IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1616 OF 2016

Manoj Kumar Kedia .. Petitioner

v/s.

Principal Commissioner of Income Tax-4 & Ors. .. Respondent

Mr. Pankaj Toprani with Ms. Krupa Toprani i/b PRH Juris Consults for the petitioner
Mr. Ashok Kotangle for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 11th AUGUST, 2016.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 30th March, 2016 passed by the Principal Commissioner of Income Tax. By the impugned order, the petitioner's application for revision under Section 264 of the Income Tax Act, 1961 (the Act) was dismissed on the ground that no sufficient cause has been shown for condoning the delay in filing the Revision Application. The relevant Assessment Year is A.Y. 2011-12.

2. On 22nd March, 2013, the Assessing Officer passed an assessment

order under Section 143(3) of the Act.

3. On 23rd January, 2015, the petitioner filed Revision Application under Section 264 of the Act with the Commissioner of Income Tax. This was admittedly beyond the period of one year provided in Section 264 of the Act to file an application from the communication of the order being sought to be Revised. Therefore, Revision Application was accompanied with an application for condonation of delay in filing the same seeking the exercise of powers under the proviso to Section 264(3) of the Act by the Commissioner of Income Tax. On merits, the revision application sought the benefit of deduction under Section 80IA of the Act, which had been inadvertently not claimed by the petitioner during the assessment proceedings.

4. The application for condonation of delay filed by the petitioner reads as under :-

> *"Ref : Application for condonation of delay in filing petition u/s 264 of the Income Tax Act, 1961 for revision of the order u/s 143(3) dated 22.03.2013 of DCIT 4(1) for A.Y. 2011-12.*
>
> *Your applicant had filed the return of income for A.Y. 2011-12, declaring the total income of Rs.7,16,69,968/-. Assessment was completed u/s 142(3) of the Income Tax Act determining the total income at Rs.7,17,95,036/-. The order u/s 143(3) dated 22.03.2013 was received on 25.03.2013.*
>
> *During the year, assessee has earned income of Rs.54,81,275/- from generation and sale of power, generated*

from Wind Mills. Said income is allowable as deduction of an amount equal to 100% of profits and gains derived from business u/s 80IA(4)(iv) of the Income Tax Act. However, inadvertently deduction was not claimed, and the income is inadvertently taxed in assessment proceedings. Hence, the applicant is now filing the application u/s 264 of the Income Tax Act, 1961 for A.Y. 2011-12.

The applicant could not file the application u/s 264 within the prescribed period of limitation i.e. one year from date of receipt of assessment order u/s 143(3). The petition should have been submitted on or before 24.03.2014.

In view of the legal position obtained now, the application is being filed. Your honour is requested to admit the belated application in terms of the proviso to Sec.264(3) of the Income Tax Act."

5. From the above, it is clear that the above application for condonation of delay merely states that the petitioner inadvertently failed to claim the deduction under Section 80IA(4) of the Act during the assessment proceedings leading to the order dated 22nd March, 2013 of the Assessing Officer. The impugned order holds that there is no explanation provided in the application as to why the delay took place in filing the Revision Application within the time prescribed under Section 264 of the Act. Therefore, rejected the revision application, as time barred.

6. In the above facts, the view taken by the Commissioner of Income Tax cannot be faulted with. This is so as the application for condonation of delay does not even attempt to explain the reason for

delay in filing the revision application. It merely sets out the reasons for not claiming relief under Section 80IA of the Act in the assessment proceedings.

7. Accordingly, the petition is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**