

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.08.2008

+ WP (C) 10035/2006

PODDAR PIGMENTS LIMITED

... Petitioner

- versus -

**COMMISSIONER OF INCOME-TAX,
DELHI-IV & ANOTHER**

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Prakul Khurana

For the Respondents : Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 25.03.2006 passed by the Commissioner of Income-tax on an application made by the petitioner under Section 264 of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act') for the assessment year 2001-02. The petitioner manufactures plastic granules, which is used as a colouring agent in the plastic and fibre industries. The petitioner claimed to have started production w.e.f. 01.03.1995.

According to the learned counsel for the petitioner, it was entitled to deduction under Section 80-IB (3) to the extent of 30% in respect of its profits and gains for a period of 10 consecutive assessment years beginning with the assessment year 1995-96. Since the petitioner did not have a positive gross total income in the initial years, it could not claim the said deduction. For the first time, the petitioner had a positive total gross income in the previous year relevant to the assessment year 2001-02. However, the petitioner did not claim any deduction in respect of the said assessment year. According to the petitioner, it did not do so because the fact that the petitioner was entitled to such a deduction escaped the attention of the tax auditors as well as the tax department of the petitioner. According to the petitioner, this happened because a positive gross total income accrued to the petitioner only in the seventh year of production and in the earlier assessment years the petitioner did not have a positive gross total income and, therefore, could not have claimed such a deduction. This had escaped the attention of the tax advisers of the petitioner.

2. It is further contended on behalf of the petitioner that the omission to claim such a deduction in respect of the assessment year 2001-02 was noticed by the petitioner for the first time while preparing the return for the assessment year 2004-05. Thereafter, the petitioner revised the income-tax returns for the assessment years 2002-03 and

2003-04. The return for the assessment year 2001-02 could not be revised as the period prescribed under Section 139 (5) of the said Act had already elapsed.

3. The learned counsel for the petitioner states that insofar as the assessment years 2002-03 and 2003-04 are concerned, the revised returns were accepted and the deduction under Section 80-IB(3) of the said Act was allowed. Because the petitioner had no other avenue left to correct the *bona fide* and genuine mistake, it filed the application under Section 264 of the said Act for revision. Section 264 permits revision of any order, other than an order in which Section 263 applies, by the Commissioner either of his own motion or on an application by an assessee. Section 264 (2) stipulates that if the Commissioner seeks to revise an order of his own motion, he cannot do so if the order sought to be revised had been made more than one year previously. Section 264 (3) prescribes the limitation with respect to applications for revision made by the assessee. The said provision reads as under:-

“(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.”

A reading of the said provision clearly indicates that the application for revision by an assessee has to be made within one year from the date on which the order in question was communicated to him. In the present case, the return for the assessment year 2001-02 was processed under Section 143 (1) and the intimation was issued on 19.02.2003 which was received by the petitioner on 23.04.2003. Consequently, the petitioner could have made an application for revision within one year thereof. The application for revision was, however, made by the petitioner on 25.11.2004, i.e., after a delay of about seven and a half months. In such a situation, the proviso to Section 264 (3) would be applicable. The Commissioner has been empowered to admit an application made after the expiry of the period of one year provided he is satisfied that the assessee was prevented by sufficient cause from making the application within the said period.

4. In the present case, we find that the petitioner had set out in his application the reason for delay in filing the revision application as being the over-looking by the tax auditor as well as the tax department of the petitioner of the fact that for the relevant year, the petitioner had a positive gross total income and that it had become eligible for deduction under Section 80-IB for the first time in this year. This, according to us, would constitute sufficient cause for condoning the delay. We say so because we are of the view that the mistake was a

bona fide one and the reason given by the petitioner is not a device to cover any ulterior purpose. This can be discerned from the fact that while preparing the return for the assessment year 2004-05, the assessee learnt that it ought to have claimed deduction for the assessment year 2001-02 and subsequent years. Insofar as the subsequent years are concerned, i.e., assessment years 2002-03 and 2003-04, the petitioner could have filed revised returns. The petitioner did so. However, in respect of the present assessment year, the period for filing a revised return had expired and, therefore, the only alternative left with the petitioner was to file a revision application under Section 264. It is also clear from the application made by the petitioner that this mistake was discovered by the petitioner sometime in November, 2004. The application was made immediately thereafter, i.e., on 25.11.2004. This can be co-related with the fact that the revised returns for the assessment years 2002-03 and 2003-04 were also made sometime in the early part of December, 2004 itself.

5. Unfortunately, these factors have not at all been considered by the Commissioner of Income-tax. All that the Commissioner has done is to set out portions of the petitioner's application and, thereafter, give the following conclusions:-

“I have considered the submissions and that in view of the reasons mentioned by the assessee the delay does not deserve to be condoned and the petition of the assessee is dismissed.”

6. The Commissioner has not examined the aforesaid aspects of the matter which we have set out above. We are of the view that there was sufficient cause for having made the application after a delay of about seven and a half months. The Commissioner ought to have condoned the delay. As indicated above, the delay was on account of a *bona fide* mistake and is not visited by any *mala fides* or any element of recklessness. The petitioner has also been able to show that the claim was not made earlier because legal advice on that account was not forthcoming. The petitioner had no reason not to have claimed it at an earlier point of time. He did not do so because the requisite advice from its tax department had not been rendered. This can certainly be treated as a sufficient cause for condonation of delay, particularly in the light of the provisions of proviso to Section 264(3) as well as the provisions of Section 5 of the Limitation Act, 1963.

7. Consequently, we set aside the order of the Commissioner and remit the matter to the Commissioner for a decision on merits.

The writ petition stands allowed. No order as to costs.

BADAR DURREZ AHMED, J

August 28, 2008
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RAJIV SHAKDHER), J