आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.364/RPR/2025
निर्धारण वर्ष / Assessment Year : 2024-25

Vivrn Foods Private Limited
C/o. Rajkumar Mundra, Village-Sarona,
Raipur-492 009 (C.G.)
PAN: AAHCV4005G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(2), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.06.2025
घोषणा की तारीख / Date of Pronouncement : 25.06.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 18.03.2025 for the assessment year 2024-25 as per the following grounds of appeal:

> "1. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals), NFAC has erred in deciding the appeal ex-parte without providing adequate opportunity and without following principals of natural justice.
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> 2. In the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals), NFAC has erred in confirming the disallowance of claim of lower rate of tax under section 115BAB of the Income-tax Act,1961, and upholding the rejection of Form-10ID by the ld. CPC, Bangalore, without appreciating that the appellant had duly complied with the conditions prescribed under the said section and exercised option in the year of commencement of actual manufacturing activity as per provisions of sub-section (2) read with sub-section (7) of sec.115BAB of the Act.
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> 3. The impugned order is bad in law and on facts.
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> 4. The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority."

2. The relevant facts in this case are that the assessee filed its return of income declaring total income at Rs.1,98,50,380/- on 12.11.2024 u/s. 139(1) of the Income Tax Act, 1961 (for short 'the Act') opting to avail lower tax rate u/s.115BAB of the Act. The due date for filing of ITR for year under consideration was on or before 31.10.2024 and extended due date by 15.11.2024. This ITR was processed u/s. 143(1) of the Act by the CPC

(AO) on 04.02.2025 applying tax @ 30% i.e. Rs.59,55,114/- on total income instead of tax calculated by the assessee @ 15% on the total income. The assessee has reported in the ITR that it has opted taxation under the provision of section 115BAB of the Act and filed Form No.10ID on 21.09.2024 for the A.Y. 2024-25.

3. The assessee submitted that the company was incorporated on 05.06.2020 and it was involved in manufacturing activities (manufacturing other food and products). The production commenced on 15.01.2024. The assessee submitted that since the incorporation the company has not been involved in any other business operation till date other than the business of manufacturing or production, therefore, the assessee had claimed the benefit of concessional tax rates as per provisions of section 115BAB of the Act. The same was however not allowed by the CPC/A.O.

4. That when the matter was further assailed before the Ld. CIT(Appeals)/NFAC, then it was observed that to claim benefit of concessional tax rate as per provisions of Section 115BAB of the Act, Form No.10ID has to be filed on or before due date specified under sub section (1) of Section 139 of the Act for furnishing the returns of income for the first assessment year commencing on or after 1st day of April, 2020. Admittedly, as per ITBA portal, the assessee first filed income tax return for A.Y.2021-22 on 24.02.2022 vide acknowledgement No.

252919040240222. However, Form 10ID was filed by the assessee on 21.09.2024 electronically which is after due date of first return of income filed on 24.02.2022. For the sake of clarity, the relevant provisions of Section 115BAB of the Act is extracted as follows:

> "115BAB. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, 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 fifteen per cent, if the conditions contained in sub-section (2) are satisfied:
>
> Provided that where the total income of the person, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately under this Chapter, such income shall be taxed at the rate of twenty-two per cent and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income:
>
> Provided further that the income-tax payable in respect of the income of the person deemed so under second proviso to sub-section (6) shall be computed at the rate of thirty per cent:
>
> Provided also that the income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed at the rate of twenty-two per cent:
>
> Provided also that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.
>
> (2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing or production of an article or thing on or before the 31st day of March, 5112024] and,—

(i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of a company, business of which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 338, in the circumstances and within the period specified in the said section;

(ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii), any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(A) such machinery or plant was not, at any time previous to the date of the installation used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed twenty per cent of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;

(iii) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Explanation.—For the purposes of this sub-clause, the expressions "hotel" and "convention centre" shall have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Explanation.—For the removal of doubt& it is hereby clarified that the business of manufacture or production of any article or thing referred to in clause (b) shall not include business of,—

(i) development of computer software in any form or in any media;

(ii) mining;

(iii) conversion of marble blocks or similar items into slabs;

(iv) bottling of gas into cylinder;

(v) printing of books or production of cinematograph film; or

(vi) any other business as may be notified by the Central Government in this behalf; and

(c) the total income of the company has been computed,—

(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 o section 35CCC or section 35CCD or under any provisions of Chapter VI-, other than the provisions of section 80JJAA or section 80M;

(ii) without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i).

Explanation.—For the removal of doubts, it is hereby clarified that in case of an amalgamation, the option under sub-section (7) shall remain valid in case of the amalgamated

company only and if the conditions contained in sub-section (2) are continued to be satisfied by such company; and

(iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

Explanation.—For the purposes of clause (b), the "business of manufacture or production of any article or thing" shall include the business of generation of electricity.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (2) or clause (b) of said sub-section, as the case may be, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.

(6) Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:

Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.

> **(7) 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 first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:**
>
> Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.
>
> Explanation.—For the purposes of section 115BAA and this section, the expression "unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A."

That keeping in view the mandate of the provision of the Act, the CPC/AO had rightly disallowed the concessional tax rate u/s. 115BAB of the Act which was upheld by the Ld. CIT(Appeals)/NFAC.

5. We are of the considered view as per mandate of the provision particularly clause (7) which reads as follows:

> "(7) 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 first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:"

It is crystal clear that in order to take benefit of the said provision, the assessee needs to file Form 10ID on or before the due date specified as per sub section (1) of Section 139 of the Act for furnishing the return of income

for the first assessment year commencing on or after 1st day of April, 2020. That it has been brought on record that as per the ITBA portal, the assessee filed first income tax return for A.Y.2021-22 on 24.02.2022 vide acknowledgement No.252919040240222. However, Form 10ID was only filed by the assessee on 21.09.2024 electronically which was after due date from the first return of income filed. Since the mandate of the provision is not complied with, therefore, the CPC/A.O had rightly denied the benefit of concessional tax rate to the assessee as per Section 115BAB of the Act. The quasi-judicial authority has to follow the mandate of the statute in its strictest form and provide always literal interpretation of the provision. The quasi-judicial authorities while interpreting fiscal statutes cannot interpret the provision in a way other than the way it is provided in the statute itself. Meaning thereby the intention of the legislature regarding the fiscal statute has to be applied in totality in black and white i.e. word to word as it is written and intended in the said statute. Accordingly, we find no infirmity with the order of the Ld. CIT(Appeals)/NFAC which is upheld.

6. As per the above terms grounds of appeal raised by the assessee are dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 25th day of June, 2025.

Sd/-	Sd/-
ARUN KHODPIA	**PARTHA SARATHI CHAUDHURY**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 25th June, 2025.
SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.