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

% *Date of Decision: 22.09.2023*

+ **W.P.(C) 12579/2023**

JASPER ASSOCIATES PRIVATE LIMITED Petitioner

Through: Mr Sumit Kumar Batra with Mr
Mayank, Advs.

versus

CENTRALIZED PROCESSING CENTRE, INCOME TAX
DEPARTMENT & ANR. Respondents

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Parth Semwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.49590/2023

1. Allowed, subject to just exceptions.

W.P.(C) 12579/2023 & CM Appl.49589/2023 [*Application moved on
behalf of the petitioner seeking interim relief*]

2. This writ petition concerns Assessment Year (AY) 2021-22.

3. The petitioner, *inter alia*, seeks to assail the impugned assessment order dated 13.11.2022.

4. Counsel for the petitioner says that the petitioner/assessee has been subjected to a higher rate of tax only because it failed to comply with a condition stipulated under Section 115BAA of the Income Tax Act, 1961 [in short, "Act"].

5. According to the counsel for the petitioner, if the option provided in section 115BAA was exercised in the manner provided in the said provision,



it would have been taxed at the rate of 22% and not be subjected to the higher rate of 30%.

6. It is contended that one of the conditions prescribed under the said provision is that the petitioner was required to exercise its option in the prescribed manner which, *inter alia*, required it to prefer an application in Form 10-IC.

6.1 This requirement, according to the counsel for the petitioner/assessee, is embedded in sub-section (5) of Section 115BAA of the Act read with Rule 21AE(2) of the Income Tax Rules, 1962. For the sake of convenience, the relevant part of Rule 21AE is extracted hereafter:

“21AE. Exercise of option under sub-section (5) of section 115BAA.

(1) The option to be exercised in accordance with the provisions of sub section (5) of section 115BAA by 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 be in Form No. 10-IC.

(2) The option in Form No. 10-IC shall be furnished electronically either under digital signature or electronic verification code.

xxx

xxx

xxx”

6.2 The extracted provisions obligate the petitioner to file Form 10-IC electronically. It is stated that because the petitioner/assessee failed to file Form 10-IC electronically, it led to the imposition of higher rate of tax on the petitioner/assessee.

7. Counsel for the petitioner submits that the petitioner/assessee has been taxed at a higher rate of tax for a mere procedural lapse and therefore, seeks the indulgence of this Court to allow the petitioner/assessee to complete the requirements prescribed under Section 115BAA(5) and Rule 21AE(2) and avail the benefit of a lower rate of tax. In support of this plea, learned counsel for the petitioner seeks to rely on the judgment of the



Gujarat High Court dated 20.01.2022 in ***Rajkamal Healds and Reeds Pvt. Ltd. vs. Assistant Director of Income Tax*** (2022) 325 CTR (Guj) 476. For the sake of convenience, the relevant paragraphs of the judgment are extracted hereafter:

“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 at least 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.”

[Emphasis is ours]

8. Mr Abhishek Maratha, learned senior standing counsel who appears on behalf of the respondent/revenue, says that he would have no objection if this court were to direct the petitioner to move an appropriate application before the Central Board of Direct Taxes (CBDT) for giving leave to file Form 10-IC, pursuant to powers conferred on it by section 119(2)(b) of the Act.
9. The writ petition is thus disposed of, with liberty to the petitioner/assessee to approach the CBDT.
10. In case the petitioner approaches the CBDT within four (4) weeks from the date of receipt of a copy of the order passed today, it will consider the request of the petitioner/assessee, and pass an appropriate order.
11. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 22, 2023/pmc