

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1206 OF 2018

Dwarikesh Sugar Industries Ltd.Petitioner

V/s.

Dy. Commissioner of Income-Tax
Circle-3(1)(1) and 2 Ors.Respondents

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Mr. Rafique Dada, Senior Counsel a/w. Mr. Pankaj Toprani
I/by. PRH Juris Consultus, Advocate for the
petitioner.

Mr. A.R. Malhotra a/w. Mr. N.A. Kazi, Advocate for the
respondent.

CORAM :- **M.S. SANKLECHA, &**
SANDEEP K. SHINDE, JJ.

DATE :- **12TH JULY, 2018.**

P.C. :-

1. At the request of the parties, the petition is

being disposed of finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 23rd March, 2018 passed by the Principal Commissioner of Income-tax-respondent no.2. By the impugned order dated 23rd March, 2018 the petitioner's Revision Application under Section 264 of the Income-tax Act, 1961 (the Act) in respect of Assessment Year 2012-13 was rejected as being time-barred and dismissed on merits also.

3. Briefly, the facts relevant are as under :

(a). The petitioner is engaged in manufacture of sugar. It purchases sugarcane from farmers through various Societies established by the State Government under the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (for short "the Sugarcane Act"). The petitioner is required to pay commission to the above Societies from whom sugarcane is procured.

(b) For the previous year relevant to Assessment Year 2012-13, the petitioner paid the Societies, the Commission under the Sugarcane Act upto January, 2012. However, the petitioner was under a belief that the State Government would announce waiver of commission to be paid to the Society under the Sugarcane Act for the months of February and March, 2012. In the above view, the petitioner did not claim deduction on account of the above accrued liability in its assessment for Assessment Year 2012-13. However, the waiver as expected from the State Government did not come. On the contrary, on 19th June, 2012 the State Government called upon the petitioners to pay the Commission of Rs.4.25 crores payable to the sugarcane Societies for having acquired sugarcane from them during February and March, 2012. In the aforesaid circumstances, during the previous year relevant to Assessment Year 2013-14, the petitioner paid the commission of Rs.4.25 crores to the Societies under the Sugarcane Act.

(c). In the above view, the petitioner claimed a deduction of Rs.4.25 crores in its return for the previous year relevant to the Assessment Year 2013-14. However, the Assessing Officer, by an order dated 25th March, 2016 passed under Section 143(3) of the Act for the Assessment Year 2013-14 did not accept the petitioner's claim for deduction of Rs.4.25 crores being commission paid to the Societies under the Sugarcane Act. This on the ground that the payment relates to the Assessment Year 2012-13 and therefore could not be allowed as a deduction in the Assessment Year 2013-14.

(d). Consequent to the above, the petitioner filed an Appeal on 22nd April, 2016 before the Commissioner of Income Tax (Appeal) CIT(A), challenging the order dated 25th March, 2016 in respect of Assessment Year 2013-14. At the same time, i.e. on 22nd April, 2016 the petitioner also filed a Revision Application under Section 264 of the Act before respondent no.2-Principal Commissioner of

Income-tax alongwith an application for condonation of delay.

(e). The reason for the delay, in filing the Revision Application as explained by the petitioner, in its application for condonation of delay, was that the deduction on account of payments made to the societies as claimed for the Assessment Year 2013-14 stood rejected by the assessment order dated 25th March, 2016. This by holding that the deduction relates to Assessment Year 2012-13 and could not be allowed in the Assessment Year 2013-14. It was in the aforesaid circumstances, that there was a delay in filing the Revision Application on 22nd April, 2016. The petitioner's sought condonation of delay on the above account and entertainment of its Revision Application on merits.

(f). By the impugned order dated 23rd March, 2018 respondent no.2-Principal Commissioner of Income-tax rejected the petitioner's application for condonation of

delay. This on the ground that the petitioner could have made this claim in a revised return for the Assessment Year 2012-13, which infact it filed on 8th June, 2013. This without claiming this deduction. Thus, the impugned order found, there is no cause for the delay and rejected the condonation of delay application. Further, on merits also, respondent no.2 rejected the claim.

4. Before considering the petitioner's challenge, it is clear on the above facts, that the respondent no.2-Principal Commissioner of Income-tax mis-directed himself in deciding with the merits of the Revision Application after having rejected the condonation application. The jurisdiction to examine the merits of the petitioner's grievance would only arise if the application for condonation of delay is allowed. Besides, it gives a proper opportunity (more fair) to the party to address the Commissioner of Income-tax on the merits of its Revision Application, once it is held that the condonation of delay application is allowed. Infact, this Court in **EBR**

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194 (Bombay), has on identical fact situation has held that the Commissioner misdirected himself in dealing with the merits of the Revision Application, when the condonation of delay application was rejected.

5. So far as the delay in filing the Revision Application under Section 264 of the Act is concerned, it is the petitioner's case that as payments of commission to Societies under the Sugarcane Act was made in previous year relevant to Assessment Year 2013-14. This was consequent to the order dated 19th June, 2012 of the State Government. Therefore, they took a view that, the deduction was allowable in Assessment Year 2013-14. It was in the above context, that though the petitioner had filed a revised return of income, in the year 2013 for Assessment Year 2012-13, it did not claim the deduction of Rs.4.25 crores being the amount paid to the Societies. It was only after Assessing Officer, by his order dated 25th March, 2016 held that, this deduction of Rs.4.25 crores

relates to Assessment Year 2012-13 and therefore could not be allowed in the Assessment Year 2013-14 that the petitioner was compelled to file the Revision Petition so as to claim the deduction. This to ensure that, in atleast one of the two assessment years it gets the benefit of deduction. It is to be noted that the petitioner filed its Revision Application on 22nd April, 2016 i.e. within a month of the order of the Assessing Officer dated 25th March, 2016 relating to Assessment Year 2013-14. In the aforesaid circumstances, the reason in filing the Revision Application is for reasonable cause and should have been condoned by the respondent no.2-Principal Commissioner of Income-tax.

6. In the above circumstances, we are inclined to set aside the impugned order dated 23rd March, 2016 and restore the Revision Application to the respondent no.2 for disposal of the application on merits. This after, we have condoned the delay.

7. At this stage, Mr. Malhotra, the Learned Counsel for the Revenue submits that restoring the Revision Application would be a futile exercise as the Revision Application itself is not maintainable. It is pointed out that the claim of deduction of Rs.4.25 crores being the payment made to the Societies was not a claim made either in the original or revised return of income before the Assessing Officer for the Assessment Year 2012-13. Thus, relying upon the decision of the Apex Court in **Goetze (India) Ltd. vs. Commissioner of Income-tax, 2006 (284) ITR 323**, it is submitted that such a claim could not be made before the Commissioner of Income-tax in Revision under Section 264 of the Act. It was pointed out to him that the decision of the Apex Court in *Goetze (India) Ltd.* (supra) was considered by this Court in **Commissioner of Income Tax V/s. Pruthvi Brokers and Shareholders Ltd. (2012) 349 ITR 336**, wherein after consideration of *Goetze (India) Ltd.* (supra), this Court after placing reliance upon **National Thermal Power Co. Ltd. V/s. Commissioner of Income-Tax,**

(1998) 229 ITR 383 it has been held that nothing bars an appellate authority from entertaining a claim which may not have been made by the Assessing Officer. It held that it is only the Assessing Officer who is prohibited from entertaining the claim which is not been made in the return filed before it.

8. Mr. Malhotra, Learned Counsel appearing on behalf of the Revenue, responded by pointing out that decisions of this Court in *Pruthvi Brokers* (supra) may have no application as it was rendered in the context of the appellate proceedings while the present proceedings before the respondent no.2-Principal CIT are Revisional proceedings under Section 264 of the Act. It was further submitted by him that only particular types of errors can be subjected to correction by revisional authorities under Section 264 of the Act. In support places reliance upon the decision of the Delhi High Court in **Vijay Gupta V/s. Commissioner of Income Tax, Delhi-XIII and anr.** (**Writ Petition (C) No. 1572 of 2013**) rendered on 23rd

March, 2016 and on **Sanchit Software & Solutions (P.) Ltd. V/s. Commissioner of Income-tax-8, [2012] 349 ITR 404 (Bombay).**

9. On the other hand, Mr. Rafique Dada Learned Senior Counsel appearing for the petitioners, invited our attention to the decisions of the Delhi High Court in **Rajesh Kumar Aggarwal V/s. Commissioner of Income-Tax, Delhi-VIII, [2017] (78) taxmann.com 265** and the decision of the Kerala High Court in **Transformers & Electricals Kerala Ltd. Vs. Deputy Commissioner of Income-tax, Circle 4(2), Kochi, [2016] 75 taxmann.com 298** wherein a view has been taken that the powers of revision under Section 264 of the Act are very wide and is not restricted to only consideration of claims made before the Assessing Officer. Therefore, it is submitted that it would be appropriate that, respondent no.2-Principal CIT passes a fresh order after hearing the parties and considering the above decisions relied upon by the Learned Counsel for the

parties.

10. In view of the rival contentions, we do not accept the contention of the Revenue that restoring the application under Section 264 of the Act the Principal Commissioner of Income-tax-respondent no.2 would be an exercise in futility. There are issues to be adjudicated and it is best that the Authority under the Act, discharges his obligation.

11. At this stage, we make no comments on the merits of the Revision Application which is before the Principal CIT-respondent no.2. We set aside the impugned order dated 23rd March, 2018 and after condoning the delay in filing the Revision Application, we restore the petitioner's Revision Application dated 22nd April, 2016 before the respondent no.2-Principal Commissioner of Income-tax for disposal on merits after following the principles of natural justice. All contentions kept open.

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Thursday, 12.7.2018

12. Petition allowed in above terms. No order as to costs.

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)