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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4705/2017**

HARGOVIND PANDEY Petitioner

Through: Mr. Inder Paul Bansal, Advocate with
Mr. Vivek Bansal, Advocate.

Versus

PR.COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

27.07.2017

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Dr. S. Muralidhar, J.:

1. The challenge in this writ petition is to an order dated 21st December, 2016 passed by the Principal Commissioner of Income Tax ('PCIT') rejecting the Petitioner's application under Section 264 of the Income Tax Act, 1961 ('Act') on the ground of limitation.

2. The brief facts are that the Petitioner is the proprietor of M/s River Banks Studios. He is also the Director of River Bank Studios Pvt. Ltd. ('RBSPL'). It is pointed out that for the relevant Assessment Year ('AY') 2012-13 both the Petitioner and RBSPL have been separately assessed.

3. On 1st April, 2011 an MOU was entered into between the Petitioner and RBSPL by virtue of which certain assets and liabilities of the proprietorship concern of the Assessee were taken over by RBSPL. On 29th August, 2012

RBSPL filed its return of income showing a loss of Rs.1,13,181 without including the interest on certain Fixed Deposit Receipts (FDRs) which came to be transferred to it as a result of the above MOU. On 29th September, 2012, the Petitioner filed a return of income for the AY in question which included interest on the above FDRs. The Petitioner's return was processed under Section 143(1) of the Act on 6th December, 2013.

4. The return filed by RBSPL was picked up for scrutiny. The assessment was completed by an order dated 5th March, 2015 passed by the Assessing Officer (AO) under Section 143(3) of the Act whereby, *inter alia*, interest on the FDRs was added to the income of RBSPL as unaccounted interest. RBSPL filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)'] against addition of the interest on the FDRs in its income. By order dated 29th August, 2016, the CIT (A) upheld the addition of the interest in the hands of RBSPL. The CIT(A), nevertheless, observed that the Assessee herein could seek consequential relief from the AO and that the AO should consider such pleas 'sympathetically'

5. Meanwhile, after the assessment order was passed in regard to the return filed by RBSPL, the Petitioner sought a copy of the intimation under Section 143 (1) of the Act in respect of his return. This which provided to him by e-mail on 13th April, 2015. On 9th June, 2015 the Petitioner filed an application under Section 264 of the Act before the PCIT *inter alia* on the ground that the interest on FDRs could not have been taxed twice, once in his hands and again in the hands of RBSPL. He accordingly prayed for revision of the intimation under Section 143 (1) by deleting the addition of interest on

FDRs in his income.

6. By the impugned order dated 21st December 2016, the PCIT dismissed the revision petition only on the ground that it was time barred. The PCIT observed:

"In this case return of income was filed on 29.09.2012 and the same was processed u/s 143(1) on 06.12.2013 by CPC Bangalore. It is seen from the CPC portal Bangalore that the refund arising on such processing was paid/encashed by the assessee on 25.04.2014. Thus, it becomes quite clear that assessee came to know about the processing of his return which resulted into refund."

7. At the hearing of this petition on 26th May 2017, the Court noted in para 2 of its order as under:

"2. It seems that in the impugned order, the Commissioner of Income Tax ('CIT') has rejected the Petitioner's application under Section 264 of the Income Tax Act, 1961 ('Act') on the ground of limitation by calculating the starting date for the period of limitation from 25th April, 2014 i.e., the date of issuance of the refund although as noted by the CIT himself in the impugned order that "actual intimation under Section 143(1) as claimed by the Assessee was received by him much later on 13th April, 2015".

8. Mr. Zoheb Hossain, the learned Senior Standing Counsel for the Revenue at that stage sought time for instructions. Today Mr Hossain drew the attention of this Court to Section 264(3) of the Act which states that the revision application should be made within one year from:

(i) the date on which the order in question was communicated to the Petitioner/Assessee; or

(ii) the date on which he otherwise came to know of it, whichever is earlier.

9. According to Mr. Hossain, since the Petitioner came to know of the fact of his return having been processed under Section 143(1) when he received the refund amount on 25th April, 2014, the one year period for filing a revision petition under Section 264 began running from that date. Since the revision petition was admittedly filed only on 9th June 2015, it was delayed by 45 days. Without prejudice to the above contention, Mr Hossain submitted that in the event the Court was of the view that the above delay ought to have been condoned then the Petitioner's application should be remanded to the PCIT for disposal on merits.

10. Mr Inder Paul Bansal, the learned counsel for the Petitioner, on the other hand submitted that a revision application could not have been filed by the Petitioner till such time the intimation under Section 143(1) was communicated to him. On 25th April, 2014 all that happened was that the refund amount got credited to his account. While at the highest it could be said that on that date the Petitioner may have known the fact of his return having been processed, he could not have known the contents of the intimation under Section 143(1). That intimation was admittedly communicated to the Petitioner only on 13th April, 2015.

11. There is merit in the contention of the Petitioner. When Section 264(3) uses the expression to 'the date on which he otherwise came to know of it', it refers to the date on which the Petitioner actually had a copy of the intimation. He could either get it from the Department or get it from any other source. In other words, it would not be sufficient that the Petitioner

came to know of the fact that his return had been processed. Till such time the Petitioner had a copy of the intimation under Section 143(1) of the Act, the limitation period under Section 264 (3) of the Act would not begin to run. Considering that Section 264 is a provision intended to benefit the Assessee, no other interpretation is possible on a plain reading of it.

12. In *Vijay Gupta v. CIT 386 ITR 643 (Del)* this Court explained that Section 264 (3) did not place any restriction on the power of the CIT to give relief to an Assessee in a case where the Assessee detects mistakes in his return as a result of which he is over assessed. The Court referred to the decision of the Gujarat High Court in *C. Parikh & Co. v. CIT [1980] 4 Taxman 224 (Guj.)* and held:

"36. An assessee is liable to tax only upon such receipt as can be included in his total income and is assessable under the Income-tax Act. There is nothing in s. 264, which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the assessee detects mistakes because of which he was over-assessed after the assessment was completed. Once it is found that there was a mistake in making an assessment, the Commissioner had power to correct it under s. 264(1). When the substantive law confers a benefit on the assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities."

13. Consequently, the Court is of the view that in the present case, the PCIT was in error in holding that the revision petition was time barred.

14. The Court would also like to observe that where in a given case, the PCIT is of the view that a certain petition is time barred, then in terms of the proviso to Section 264 (3), the PCIT should also examine whether there was any justifiable reason for such delay. He need not wait for an application to

be filed by an Assessee for that purpose. He may put the Assessee on notice of this fact and require the Assessee to show sufficient cause for the delay. This may avoid needless multiplicity of the proceedings, particularly, when the delay is not substantial and can be explained by the Assessee.

15. Since the PCIT has declined to examine the issue on merits, the Court sets aside the impugned order dated 21st December, 2016 passed by the PCIT and restores the Petitioner's revision application to his file for disposal on merits in accordance with law. The Petitioner's aforementioned revision application shall be placed before the PCIT on 4th September, 2017 for this purpose.

16. The petition is disposed of in the above terms.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 27, 2017
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