



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21829 of 2016

and

W.M.P.No.18688 of 2016 and

W.M.P.Nos.29179 of 2016 and 11229 of 2017

M/s.IG3 Infra Limited,
Rep. by its Director,
Miss. Rukmini Thiagarajan,
D/o Sri S.Thiagarajan,
44/13-14, Chennai One Pallavaram -
Thoraipakkam 200 Feet Road,
Thoraipakkam, Chennai - 600 097.

... Petitioner

Vs.

1. Deputy Commissioner of Income-tax,
Corporate Circle 2 (2),
Room No.512, 5th Floor, Wanaparthi Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
2. Central Board of Direct Taxes,
Rep. by its Director (I.T.A.I),
Ministry of Finance, Govt. of India,
Department of Revenue, Central Secretariat,
North Block, New Delhi - 110 001.
3. Union of India,
Rep. by its Secretary,
Ministry of Finance, Department of Revenue,
Central Secretariat, North Block,
New Delhi - 110 001.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records in F.No.197/27/2015-ITA-I dated 31.05.2016 on the file of the 2nd respondent, quash the same and further direct the 2nd respondent to condone the delay occasioned in the filing of Returns in respect of assessment years 2012-13 and 2013-14.



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For Petitioner :Mr.R.V.Easwar, Senior Counsel
Asst. by M/s. Rubal Bansal for
Mr.P.Senthil Kumar.

For Respondents :Mr.T.Pramodkumar Chopda.

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 31.05.2016 passed by the 2nd respondent.

2. By the impugned order, the 2nd respondent has rejected the application filed by the petitioner on 07.05.2015 and 22.12.2015 for condoning the delay in filing the Income Tax Returns in time for the Assessment Years 2012-13 and 2013-14 to avail the benefit of deduction under Section 80IAB of the Income Tax Act, 1961.

3. Earlier, the petitioner had approached this court vide W.P.No.5435 of 2016 for a direction to the 2nd respondent to dispose the petitioner's petitions dated 07.05.2015 and 22.12.2015 filed under Section 119(2) of the Act, after granting an opportunity of hearing to the petitioner.

4. This court by an order dated 21.3.2016 disposed the said writ petition and directed the 2nd respondent herein to dispose petitions filed by the petitioner, on merits in accordance with law, within a period of three weeks from the date of receipt of the aforesaid order.

5. Pursuant to the aforesaid directions of this court in W.P.No.5435 of 2016, the 2nd respondent has passed the impugned order and has rejected the petitions filed by the petitioner under Section 119(2) of the Income Tax Act, 1961.

6. The petitioner had filed Income Tax Returns with a delay of 14 months for the Assessment Year 2012-13 on 27.11.2013 and with a delay of 5 months for the Assessment Year 2013-14 on 31.10.2013.

7. The reasons given by the petitioner for filing the returns belatedly under Section 139 of the Income Tax Act, 1961 was apparently, on account of paucity of funds and account of the amendment to Section 115JB of the Income Tax Act, 1961 and on the assumption that the IT system of Income Tax Department would not accept the Income Tax Returns without payment of tax.

8. The petitioner was heard by the Member (IT) before the impugned order was passed. The petitioner stated that it was



wrongly advised by its Chartered Accountant that the IT System of the Income Tax Department will not accept Income Tax Returns without payment of tax.

9. It was submitted that the delay in filing the Income Tax Return should not come in the way of the petitioner legitimately claiming deduction under Section 80IAB of the Income Tax Act, 1961, if the petitioner was otherwise entitled to such deductions.

10. The 2nd respondent has rejected explanation offered by the petitioner that its Chartered Accountant had given a wrong advice and therefore the petitioner could not file the returns on time, on the ground that the petitioner has not produced any document to substantiate.

11. Before the 2nd respondent, the petitioner relied on the decision of the Division Bench of the Bombay High Court in Bombay Mercantile Cooperative Bank Ltd vs. Central Board of Direct Taxes, (332) ITR 87 wherein, the court observed that the power to appoint a statutory Auditor was with the Central Registrar and the said Authority appointed a Chartered Accountant to be the statutory Auditor in place of the Department locked Auditors. This change was made in respect of all the societies and therefore the assessee could not be blamed for delay in carrying out its audit as it was beyond its control.

12. Heard and seen Mr.R.V.Easwar learned Senior Counsel, duly assisted by Mr.Rubal Bansal for Mr.P.Senthilkumar learned counsel for the petitioner and Mr.T.Promod Kumar Chopda, the learned counsel for the respondents.

13. The learned Senior Counsel appearing for the petitioner relied on various decisions of the Hon'ble Supreme Court, particularly, in Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi & Others, (1979) 118 ITR 507 (SC), wherein, the Hon'ble Supreme Court discussed the scope of Article 136 of the Constitution of India, for condoning the delay in filing S.L.P. The learned Senior Counsel appearing for the petitioner referred to the following passages of the said decision:-

6. We are not able to agree with this reasoning. A company relies on its Legal Adviser and the Manager's expertise is in company management and not in law. There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for laymen or if there is incomprehensible indifference the shield of legal opinion may



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still be vulnerable. The correct legal position has been explained with reference to the Supreme Court decision in a judgment of one of us in *State of Kerala v. K.K.M. Kurup* [AIR 1971 Ker 211, 215] .

"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation." [*Lala Mata Din v. A Narayanan*, (1969) 2 SCC 770, 772]

The High Court took the view that Mr Raizada being an advocate of 34 years' standing could not possibly make the mistake in view of the clear provisions on the subject of appeals existing under Section 39(1) of the Punjab Courts Act and therefore, his advice to file the appeal before the District Court would not come to the rescue of the appellant under Section 5 of the Limitation Act. The Supreme Court upset this approach.

I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on questions of law by courts are sometimes wrong. An amount of latitude is expected in such cases for, to err is human and laymen, as litigants are, may legitimately lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The court must of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under Section 5 of the Limitation Act is being



19. I have considered the arguments advanced by the learned Senior Counsel appearing for the petitioner and the learned counsel for the respondents.

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20. Under Section 119(2)(b) of the Income Tax Act, 1961, the 1st respondent may issue instructions to subordinate authorities, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

21. Under Section 119(2)(c) of the Income Tax Act, 1961, the 1st respondent may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:-

- (i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and
- (ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.

22. As an undertaking/enterprise engaged in development of special economic zone, an assessee can be allowed to certain deductions under Section 80IAB of the Income Tax Act, 1961.

23. To avail the benefit of deduction under Section 80IAB of the Income Tax Act, 1961, an assessee also has to comply with the requirements of provisions of Sub-Section (5) and Sub-Section (7) to (12) of Section 80IAB of the Act.

24. As per Sub-Section (7), the deduction is not admissible unless the accounts of the undertaking for the previous year relevant to the Assessment Year for which the deduction is claimed have been audited by an accountant as defined in



Explanation below Sub-Section (2) of Section 288 and the assessee furnishes along with the return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

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25. As the Assessing Officers are not empowered under the Act to condone the delay in filing the returns, therefore, power has been vested with the 2nd respondent Board under Section 119 (2) (b) of the Income Tax Act, 1961, to condone such delay.

26. Power is invested with the 2nd respondent under Section 119(2) of the Income Tax Act, 1961, to pass appropriate orders by directing the Income Tax Authority other than Commissioner of Income Tax (Appeals), to admit an application or claim for exemption, deduction, refund or any other relief under the Act after expiry of the period specified by or under the Act for making such application or claim and to deal with the same on merits in accordance with law.

27. In this case, the unnamed Chartered Accountant had purportedly advised the petitioner to delay in filing returns. He could also have not signed the report of audit in the prescribed form. It is perhaps the report of the Chartered Accountant who finalized the account for the petitioner later was made available for the assessment and the return was filed belatedly.

28. The explanation offered by the petitioner that in view of amendment to Section 115JB created confusion and that there was paucity of fund for payment of tax under the aforesaid provision which resulted in delay in filing of the returns is of no significance as by not filing the returns in time, the petitioner has not gained any advantage.

29. On the other hand, the petitioner had put to jeopardy to its claim for the benefit of deduction under Section 80IAB of the Income Tax Act, 1961.

30. Though the delay has not been properly explained, issue as to whether the petitioner was otherwise entitled to benefit of the deduction, but for failure to file such return would require examination independently. There is a genuine hardship as the petitioner failed to file return on time to avail the benefit of the deduction.

31. By condoning the delay, the 2nd respondent would be merely allowing the Assessing Officer to examine the petitioner's claim for the benefit of deduction under Section 80IAB of the Act, on merits and nothing more.



32. By permitting the Assessing Officer to scrutinize the Income Tax Return filed belatedly by the petitioner, the 2nd respondent is not really asking the Assessing Officer to straight away allow the benefit of deduction under 80IAB of the Act.

33. In the light of the above observation, I set aside the impugned order and direct the 1st respondent Deputy Commissioner of Income Tax to examine the claim of the petitioner on merits as to whether the petitioner was otherwise entitled to the benefit of deduction under Section 80IAB of the Income Tax, 1961.

34. Since the dispute pertains to the Assessment Years 2012-13 & 2013-14, the 1st respondent is directed to pass appropriate orders on merits, after examining the claim of the petitioner, within a period of three months from the date of receipt of a copy of this order.

35. The present Writ Petition stands allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To

1. Deputy Commissioner of Income-tax,
Corporate Circle 2 (2),
Room No.512, 5th Floor, Wanaparthi Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
2. The Director (I.T.A.I),
Central Board of Direct Taxes,
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3. The Secretary,
Union of India,
Ministry of Finance, Department of Revenue,
Central Secretariat, North Block,
New Delhi - 110 001.



+1 CC to Mr.P.Senthil Kumar, Advocate sr 7372
+1 CC to Mrs.Hema Muralikrishnan, Advocate sr 7718

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AD(CO)
SP(14/07/2020)