



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11722 of 2024

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No
	✓	

HERALD GLOBAL VENTURES PRIVATE LIMITED

Versus

THE CHIEF COMMISSIONER OF INCOME TAX-1 AHMEDABAD

Appearance:

MR. TUSHAR HEMANI, SR. ADVOCATE WITH PARIMALSINH
PARMAR(7296) for the Petitioner(s) No. 1

MAUNIL G YAJNIK(9346) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 16/03/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned Senior Advocate Mr. Tushar Hemani with learned advocate Mr. Parimalsinh Parmar for the petitioner and learned Senior Standing Counsel Mr. Maunil Yajnik for the respondent.

2. **Rule**, returnable forthwith. Learned Senior Standing Counsel Mr. Maunil Yajnik, waives service of notice of rule for and on behalf of the respondent.

3. Since a short issue is involved, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing, for final disposal.



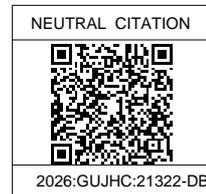
4. By way of the present petition, the petitioner has assailed the order dated 03.01.2024 passed by the Respondent under section 119(2)(b) of The Income Tax Act, 1961 (hereinafter referred to as "the Act" for the short) rejecting the application moved by the Petitioner for condonation of delay in filing Form 10-IC for the Assessment Year 2022-23 (hereinafter referred to as "year under consideration").

5. The brief facts giving rise to the filing of the present petition are as under:

5.1 The petitioner company was incorporated on 10.12.2019 and is engaged in "Healthcare & Lifesciences" industry. The petitioner has been recognized as "start-up" by the Department for Promotion of Industry and Internal Trade vide Certificate No. DIPP80620 dated 28.05.2021. The petitioner, thereafter, moved an application in August 2021 before the Inter-Ministerial Board of Certification (hereinafter referred to as "the Board") for getting a certificate of eligible business, as Act) as envisaged under section 80-IAC of the Act.

5.2 Books of accounts of the petitioner for the year under consideration have been audited and Tax Audit Report was duly uploaded on 28.09.2022.

5.3 The Board, during its 66th meeting held on 07.10.2022, decided applications filed by various start-ups (including the petitioner) for getting requisite certificate. However, application filed by the petitioner was rejected solely on the

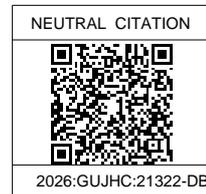


count that Director of the petitioner has majority shareholding in the Herald groups of company. The said decision was communicated to the petitioner vide email dated 21.10.2022.

5.4 After the decision of the Board, the petitioner took opinion of professionals in the field as regards further course of action. Based on such advice, the petitioner initiated efforts for gathering funds for payment of tax for the year under consideration. Eventually, self-assessment tax under section 140A of the Act aggregating to Rs.1,39,77,790/- was paid by the petitioner in four installments during the period between 20.12.2022 and 30.12.2022. The petitioner, in order to avail benefit envisaged under section 115BAA of the Act (i.e. computation of "tax" at "22%" as against "normal tax rate"), electronically filed the prescribed form i.e. Form 10-IC (application for exercise of option under sub-section 5 of section 115BAA of the Act) on 30.12.2022. The petitioner, on the very same day (i.e. 30.12.2022), filed return of income for the year under consideration whereby tax liability was computed by availing benefit envisaged under section 115BAA of the Act.

5.5 The return of income for the year under consideration was processed vide intimation under section 143(1) of the Act dated 26.06.2023 as per which, benefit of section 115BAA of the Act was denied i.e. tax was computed at normal rate.

5.6 The petitioner, vide letters dated 25.10.2023, 21.12.2023 and 25.12.2023, pointed out the facts in relation to the application filed under section 119(2)(b) of the Act for



the year under consideration, and requested to condone the delay in filing FORM 10-IC. However, vide order dated 03.01.2024, passed under section 119(2)(b) of the Act, the application of the petitioner has been rejected on the ground that the petitioner's case cannot be considered as a case of genuine hardship.

6. Learned Senior Counsel Mr. Tushar Hemani appearing for learned advocate Mr. Parimalsinh Parmar for the petitioner submitted that there was a "reasonable cause" behind "delay" of "53 days" in filing "Form 10-IC" before the "due-date" prescribed under "section 139(1)" of the Act and hence, such delay ought to have been condoned.

6.1 It is further submitted that the petitioner has been recognized as a "start-up" by the Department for Promotion of Industry and Internal Trade vide Certificate No. DIPP80620 dated 28.05.2021. The petitioner moved an application before the Board for getting a certificate of eligible business, as envisaged under section 80-IAC of the Act.

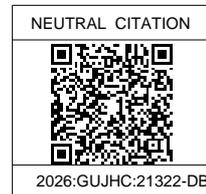
6.2 It is further submitted that the petitioner, thereafter, consulted professionals in the field seeking opinion as to whether the decision of the Board should be challenged or not. The petitioner was advised that challenging the decision of the Board may not be a workable solution. However, the petitioner was advised to claim benefit of section 115BAA of the Act. Upon being so advised somewhere in the middle of December 2022, the petitioner decided to go for the said option i.e. claiming benefit envisaged under section 115BAA



of the Act.

6.3 It is submitted by learned Senior Advocate Mr. Hemani that there is no dispute as regards the fact that the activities carried out by the petitioner fall within the ambit of eligible activities prescribed under Section 80-IAC of the Act and all the conditions stand fulfilled except “certificate of eligible business” from the Board, which could not be obtained on account of majority shareholding of the Director of the petitioner in Herald Group of Companies. It is submitted that the delay of 53 days in filing the Form 10-IC has resulted into tax payable being quantified at Rs.50,72,890/- and hence for such a small delay, the petitioner cannot be made to suffer and, hence the action of the respondent in not condoning the delay, may be quashed and set aside.

7. In response to the aforesaid submissions, learned Senior Standing Counsel Mr.Maunil Yajnik for the revenue submitted that the respondent authority has precisely disbelieved the case of the petitioner and has not condoned the delay. It is submitted that the petitioner had enough time to file Form 10-IC, however, he did not do so and filed the Form 10-IC on 30.12.2022 along with his return of income. It is submitted that the reasons given by the petitioner in belatedly filing the Form 10-IC as well as return of income, are not palatable, as the assessee was just waiting for the certificate without appreciating the fact that due date of filing return of income was getting over for the relevant assessment year and further, as per Section 80-IAC of the Act, the deduction specified in

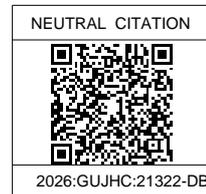


sub-section (1) of Section 80-IAC of the Act can be claimed at the option of the assessee for any three consecutive assessment years out of ten years beginning from the year in which the eligible start-up is incorporated. It is submitted that the petitioner as a start-up was incorporated in 28.05.2021 and it could have claimed the above deduction in subsequent three consecutive years out of ten years beginning from the year in which the eligible start-up is incorporated. Hence, there was no hurry in claiming the said deduction in the present assessment year. Thus, it is submitted that the petitioner has not acted *bona fide* and hence, the competent authority has passed the impugned order under Section 119(2)(b) of the Act.

8. We have heard the learned advocates appearing for the respective parties at length. The established facts from the pleadings and record are that the assessee filed its return of income for the Assessment Year 2022-23 under Section 139 of the Act, on 30.12.2022. The assessee Company uploaded the tax audit report on 28.09.2022 and Form 10-IC on 30.12.2022 by claiming the optional provisions of Section 115BAA of the Act.

9. The ITR was processed under Section 143(1) of the Act, computing tax at normal rate as the Form 10-IC was uploaded on portal on 30.12.2022 whereas, the extended due date for filing return of income was 07.11.2022, resulting raise in demand of Rs.50,72,890/-.

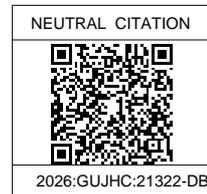
10. The assessee Company in its application dated



15.09.2023, has stated that it applied for start-up by complying with the conditions laid down under Section 80-IAC of the Act and waited for necessary certification from the Inter Ministerial Board of Certification from claiming deductions and hence did not pay advance tax installment, however, the Board disapproved the application of the Company in its meeting held on 07.10.2022, which was communicated to the petitioner vide email dated 21.10.2022.

11. The petitioner towards the end of December, 2022, paid the self-assessment tax in four installments i.e. Rs.30,00,000/- on 20.12.2022, Rs.30,00,000/- on 26.12.2022, Rs.30,00,000/- on 28.12.2022 and Rs.49,79,770/- on 30.12.2022. Thus, when the last installment was paid, the petitioner opted for benefit under Section 115BAA by filing Form 10-IC on 30.12.2022, also declaring total income at Rs.5,01,96,080/-. Thus, there was a procedural delay of 53 days in uploading Form 10-IC.

12. It is not in dispute that the due date prescribed under Section 139(1) was 07.11.2022 and the rejection of the application for start-up was communicated on 27.10.2022. It is the case of the petitioner that under the *bona fide* impression that the petitioner being a start-up shall receive the requisite certificate from the Board. However, at the end of October, 2022, the petitioner was informed that such application has been rejected. Thereafter, the petitioner sought advice from professionals in relation to issue on hand and eventually, after taking necessary advice, the petitioner filed Form 10-IC for the year under consideration. However, there was a delay of 53 days in filing such Form. The



petitioner in its application explained all these factors in detail. The petitioner had two options, one by claiming cent-percent deduction under Section 80-IAC of the Act, while furnishing the return of income for the relevant years, including the one for the year under consideration, and the other option that the assessee could reduce its tax liability by opting for provisions under Section 115BAA of the Act and, ultimately, the petitioner chose the second option after taking necessary advice and accordingly, the petitioner mobilized its fund for the payment of the applicable self-assessment tax with interest before it could upload the return of income thereafter. Thus, it cannot be said that there was some deliberate delay on the part of the petitioner assessee in filling up the Form 10-IC. The respondents have also not doubted the action of the petitioner being tainted with malfeide in belatedly filing the Form 10-IC after 53 days. It is not disputed by the respondent that the petitioner satisfied all the conditions prescribed under Section 80-IAC of the Act, except the certificate of eligible business, which was ultimately, refused on 07.10.2022, which was communicated to the petitioner on 21.10.2022.

13. At this stage, we may refer to Section 119(2)(b) of the Act which reads as under:

“SECTION 119 : Instructions to subordinate authorities

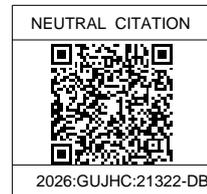
(1) The Board may, from time to time, issue such orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :



(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 [5734](#) [any income tax authority, not being a [5735](#) [***] 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;”

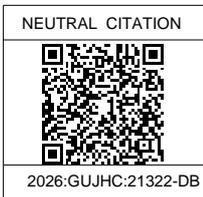
14. Before, we form an opinion, we are reminding ourselves, about the legal precedent in the case of B.M.Malani vs. Commissioner of Income-tax & Anr., [2008] 306 ITR 196, wherein the Supreme Court had an occasion of interpreting the word and phrase "genuine hardship". The Apex Court, referring to the term "genuine" as per New Collins English Dictionary, where the word genuine was defined as "Genuine: not a fake or counterfeit, real, not pretending (not bogus or merely a ruse)". On the principle of purposive construction, the Supreme Court held that the ingredients of genuine hardships must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, "a person cannot take advantage of his own wrong", may also have to be borne in mind.

15. The aforementioned facts are not disputed. The respondent was supposed to consider the impact of refusing to condone the delay in filing Form 10-IC. The refusal to condone the delay has resulted into denial of claiming the benefit under section 115BAA of the Act, despite the petitioner being found eligible. The same has also resulted into the quantification of



tax which is payable at Rs. 50,72,890/-" as per intimation under section 143(1) of the Act. Thus, if the delay in question is not condoned, the petitioner will have to pay substantial tax calculated as per "normal rate of tax" despite the fact that the petitioner is otherwise eligible for claiming benefit under section 115BAA of the Act i.e. "tax rate being 22%". This will result into "financial hardship" to the petitioner which is a "genuine hardship". Thus, by condoning delay, the genuine hardship caused to the petitioner could have been avoided.

16. Thus, on an overall appreciation of the facts, we are of the opinion that the efforts made by the petitioner and the delay of 53 days cannot be either said to be concocted or illogical. Hence, we are of the opinion that the expression 'genuine hardship' used under Section 119(2)(b) of the Act is required to be construed liberally in case of the petitioner. The submissions advanced on behalf of the revenue regarding the option available to the petitioner assessee for claiming the deduction under Section 80-IAC of the Act or any three consecutive assessment years out of ten years beginning from the year in which the eligible start-up is incorporated, is without merits, since the petitioner had undertaken the necessary exercise after it realized that its certificate of eligible business was refused, after it was recognized as start-up. The necessary efforts coupled with the fact that the petitioner's action was bonafide and his hardships which it will face are required to be examined at the relevant point of time, when the cause arose, and the remedial action cannot be left on the happening of the subsequent event of claiming



the deduction.

17. It is a settled position of law that the respondent has extensive powers to condone the delay and in the facts of the case and such powers ought to have been exercised judiciously so as to render substantial justice.

18. Hence, on an overall perusal of the case, we are of the opinion that the impugned order dated 03.01.2024 passed under Section 119(2)(b) of the Act, rejecting the application for condonation of delay in filing Form 10-IC for the Assessment Year 2022-23, is required to be quashed and set aside and is accordingly, quashed and set aside. The matter is remanded to the competent authority and the competent authority shall accept the Form 10-IC filed by the petitioner for the Assessment Year 2022-23.

19. The writ petition stands **allowed**. Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

SAJ GEORGE/33