

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Tax Case No. 33 of 2015**

M/s. Chhattisgarh State Civil Supplies Corporation, Daga Complex, Kutcheri Chowk, Raipur.

---- Appellant

Versus

1. Commissioner of Income Tax, Raipur.
2. Assistant Commissioner, Circle -1(2), Raipur.

---- Respondents

For Appellant/Assessee	: Ms. Smiti Sharma, Advocate.
For Respondent/Revenue	: Ms. Naushina Ali, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****12/05/2017**

1. This appeal under Section 260-A of the Income Tax Act 1961 (hereinafter called the 'Act') has been admitted and the following questions of law so formulated by this Court through the order dated 23.11.2016:

“(i) Whether Section 80 of the Income Tax Act, 1961 creates an absolute bar debarring the assessee from claiming set-off/carry forward losses of earlier years if the return had been filed after due date?”

2. We have heard learned counsel for the Appellant/Assessee which is the Chhattisgarh State Civil Supplies Corporation and the learned counsel for the Revenue.
3. The assessment order for the assessment year 2006-2007 was passed *ex-parte* by the Assessing Officer disallowing the set-off/carry forward of business loss under Section 80 of the Act on the ground that return was not filed within time prescribed under Section 139 of the Act. The

Commissioner of Income Tax (Appeals) {hereinafter called 'the CIT(A)'} concurred with that view. That was confirmed by the Tribunal. Hence, this appeal by the Assessee.

4. As is discernible from the question of law as framed for consideration, the issue revolves around the construction of Section 80 of the Act. That provision enjoins that notwithstanding anything contained in Chapter VI, no loss which has not been determined in pursuance of the return filed shall be carried forward and set-off under sub-section (1) of Section 72 or sub-section (2) of Section 73 or sub-section (1) or sub-section (3) of Section 74 or sub-section (3) of Section 74-A of the Act. That embargo, with effect from 01.04.1989 depends upon a return filed in accordance with the provisions of Section 139(3) of the Act. Before that, the said embargo would operate if the return is not filed within the time allowed under Section 139(1) or within such further time as may be allowed by the Income Tax Officer. That situation prevailed with effect from 01.04.1985 till 01.04.1989. Prior to 01.04.1985, the interdiction was dependent upon non-filing of a return under Section 139 of the Act. These substitutions in Section 80 of the Act are referred to us here and now to indicate that the legislature intended that embargo dependent on the abridgment of the time factor of filing of the return could be taken off in such manner, in terms of statutory provisions, that it operate independent of any limit as to time, depending upon case to case. This is the manner in which the different adjunct provisions of Section 139 of the Act have to be understood and applied for the purposes of Section 80 of the Act. Section 139(3) of the Act have to be appreciated. It provides among other things that for the purpose of carrying forward loss of any previous year, a return of loss in the prescribed form and verified in the manner and containing such other particulars as may be prescribed ought to be filed. That has to

be done within the time allowed under sub-section (1) of Section 139 (1) of the Act. Obviously, therefore, the further provision which deals with furnishing of return within further time limits as are prescribed, including in Section 139(4) of the Act may come to the aid of a particular assessee depending upon the particular events as regards the assessment year in question. In this view of the matter, we see that different instructions and circulars have been issued by the Central Board of Direct Taxes from time to time in relation to carrying forward of losses. Circular 9 of 2015 dated 09.06.2015 is issued in supersession of earlier instructions, circulars and guidelines issued by the CBDT from time to time to deal with, among other things, the applications for condonation of delay in filing the returns claiming refund and also returns claiming carry forward of losses and set-off thereof. Bearing this in mind, analyzing the stand taken by the CIT(A) and the Tribunal, we are of the view that the embargo in Section 80 of the Act cannot be treated as a straitjacket one which could be applied without reference to different provisions included in Section 139 of the Act and elsewhere to enlarge the time for filing the return. It will also be open to the Assessee to take recourse to the powers of the CBDT in obtaining clarifications or directions and orders which may enable a particular assessee to seek indulgence where the returns were not filed in time for bonafide reasons.

5. We are of the view that in the case in hand, the Appellant which is a public sector body, stands to plead that its accounts would be audited only under the control of the Comptroller and Auditor General of India and without such exercise being carried out, it will be disabled from filing its return with the requisite documents including the auditor's certificate and audit statement. Ends of justice, therefore, requires that the Appellant has to be given an opportunity to meet the situation by placing before the

Assessing Officer appropriate application as may be permissible in law or by moving the CBDT within the time prescribed in terms of the circulars for relief as may be available to the Appellant. To enable this process, the impugned decisions are liable to be set aside without expressing anything on the merits of the claim of the Appellant's eligibility for carrying forward the losses.

6. In the result, this appeal is allowed answering the question formulated as above and resultantly, setting aside the decision of the Tribunal and that of the CIT(A) as also the Assessing Officer.
7. Resultantly, this matter will stand remitted to the Assessing Officer for consideration *de novo* in the light of what is stated above. Let this be done after affording the Appellant a time limit of six months to bring on record any decision that the CBDT may issue on an appropriate application by the Appellant in accordance with law.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE