

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'E' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),  
and Pavan Kumar Gadale (Judicial Member)]**

ITA No.: 889/Mum/2022  
Assessment year: 2020-2021

**Suminter India Organics Pvt. Ltd.** .....Appellant  
*3<sup>rd</sup> Floor, X Cube Building, New Link Road,  
Opp. Fun Republic, Andheri (W) Mumbai 400 053  
[PAN: AAICS3167M]*

**Vs.**

**Deputy Commissioner of Income Tax** .....Respondent  
**Circle 2(1)(1), Mumbai**

**Appearances by:**

**V. Sridharan, Senior Advocate, along with Ravi Sawana and Neha Sharma for the appellant  
Ketaki Desai for the respondent**

Date of concluding the hearing : 21/07/2022  
Date of pronouncing the order : 26/07/2022

**O R D E R**

**Per Pramod Kumar VP:**

1. This appeal, filed by the assessee, is directed against the order dated 24<sup>th</sup> March 2022, in the matter of the processing of income tax return under section 143(1) of the Income Tax Act, 1961 [hereinafter referred to as '*the Act*'], for the assessment year 2020-21.

2. Grievance of the assessee, in substance, is that the learned CIT(A) erred in upholding the levy of income tax on the assessee @ 30%, whereas, in the light of the option exercised by the assessee for the concessional tax regime under section 115BAA, the income tax ought to have been levied @22%. The larger macro issue falling for our consideration in the process, and an interesting offshoot of this controversy, is about the manner in which the provisions of Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020, are required to be interpreted and whether *dehors* the statutory linkage between the time permissible for furnishing of return under section 139(1) and filing the intimation of exercising the option for the concessional regime of taxation under section 115BAA(5), such a linkage can be diluted by

the peculiar scheme of relaxations under the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020.

3. The issue in appeal lies in a very narrow compass of material facts. The assessee before us is a private limited company engaged in the business of trading, sourcing and supplying organic and natural produce from India to buyers internationally. The assessee has opted for the taxation under the concessional scheme of taxation under section 115BAA. This concessional scheme of taxation is broadly like this. Section 115BAA(1) provides that, **“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”**. Section 115BAA(2), in turn, refers to the computation of income **“(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 other than the provisions of section 80JJAA or section 80M; (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.”** There is no dispute with respect to the conditions under section 115BAA(2) on the facts of this case; the dispute is confined to the furnishing of option, under section 115BAA(5), for this scheme. On 31<sup>st</sup> March 2021, the assessee filed the income tax return, and, in the said income tax return, it was indicated that the assessee has opted for the concessional tax regime under section 115BAA. This income tax return, however, was a belated income tax return inasmuch as even the extended time limit for the filing of the income tax return under section 139(1) expired on 15<sup>th</sup> February 2021. On the same date, i.e. 31<sup>st</sup> March 2021, the assessee also filed form 10-IC in terms of the requirements of section 115BAA(5). The assessee had computed the income tax liability @ 22% in terms of the rate prescribed under section 115BAA, and the system-generated computation of income tax also apparently accepted the same. However, when the income tax return was processed under section 143(1), this concessional rate of 22% was rejected, and the assessee was levied tax @ 30%. Aggrieved, the assessee carried the matter in appeal before the learned CIT(A) but without any success. The learned CIT(A) upheld and justified the rejection of the assessee’s stand with respect to taxability @ 22% primarily on the ground that the option under section 115BAA(5), by way of filing of form 10-IC, was not exercised within the time prescribed under section 139(1) which is a sine qua non for availing the concessional tax regime

under section 115BAA. Learned CIT(A) thus upheld the stand of the Assessing Officer in declining the benefit of the concessional tax regime under section 115BBA, and declined to interfere in the matter. The taxability @ 30%, The assessee is not satisfied with the stand so taken by the learned CIT(A) and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record, and duly considered the facts of the case in the light of the applicable legal position.

5. While Shri Sridharan, learned senior counsel for the assessee, has made elaborate submissions on various facets with respect to the scheme of Section 115BAA, implications of the provisions of the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020 [hereinafter referred to as '*the TOLA*'], and several other nuances of law, for the reasons we will set out in a short while, it is sufficient to take note of his basic plea- i.e. in terms of the requirement of section 3(1)(b) of TOLA, the time limit for filing of form 10-IC, for the assessment year 2020-21, stands extended to 31<sup>st</sup> March 2021, and, to this extent, the requirement of filing form 10-IC within the time permitted for filing an income tax return under section 139(1), stands superseded by the TOLA provisions. Shri Sridharan, learned senior counsel, invites our attention to the scheme of Section 3(1)(c) of TOLA, which provides that where any time limit has been specified in, or prescribed or notified under, the specified Act, which falls during the period from the 20th day of March 2020 to the 31st day of December 2020, or such other date after the 31st day of December 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as **“filing of any appeal, reply, application or furnishing of any report document, return or statement or such other record, by whatever name called, under the provisions of the specified Act”**, or in the case where the specified Act is the Income-tax Act, 1961, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, **“stand extended to the 31st day of March, 2021”**. Our attention is then invited to clause (i) of the third proviso to Section 3(1) of TOLA, which carves out an exception only for the income tax return under section 139. Learned senior counsel's contention is that while in terms of the provisions of the TOLA, the time limit for submission of **“filing of any appeal, reply, application or furnishing of any report document, return or statement or such other record, by whatever name called, under the provisions of the specified Act”**, stands extended to 31<sup>st</sup> March 2021, the exceptions carved out in the third proviso to Section 3(1) does come into play only in respect of the income tax returns filed under section 139, and, as a corollary thereto, the time limits for filing of income tax returns and the time limits for the filing of any other application under the Income Tax Act, stand segregated. It is in this backdrop, according to the learned senior counsel, that the submission of form 10IC, being an exercise of option under section 115BAA, was permissible up to 31<sup>st</sup> March 2021. It is thus submitted that the option for the concessional tax regime under section 115BAA was properly exercised, and that the authorities below erred in law and on facts in declining the same. Smt Desai, learned

Departmental Representative, submits that this plea was not taken up before the first appellate authority, and we must not, therefore, adjudicate on the same on merits. Without prejudice to this line of submission, it is reiterated that in terms of the provisions of Section 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”**. Our attention is then invited to Rule 21AE, prescribing the manner in which this option is to be exercised by the filing of Form 10-IC. It is pointed out that the extended time limit for submission of return under section 139(1) was only up to 15<sup>th</sup> February 2021, whereas the form 10IC was submitted on 31<sup>st</sup> March 2021. Learned Senior Departmental Representative further submitted that the Income Tax Act, 1961 does not provide for the extension of time limit for filing of form 10IC, and, therefore, once the time limit for filing of income tax return expires, it is not to an assessee to claim the concessional rate of tax under section 115BAA. The distinction being canvassed by the learned senior counsel between the time limit for filing of income tax return and for exercising the option under section 115BAA, according to the learned Senior Departmental Representative, was wholly devoid of any merits inasmuch section 115BAA(5) clearly provides for the exercise of option within the time permitted for filing of the income tax return. We are thus urged to confirm the action of the authorities below, and decline to interfere in the matter. In a brief rejoinder on this issue, learned senior counsel once again took us through the TOLA provisions and submitted that whatever be the scheme of Section 115BAA, it stands superseded by the concessions under the TOLA. We are once again urged to uphold the plea of the assessee with respect to his entitlement for the concessional regime of tax under section 115BAA.

6. Learned senior counsel's plea is indeed well taken. The scheme of Section 115BAA, as visualized under the Income Tax Act, is that the option for availing of the concessional tax rate regime must be exercised within the time permissible for the filing of the income tax return under section 139(1); section 115 BAA unambiguously provides so when it states that **“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”**. This scheme, however, was diluted under the scheme of TOLA when the relaxation, on account of the covid pandemic, when different treatment was accorded to **“furnishing of return under section 139”** [see clause i of third proviso to Section 3(1) of TOLA] and **“filing of any appeal, reply, application or furnishing of any report document, return or statement or such other record, by whatever name called, under the provisions of the specified Act”** [see Section 3(1)(b) read with Section 2(1)(b)(ii) of TOLA]. Section 2(1)(b)(ii) provides that the Income Tax Act 1961 is one of the “specified Acts” under the TOLA, and Section 3 (1)(b) of TOLA, *inter alia*, provides as follows:

**Relaxation of certain provisions of specified Act.**

**3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—**

.....

**(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act;**

.....

**and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:**

7. A plain reading of the above statutory provision shows that the time limit for filing of filing between 20<sup>th</sup> March 2020 and 31<sup>st</sup> December 2020 in respect of “**filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act** (i.e. the *Income Tax Act, 1961*)” stood extended to a date not earlier than 31<sup>st</sup> March 2021. There is no dispute that the original date of filing of income tax return fell within this period, and in terms of the provisions of Rule 21AE, the option was to be exercised in the prescribed manner, i.e. by filing form 10-IC. The requirement of Section 115BA(5) admittedly was that it is within this time limit that the option must be exercised. However, this extension of the time limit, in view of the relaxation provisions of Section 3(1)(b) of the TOLA, stood extended to 31st March 2021. There is, however, an exception carved out to the aforesaid relaxation by clause (i) of the third proviso to Section 3(1), which provides as follows:

***Provided also that where the specified Act is the Income-tax Act, 1961 (43 of 1961) and the compliance relates to—***

**(i) furnishing of return under section 139 thereof, for the assessment year commencing on the—**

**(a) 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted;**

**(b) 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of November, 2020" had been substituted;**

8. A proviso, as is the well settled position, carves out an exception from the scope of the main section. The normal function of a proviso is to qualify something out of an enactment that, but for the proviso, would be within the purview of the enactment. As stated by Justice Lush, in the classic case of *Mullins Vs Treasurer of Surrey* [(1880) 5 QBD 70], "when one finds proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included subject matter of the proviso" [See *Principles of Statutory Interpretation* by Justice G P Singh- 14<sup>th</sup> Edition @ Page 215]. Quite clearly, therefore, when the time limit for filing the income tax return under section 139 is specifically carved out of the scope of Section 3(1), it is clear that the other time limits under the Income Tax Act, 1961, for the statutory filing obligations, were indeed covered by Section 3(1) -to which such an exception was carved out. There is thus clear segregation of time limits between what is covered by the specific exception set out in the proviso and what is not covered by the exception set out in the related proviso. In respect of what is not covered by the exception set out in the proviso, the provisions of Section 3(1)(b) will apply, extending the relaxation to 31<sup>st</sup> March 2021 uniformly. The filing of the income tax return and the exercise of an option for the concessional regime of taxation under section 115BAA are two distinct obligations. When the overriding provisions of TOLA provide separate relaxations for the purpose of the legal obligations with respect to the filing of return vis-à-vis filing of other documents, to that extent, specific relaxation provisions under the TOLA must make way for rather general provisions with respect to various statutory obligations. If a relaxation provision, as the TOLA is, visualizes separate parameters of relaxation for the income tax returns vis-à-vis other documents, it cannot be open to the revenue to negate the same on the ground that the scheme of the Income Tax Act 1961 treats the filing obligations in respect of the same at par. When the economic activities worldwide were seriously disrupted on account of the Covid pandemic, if more relaxations were required to be given, in the wisdom of the legislature, in respect of filing documents other than income tax returns, such statutory relaxations could not be declined on the ground that this differentiation is alien to the scheme of the Income Tax Act, 1961. The general scheme of timeframe prescribed under the Income Tax Act 1961 has to make way for the specific relaxation provisions under the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020. The time permitted for filing of form 10-IC, by virtue of section 3(1)(b) of TOLA, must be treated as 31<sup>st</sup> March 2021, even as the time permitted for filing of the income tax return under section, in the light of third proviso to Section 3(1) and read with subsequent notification, was only upto 15<sup>th</sup> February 2021. The plea of the assessee thus is indeed correct.

9. In any event, the short question before us relates to the interpretation of provisions with respect to relaxations to mitigate the hardships caused during the Covid pandemic period, by the

Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020, and it is our considered view that such relaxation provisions must be interpreted in a liberal and non-pedantic manner, and so as to give full effect to the relaxations permitted by the legislature. Viewed thus also, the proposition canvassed by the assessee is a reasonably possible view of the matter, and it merits acceptance. In view of all these discussions, and bearing in mind the entirety of the case, we uphold the plea of the assessee, and direct the Assessing Officer to accept the exercise of the option by the assessee for the concessional taxation regime under section 115 BAA. The assessee must therefore get the relief, as admissible, on the application of the scheme of taxation under section 115BAA. Ordered, accordingly.

10. As we have upheld the plea of the assessee for the short reason discussed above, we see no need to deal with other legal issues sought to be raised by the assessee. All other aspects of the submissions of the assessee, given our conclusions on the basic plea of the assessee- as set out above, are purely academic as of now, and need no adjudication at this stage. We leave it at that for the time being.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 26<sup>th</sup> day of July 2022

**Sd/-**  
**Pavan Kumar Gadale**  
(Judicial Member)  
**Mumbai, dated the 26<sup>th</sup> day of July, 2022**

**Sd/-**  
**Pramod Kumar**  
(Vice President)

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order etc*

*Assistant Registrar/ Sr PS*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*