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

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Decision delivered on: 30.11.2023

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W.P.(C) 17057/2022

A.C. SURGIPHARMA PRIVATE LIMITED Petitioner

Through: Mr Vibhor Garg, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX

CIRCLE 1(1) & ANR.

..... Respondents

Through: Mr Sanjeev Menon, Standing
Counsel.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. On 14.12.2022, after hearing learned counsel for the parties, we had broadly set out the grievance of the petitioner. For convenience, the relevant part of the order dated 14.12.2022 is extracted hereafter:

“2. A challenge in this writ petition is laid to the impugned intimation dated 13.11.2022 issued by respondent no.2 under Section 143(1) of the Income Tax Act, 1961 [in short “Act”].

2.1 Via this intimation, a demand amounting to Rs.1,03,94,820/- has been raised against the petitioner.

3. The principal grievance of the petitioner is, that although in the income tax return, enough and more information had been given, that the petitioner has opted for being taxed at the rate of 22% as provided under Section 115BAA of the Act, the impugned order was passed, only on account of the fact that the petitioner had failed to file Form 10-IC.



4. *It is the submission of Mr Vibhor Garg, who appears on behalf of the petitioner, that before passing the impugned intimation dated 13.11.2022, an opportunity could have been granted to the petitioner, to correct course.*

4.1 *To be noted, in the instant writ petition, we are concerned with Assessment Year (AY) 2021-2022.*

5. *Mr Garg informs us, that for AY 2022-2023, once again, in accordance with the provisions of sub-section (5) of Section 115BAA of the Act, the petitioner continued to opt for being taxed at the rate of 22%, and has accordingly indicated the option in the prescribed form i.e., Form 10-IC.*

6. *Mr Zoheb Hosain, who appears on behalf of the respondent/revenue, on the other hand, says that the provisions of Section 115BAA and Rule 21AE clearly mandate that Form 10-IC should be filed, along with the return.*

6.1 *Mr Hossain also says, that there is an alternate remedy available under Section 246A of the Act.*

7. *Perhaps, the issue that requires consideration, is that if every information that is sought for in the form is available with the return, and there is indication in the return, that the assessee has exercised his option in terms of sub-section (1) of Section 115BAA, then, before proceeding further, should the Assessing Officer (AO) not give an opportunity to the assessee [in this case the petitioner] to make course correction?*

8. *We may note, that when the provision i.e., Section 115BAA was inserted, the Central Board of Direct Taxes (CBDT) via circular dated 17.03.2022 had relaxed the rigour of the law, in exercise of its powers under Section 119(2)(b) of the Act.*

9. *To our minds, the matter requires to be delved into.*

10. *Accordingly, issue notice.*

10.1 *Mr Zoheb Hossain accepts notice on behalf of the respondents/revenue.*

11. *Counter-affidavit will be filed within the next four weeks.*

11.1 *Rejoinder thereto, if any, be filed before the next date of hearing.*

12. *List the matter on 19.05.2023.*

13. *In the meanwhile, no precipitate action will be taken against the petitioner in respect of the demand raised via the impugned intimation dated 13.11.2022, till further orders of the Court."*

2. As would be evident from the aforesaid extract, the only reason that the petitioner was not taxed at the rate of 22%, as provided under Section 115BAA of the Income Tax Act, 1961 [in short, "Act"], was on account of the fact that it failed to file Form 10-IC.



3. Mr Garg has placed before the court Circular No.19/2023 dated 23.10.2023 issued by the Central Board of Direct Taxes (CBDT) which, in effect, condones the delay in filing Form 10-IC. In this regard, Mr Garg draws our attention to paragraph 3 of the aforementioned circular, which is extracted hereafter:

“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, CBDT in exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that: -

The delay in filing of Form No. 10-IC as per Rule 21AE of the Rules for previous year relevant to A.Y. 2021-22 is condoned in cases where the following conditions are satisfied:

(i) The return of income for relevant assessment year 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 item (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6; and

(iii) Form No. 10-IC is filed electronically on or before 31.01.2024 or 3 months from the end of the month in which this Circular is issued, whichever is later.”

4. We are informed by Mr Garg that in terms of the said circular, a fresh Form 10-IC has been filed, *albeit*, electronically.

5. Accordingly, Mr Garg says that the petitioner fulfills the conditions referred to in paragraph 3 of the said circular.

6. In these circumstances, the writ petition is disposed of, with a direction to the CBDT to process the petitioner’s request contained in Form 10-IC.

7. The CBDT will process the aforementioned prescribed form within eight (8) weeks from the date of receipt of the order passed today.



8. The interim order dated 14.12.2022, which was made absolute on 19.05.2023, shall continue to operate pending the aforementioned exercise, and for further three (3) weeks, in case the result is adverse to the interest of the petitioner.
9. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 30, 2023/aj