee filed such Form before Assessing Officer on 29.06.2022. The copy of such form was placed before Id.CIT(A). It is also not in dispute that this is the first year, in which, the assessee was to avail such benefits. Further, Form 10-IC was furnished by the assessee on 29.01.2022 and therefore, we are of the opinion that since the assessee could not upload Form No.10-IC, on ITBA portal on account of technical error, there being no fault of the assessee, it could not be deprived of benefit particularly when this being the first year for availing such benefits.

8. Therefore, in our opinion, there is no error of fact and Law in the order of the ITAT. No substantial questions of law are involved in the present appeal; hence, the present appeal is dismissed.

sd/-

**(BIREN VAISHNAV, J)**

sd/-

**(MAUNA M. BHATT,J)**

DIPTI PATEL