

MODI HOUSING PVT LTD

5-4-187/3&4, II floor, MG Road,
Secunderabad - 500 003.
Phone: +91-40-56335551

18th January 2023

To
Shri Nitin Gupta,
Chairman, Central Board of Direct Taxes,
Room No. 150,
North Block,
New Delhi - 110001.

Dear Sir,

Sub: Application for condonation of delay in filing Form 10 - IC under Section 119(2)(b) of IT Act, 1961.

Ref: Modi Housing Private Limited ('the Assessee' or 'the Company' or 'Modi Housing') - Assessment Year ('AY') 2021-22

PAN: AADCM5966D

Background

Modi Housing Private Limited (herein after mentioned as 'the Company' or 'Modi Housing') is a Company incorporated under the Companies Act, 2013 with CIN - U45200TG2002PTC040192 having its registered office at 5-4-187/3&4, 3rd floor, Soham Mansion, M. G. Road, Secunderabad - 3, Hyderabad, Telangana - 500003 India.

With kind reference to the aforementioned subject, the Company is in receipt of intimation under section 143(1) dated 13 November 2022 vide demand reference number - 2022202157133975171C issued for the Assessment Year 2021-22.

In the present communication, the Company wishes to submit the following information for your favorable consideration.

Facts

The Company is engaged in the business of construction and development of residential housing projects. While filing the return of Income for the Assessment Year 2021-22, the Company had availed the benefit of concessional corporate tax regime introduced under Section 115BAA of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The concessional tax regime requires that the Company/ taxpayer does not avail any of the specified benefits in computing the



taxable income of the taxpayer. Therefore, the Company while computing and filing its return of income, did not avail any of the specified benefits and opted to file the return of income by applying the corporate tax regime under section 115BAA of the Act. The Company filed Form 10IC along with the return of income. We have subsequently received an intimation under section 143(1) of the Act, wherein the assessing officer has determined the total income and tax liability of the Company without granting the benefit of the new corporate tax regime as envisaged under section 115BAA of the Act and raised a demand of Rs. 69,97,780. This demand was subsequently revised to Rs. 71,79,680 vide order dated 10 January 2023. The copy of the intimation order and revision order is attached and annexed as Annexure A and Annexure B respectively.

Our Submission

We would like to submit before your goodself that that we had filed Form 10-IC for AY 2021-22, however, due to technical issues, the same is not reflecting on the income tax portal. Additionally, the acknowledgement of filing the same cannot be traced as our Chartered Accountant, Mr. Ajay Mehta, who had assisted us in filing the Income Tax Return for AY 2021-22, passed away on December 10th, 2022. The death summary of the same is attached and annexed as Annexure C. CA Ajay Mehta, our statutory auditor and tax advisor has been diligently and professionally helping the Company in filing and complying with all the tax laws. Due to his ill health and now his demise we are not in possession of proof of having submitted the Form 10-IC at the time of tax return filing for the AY 2021-22.

Assuming but not admitting, that the Company has failed to submit Form 10-IC electronically before filing the return for the AY 2021-22, the Company wishes to approach your good office for seeking condonation in filing the Form 10-IC and the return of income to be re-processed accordingly. We wish to submit before your good office that we have complied with all the conditions as required by the Act for availing the benefit of the section 115BAA. Assuming but not admitting that the Company has failed to submit the Form 10-IC, we wish to humbly submit and request before your goodself that the Company be given an opportunity to make good the deficiency.

We also wish to submit before your goodself that the Company will be put to undue hardship if the Company is not permitted to avail the benefit of section 115BAA merely on account of non-compliance with some procedural requirement which the Company genuinely believes to have complied with. In this regard, we wish to bring following judicial precedents to your good self's consideration:

In the case of Rajkamal Healds and Reeds Pvt. Ltd. [TS-73-HC-2022(GUJ)], the taxpayer filed its return of income for AY 2020-21 by resorting to concessional tax rate u/s 115BAA but

A handwritten signature in black ink is written over a circular official stamp. The stamp contains text in a circular border, which is partially obscured by the signature. The signature appears to be a stylized name, possibly 'Ajay Mehta'.

failed to file Form No. 10-IC electronically, mandatory for availing the concession. Taxpayer's return was thus processed as regular return and a demand was raised. In response to the same, the Hon'ble Gujarat High Court held that the Assessee is at liberty to file an application u/s 119(2)(b) seeking permission for condonation of delay in filing of Form No. 10-IC and observes that on filing of such application, the Chief Commissioner should expedite it and may exercise discretion keeping in mind the object behind Section 119(2)(b) and also consider the hardships that assessee will face if not permitted to file the Form No. 10-IC and that this was not a deliberate default by the assessee. Hon'ble High Court also considers assessee's submission that it was the first return of the assessee filed in accordance with Section 115BAA where inadvertently assessee's Chartered Accountant missed filing the Form No. 10-IC. Hon'ble High Court directs the assessee to file an application for condonation of delay.

In the case of **Civitech Developers Private Limited [TS-597-HC-2021(DEL)]**, the taxpayer engaged in the business of real estate projects, was served with draft assessment order on March 10, 2021, in response to which it made a request for personal hearing through video conferencing to explain the disputed issue, and was asked to request for personal hearing through a video link. Despite repeated attempts, the Assessee was unable to make the request through the video link, which was brought to Revenue's notice on April 16, 2021. In this regard, Hon'ble High Court observed that, as the option for personal hearing was not enabled, the petitioner due to technical glitches could not request for personal hearing on the e-portal, consequently, it cannot be said that the petitioner did not opt for personal hearing.

In the case of **L&T Chennai-Tada Tollway Ltd. [2021]** (128 taxmann.com 172 (Madras HC)), the assessing officer rejected the taxpayer's claim of deduction under section 80-IA on the grounds that Form No. 10CCB was not filed along with the return of income. On appeal the matter reached the Hon'ble Madras High Court which held that filing of such form along with the return of income was mandatory, however violation of the said rule did not take away the substantive right of the taxpayer in claiming a deduction under section 80-IA of the Act and that a substantive right could not be denied or taken away by virtue of a rule which was only a machinery provision.

We would also like to highlight the difficulties taxpayers and tax professionals had to encounter in complying with the requirements of the Act due to the technical issue which is encountered in any large-scale technology adoption/ upgradation exercise. We wish to submit before your goodself that the taxpayers should not be put to undue hardship due to deficiencies in the portal.

Relevant Provision of the Act

As per the provisions of section 119(2)(b) of Income Tax Act 1961,



"119(2) Without prejudice to the generality of the foregoing power -
(a)

(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;

(c)"

Pursuant to the above, the CBDT has issued Circular 9/2015 [F. No. 312/22/2015-OT] dated 9th June 2015 (enclosed and annexed as Annexure D) giving instructions to subordinate authorities to deal with applications for condonation of delay in filing refund claim and claim of carry forward of losses under Section 119(2)(b) of the Act. The aforementioned circular contains comprehensive guidelines on the conditions for condonation and procedure to be followed for deciding such matters. Relevant extract of the circular is provided herewith for your ready reference:

"In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income-tax Act (the Act), the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

(2) The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs. 10 lakhs for any one Assessment Year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (PLCCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs. 10 lakhs but is not more than Rs. 50 lakhs for any




one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

.....
(3) No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made.
....."

Based on the above circular and relevant provisions of the law, we would like to seek condonation to file Form 10-IC for AY 2021-22 with your goodself. Based on the above rulings and facts of the case, we would also like to submit before your good self that

- * Assuming but not admitting that the form was not filed, the omission was not deliberate and circumstantial and the Company shall be put to extreme hardship if the delay is not condoned.
- * Procedural requirement of filing the form should not result in denial of the benefits of section 115BAA, the conditions to avail the same has been complied with by the taxpayer.

Prayer

With due respect, we would like to respectfully submit before your goodself that the Company has filed its return for the AY 2021-22 by availing the benefit of the concessional tax rate under Section 115BAA of the Income Tax Act, 1961, thereby complying with all the conditions laid down in such section. Furthermore, for availing such benefit, the Company has also filed Form 10-IC as per the provisions of the Act. However, it has come to our attention that the same is not reflecting on the Income Tax Portal. But, due to technical glitches and demise of CA Ajay Mehta the Company is not in a position to prove that the form is filed. On perusal of the 143(1) intimation, it can be observed that the option for availing the benefit under Section 115BAA has been marked as 'Yes' by the Company while filing its income tax return for the AY 2021-22. Therefore, we are assuming, although not admitting, that the Company may have inadvertently failed to submit Form 10-IC.

We would like to bring to your kind attention that the quantum of amount involved in this application is in excess of Rs. 50 lakhs. Therefore, as per the guidelines laid down in Circular 9/2015 [F. No. 312/22/2015-OT] dated 9th June 2015, the application for condonation of delay is being filed with the Central Board of Direct Taxes.

In light of the provisions of the Act and the judicial interpretations, it can be comprehended that Section 115BAA of the Act is a beneficial provision and shall be construed liberally. The benefits of Section 115BAA cannot be withdrawn merely due to non-filing of Form 10-IC. AY 2021-22 was the first year in which the Company has opted for the concessional tax rate @22%, wherein the return was not mandating the filing of the acknowledgement number of Form 10-IC,



due to which corrective action could not be taken. As a result of the technical issues, a demand of Rs. 71 lakhs has been levied on the Company.

In accordance with the same, we would like to humbly request your goodself to kindly grant us condonation for filing Form 10-IC for the AY 2021-22 on the principles of natural justice and also consider the hardships that the Company will face if not permitted to file the Form No. 10-IC electronically.

If you require any further information, we shall be pleased to provide the same. We also request your goodself to grant us an opportunity of being heard in person prior to passing any order in this regard.

Thanking you!

Yours faithfully

For Modi Housing Private Limited


Authorised Signatory



Encl

Annexure A: Order issued under 143(1)

Annexure B: Order issued under 154

Annexure C: Death summary of CA Ajay Mehta

Annexure D: Circular issued by Central Board of Direct Taxes