

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CWP No. 1064 of 2017
Date of decision: 20.01.2017**

M/s G.E. Motors India (P) Limited.

.....Petitioner

Vs.

The Deputy Commissioner of Income Tax, Circle-I, Faridabad.

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA SINGH**

Present: Mr. Tushar Jaswal, Advocate, Mr. Ratul Sateerja, Advocate and
Mr. A.S. Narang, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the order dated 03.11.2016, Annexure P.1 passed by the Income Tax Appellate Tribunal, Delhi Bench "C" New Delhi, (in short, "the Tribunal") in ITA No. 2622/Del/2008 for the assessment year 2003-04 admitting the additional grounds filed by the respondent-revenue. Direction has also been sought to the Tribunal to expeditiously dispose of the main appeal filed by the Respondent-revenue.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a private limited

company, engaged in the business of manufacturing and export of fan and washer motors. It has two units, one located in the domestic tariff area and the other is an Export Oriented Undertaking (“EOU”). For the EOU unit, the petitioner is claiming exemption under Section 10B of the Income Tax Act, 1961 (in short, “the Act”). The petitioner’s units are located at Faridabad. The petitioner filed its return of income for the assessment year 2003-04 on 31.10.2003 declaring a total income of ₹ 26,44,25,928/-. The case of the petitioner was picked up for scrutiny by the Assessing Officer. Assessment order dated 23.03.2006, Annexure P.2 was passed under Section 143(3) of the Act assessing the total income of the petitioner at ₹ 35,13,77,940/- on account of disallowance of deduction under Section 10B of the Act, disallowance of advances written off, social welfare, in-land and foreign travelling expenses etc. The petitioner challenged the additions made by the Assessing Officer by filing an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 23.05.2008, Annexure P.3, the CIT(A) substantially allowed the appeal holding that the petitioner was eligible for claiming deduction under Section 10B of the Act. Aggrieved by the order, the respondent-revenue filed an appeal before the Tribunal, against the order dated 23.05.2008, Annexure P.3, passed by the CIT(A). The matter remained pending before the Tribunal for quite some time. The petitioner even moved an application dated 10.04.2013 for early disposal of the appeal. On 22.09.2016, the respondent-revenue moved an application to amend the grounds of appeal filed before the Tribunal, even though the same request was rejected by the Tribunal on 27.06.2016. Thereafter, the matter was fixed for hearing on 26.09.2016 wherein a detailed hearing before the Tribunal on the preliminary issue of admission of additional grounds took place. The petitioner *inter alia* submitted that the application for additional grounds

ought to be outrightly rejected as no reason had been given by the Revenue to substantiate as to how it was prevented from filing its application on numerous occasions provided earlier and when an opportunity had already been availed. The Tribunal directed both the parties to file written submissions. On 3.11.2016, the Tribunal passed the impugned order allowing the respondent's application for additional grounds. Aggrieved by the order, the petitioner has filed the present writ petition.

3. We have heard the learned counsel for the petitioner.

4. Learned counsel for the petitioner challenges the order dated 3.11.2016, Annexure P.1 passed by the Tribunal whereby application filed by the respondent-revenue seeking admission of four additional grounds has been allowed. Reliance has been placed on the judgments in *Aravali Engineers P. Limited Vs. Commissioner of Income Tax and another*, [2011] 335 ITR 508 (P&H) *Prabhakar Vs. Joint director, Sericulture Department and another*, (2015) 15 SCC.

5. We do not find any weight in the submissions made by learned counsel for the petitioner. The four additional grounds raised by the respondent-revenue before the Tribunal for admission read thus:-

“13. The learned CIT(A) erred in passing the impugned order in violation of principles of natural justice in disregard of law and contrary to the material on record.

14. The learned CIT(A) erred in accepting new evidences in violation of Rule 46A.

15. The learned CIT(A) erred in passing a judgment in respect of technological issues without having any technical competence.

16. The learned CIT(A) erred in not appreciating that requirements of law in respect of provisions contained in Section 10B have not been satisfied in present case.”

6. After considering the matter, it has been categorically recorded by the Tribunal that as per the provisions of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 (in short, “the Rules”), there is no limitation for raising additional grounds before the Tribunal. It has also been provided that the Tribunal in deciding the appeal shall not be confined to the grounds set forth in the memorandum of the appeal. In the present case, the issues as quoted above being additional grounds were considered to be legal issues which could be decided on the basis of the facts and the material available on the record. Thus, the said grounds are essential for the just decision of the controversy involved. Learned counsel for the petitioner has not been able to produce any material on record to show that the order passed by the Tribunal is illegal or perverse.

7. Adverting to the judgments relied upon by the learned counsel for the petitioner it may be noticed that in *Aravali Engineers Limited’s case* (supra), it was held that an Appellate authority can allow a question to be raised for the first time even if such a question was not raised at a lower forum but the discretion to do so has to be exercised in the interest of justice in the facts and circumstances and not mechanically. In *Prabhakar’s case* (supra), it was held by the Apex Court that it is well settled principle of jurisprudence that right not exercised for long time is non-existent. Even when no limitation period is prescribed by statute, courts apply doctrine of delay/laches/acquiescence and non-suit litigants who approach court belatedly without justifiable explanation. There is no quarrel with the propositions enunciated in these decisions. However, the situation in the present case being different, the petitioner cannot derive any advantage from these decisions.

8. In view of the above, we do not find any ground to interfere with the impugned order dated 3.11.2016 passed by the Tribunal allowing the additional grounds raised by the respondent-revenue. Consequently, the petition is dismissed. The Tribunal shall make sincere efforts for deciding the pending appeal expeditiously in accordance with law.

(Ajay Kumar Mittal)
Judge

January 20, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No