

GAHC010115392024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3009/2024

AGNISHANTI INFRA PROVICER PVT. LTD.
(A PRIVATE LTD. COMPANY HOLDING PAN AALCA5858Q,
HAVING ITS REGISTERED OFFICE AT GNB ROAD, AMBARI, GHY-1.)
(REPRESENTED BY ITS DIRECTOR, SRI KUNAL AGNIHOTRI, DIN. 00877959)

VERSUS

PRINCIPAL COMMISSIONER,INCOME TAX GUWAHATI-1
ROOM NO. 705, AAYKAR BHAWAN, CHRISTIAN BASTI, G.S. ROAD,
GUWAHATI- 781005.

2:ASST. DIRECTOR OF INCOME TAX
CPC
BENGALURU
CENTRALIZED PROCESSING CENTRE

INCOME TAX DEPARTMENT

BENGALURU
PIN- 560500.

3:DY. DIRECTOR OF INCOME TAX
CPC
BENGALURU
CENTRALIZED PROCESSING CENTRE

INCOME TAX DEPARTMENT

BENGALURU
PIN- 560500.

4:CENTRAL BOARD OF DIRECT TAXES

HEADED BY THE CHAIRPERSON
CBDT

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

GOVT. OF INDIA

HAVING ITS OFFICE AT NORTH BLOCK SECRETARIAT BUILDING

NEW DELHI- 110001

Advocate for the Petitioner : MD KHAN,

Advocate for the Respondent : SC, INCOME TAX, MR. S CHETIA (SC, INCOME TAX DEPT.)

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

20.11.2024

Heard Mr. D. Khan, learned counsel for the petitioner. Also heard Mr. S. Chetia, learned Standing Counsel, Income Tax.

2. The petitioner before this Court is a private limited company engaged in constructions of building and other infrastructural works and is an assessee of Income Tax under the Income Tax Act, 1961 and holding PAN AALCA5858Q for the purposes. The petitioner filed Income Tax Return for the assessment year 2020-21 on 31.03.2022 along with it had also filed Form No. 10-IC for exercise of option under Sub-section (5) of Section 115BAA of the Act. Section 115 BAA was introduced on September, 2019 to give additional benefits of the optional reduced corporate tax to certain categories of domestic companies permitting them to retain more profits in view of the competitive business environment. Under Section 115BAA, domestic companies have the option to pay tax at a rate

of 22% plus applicable surcharges instead of 30% plus surcharges. This provision is optional, however, if the company opt for it, it cannot withdraw subsequently. To avail this offer, the assessee concerned has to file Form 10-IC once in a lifetime on or before the due date of filing the ITR for the concerned Assessment year namely AY 2020-21 in so far as the present proceedings are concerned. The petitioner company opted for the scheme and filed its Returns by paying the total self assessment tax amount of Rs. 44,95,515/- and leaving no further tax dues to be paid. No refund of tax or carry forward of losses was claimed by the petitioner for the said assessment year of 2021-22.

3. The respondent No. 2 by Notice dated 13.11.2022 received tax demand of Rs. 15,68,780/- plus interests on the petitioner resulting in the rejection of the option under Section 115BAA opted by the assessee during filing the ITR for the Assessment Year 2021-22.

4. The petitioner on 09.02.2023 requested the Income Tax authorities through e-filing portal for rectification and reprocessing the ITR for Assessment Year 2021-22 citing mistakes in the notice or intimation dated 13.11.2022 under Section 143(1). Thereafter on 24.02.2023 after due verification, the respondent No. 3 issued an order under Section 154 of the Act raising additional tax upto Rs. 15,83,3980/- and thereby rejecting the Form 10-IC filed by the petitioner under Section 115BAA.

5. It is the case projected by the petitioner that the CBDT under its circular No. 19/2023 dated 23rd October, 2023 had allowed general condonation of the delay under Section 119(2)(b) of the Income Tax Act, 1961 by filing Form No. 10-IC for Assessment Year 2021-22 by extending the deadline of file Form 10-IC till 31.01.2024. The petitioner however inspite of his best efforts could not avail

the advantage of the extended due date of 15.03.2022 and filed its returns within that extended period of time. The said returns were thereafter filed on 31.03.2022 together with all taxes, interest and other charges are applicable. This delay occurred because of COVID-19 pandemic situation, the petitioner was quarantine at his Noida residence for Covid related infections which caused general hardship to the petitioner.

6. It is the case of the petitioner before this Court that this delay caused due to willful and deliberate intention of the petitioner. This delay was because of genuine hardship caused due to medical related issue. Under such circumstances, the petitioner has approached this Court for a direction to the respondents more particularly CBDT to consider the case of the petitioner liberally under Section 119(2) of the Act and condone the delay of 16 days that had occurred in filing the ITR for Assessment Year 2020-21 and also consider the option exercised by the petitioner under Section 115BAA of the Act.

7. The petitioner has referred to a Judgment of the Telangana High Court in W.P.(C) No. 8272/2023. The learned counsel appearing for the petitioner submits that a similar issue came up before the Telengana High Court and by Judgment and Order dated 18.01.2023, the Hon'ble High Court allowed the petition directing the respondent authorities more particularly CBDT to consider the case of the petitioner because of genuine hardship. He further refers to a Judgment of the Orissa High Court rendered in W.P(C) No. 38769/2023 (Dilip Kumar Barik Vs. The Income Tax Officer, Keonjhar & Ors) wherein the prayer for consideration for the request of the petitioner is to condone the delay was accepted and orders accordingly were issued. The learned counsel for the petitioner has also referred to a Judgment of the Bombay High Court rendered in Sitaldas K. Motwani Vs. Director General of Income Tax & Ors., reported in

(2009) SCC Online 2195 to submits that words “genuine hardship” used in Section 119(2)(b) has to be construed liberally and refusal to condone the delay resulting in a matter where the merits require consideration but was not consider on the point limitation and thereby defeating the cause of justice at the very threshold.

8. The learned Standing counsel for the Income Tax Department submits that the power to condone the delay under Section 119 is in respect of the scheme is only reserved for the Central Board of Direct Taxes. The CBDT by its circular dated 23.10.2023 had issued a circular in respect of the cases where such delay in filing of Form 10-IC could be considered in cases where the return of income has been filed on or before the due date specified under Section 139(1) of the Act. He therefore submits that since admittedly the petition has been filed after the due date, the income tax authorities are not empowered to consider the delay.

9. The learned counsel for the parties have been heard. The writ petition along with enclosures have been carefully perused. Judgments placed before the Court are also carefully perused.

10. Under Section 119(2)(b), it is provided as under:

“(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, authorize to admit an applicant 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.”

11. The Telengana High Court by its Judgment and Order dated 18.01.2023 passed in W.P.(C) No. 8272/2023 had the occasion to deal with a similar issue

and the Court after consideration of the issues before it had allowed the writ petition directing the CBDT to consider the grievances of the petitioner thereafter passed appropriate orders.

12. The Orissa High Court in W.P.(C)No. 38769/2023 also expressed the same opinion, wherein the High Court, upon considering the grievances raised by the petitioner, allowed the writ petition and directed the CBDT to consider the matter in respect of the prayer of condonation of delay.

13. The Judgments of Telengana High Court and the Orissa High Court have been carefully perused. The facts in the present proceedings are similar. The provisions of Section 119 have also been carefully noted.

14. What transpires is that it is the CBDT which is vested with the power of condonation of delay in the event the Board considers it necessary to pass such an order on the attending facts and circumstances of the case, where the authority prescribed by the statute is given the discretion to consider the difficulties faced by any assessee and thereupon pass an order, it will be improper for the subordinate authorities to reject the same on the ground that no power is prescribed on the said authorities. Where statute provides for the provisions for condonation of delay by an appropriate authority upon due consideration of the relevant facts and circumstances, then any subordinate authority under the authority prescribed before whom such an application is filed is required to redirect the assessee to the authority prescribed under the Act who has been bestowed with the power of condonation of any delay upon due consideration of the facts and the materials. The authority which rejected the application filed by the petitioner was required to refer the matter to the CBDT as the power for consideration of condonation of delay was bestowed only on the CBDT under the statute and not on any other authority.

15. In the facts and circumstances of the case, this Court is persuaded to accept the view rendered by the Telengana High Court and the Orissa High Court and is therefore of the considered view that the hardship on medical grounds which are urged before this Court cannot be disregarded without a proper finding on that issue by the authority concerned. Prima facie it appears to the Court that the hardship suffered by the petitioner was for reasons beyond its control and for the medical conditions mentioned as the same occurred during the COVID 19 pandemic situation.

16. Be that as it may, considering the submissions made by the petitioner and the averments made in the writ petition and the Judgments referred by the petitioner, this Court is of the view that the writ petition can be disposed of with a direction to the CBDT authorities to consider the claim of the petitioner for condonation of the delay on the ground of hardship and thereafter pass appropriate orders. The Commissioner of Income Tax is directed to place the necessary records of the application filed by the petitioner before the CBDT and which in turn will pass necessary order thereon, as per the directions above.

17. The entire exercise be carried out as expeditiously as possible within the outer limit of 60 days from the date of receipt of certified copy of this order.

18. The writ petition stands disposed of in view of the above.

JUDGE

Comparing Assistant