

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2020

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition Nos.39208 and 39209 of 2015
and
W.M.P.Nos.1,2 and 2 of 2015

M/s Beach Minerals Company Pvt.Ltd.,
BMC House, 32-2, Halls Road,
Egmore,
Chennai 600 008,
Rep.by Authorised Signatory .. Petitioner in both W.Ps

/verus/

1.Union of India,
Ministry of Finance,
Rep.by the Secretary,
Government of India,
Shastri Bhawan, R.P.Marg,
New Delhi 110 002.

2.The Central Board of Direct Taxes,
Rep.by its Director,
Ministry of Finance,
Department of Revenue,
New Delhi 110 001.

3.The Principal Commissioner of Income Tax,
Chennai-1,
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

4.The Income Tax Appellate Tribunal,
Chennai 'A' Bench,
Chennai Zone,
'Rajaji Bhavan',
Besant Nagar,
Chennai 600090.

5.The Deputy Commissioner of Income Tax,
Corporate Circle-I(2),
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

6.The Tax Recovery Officer-1,
Room No.327A, III Floor, New Block,
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

.. Respondents in both W.Ps.

Prayer in W.P.No.39208 of 2015:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent to quash the impugned order in F.No.200/40/210/ITA-1 dated 09.10.2015 relating to the Assessment Year 2008-09 and consequently direct the 5th respondent to accept the return of income filed for the said Assessment Year as valid return of income within the scope of Section 139(1) of the Act.

Prayer in W.P.No.39209 of 2015:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent to quash the impugned order in F.No.200/40/210/ITA-1 dated 09.10.2015 relating to the Assessment Year 2009-10 and consequently direct the 5th respondent to accept the return of income filed for the said Assessment Year as valid return of income within the scope of Section 139(1) of the Act.

For Petitioner :Mr.A.S.Sriraman
(in both cases)

For Respondents :Mr.D.Prabhu Mukunth
(in both cases) Arunkumar, Jr.Standing
Counsel for
M/s Hema Muralikrishnan
Standing counsel

COMMON ORDER

Heard the learned counsel for the petitioner and the respondents. By this common order, both the writ petitions are being disposed.

2. The petitioner is aggrieved by the impugned order dated 9.10.2015 passed by the 2nd respondent Central Board of Direct Taxes under Section 119(2)(b) of the Income Tax Act, 1961.

3. By the impugned order, the 2nd respondent has declined to condone the delay in filing returns under Section 139 of the Income Tax Act, 1961 as a result of which, the petitioner claimed for the benefit of deduction under Section

10 B of the Income Tax Act, 1961 for the assessment year 2008-09 and the assessment year 2009-10 stands finally disallowed.

4. The petitioner had filed returns for the respective assessment years belatedly on 20.2.2009 and on 20.11.2009. It is the contention of the petitioner that it is a 100% Export Oriented Unit and the accounts prepared for the purpose of filing returns were hacked in computer system and corrupted and therefore the Income Tax Returns were filed after a delay of 143 days for the assessment year 2008-09 and a delay of 50 days for the assessment year 2009-10 on 30.09.2008 and on 13.09.2009.

5. It is submitted that the marginal delay in filing the returns for the respective assessment year was not wilful which has resulted in denial of a legitimate benefit available to a 100% Export Oriented Unit under Section 10B of the Income Tax Act, 1961.

6. It is submitted that by not filing the returns in time, the petitioner did not gain any advantage. On the other hand, the delay in filing the return has resulted in denial of the benefit of deduction under Section 10B of the Income Tax Act, 1961 on the Assessment Order.

7. It is further submitted that the 2nd respondent ought to have been liberal and condoned the delay under Section 119 (2) (b) of the Income Tax Act, 1961 as legitimate export incentive that are otherwise available to it stands denied.

8. It is submitted on behalf of the petitioner that the petitioner relied on the advice of the Chartered Accountant right from the inception and considering the volume and nature of transactions and since audited their data could not be retrieved in time, a delay occurred in filing the returns in time.

9. It was further stated that the petitioner had filed the returns for the subsequent financial years in time. By not filing returns for the two years in time, the petitioner did not gain any advantage. It was further stated that the petitioner was not in the habit of filing returns belatedly and the delay arose on account of corruption of data in the computer and illness of its Managing Director who suffered a health setback.

10. It was further submitted that the allegation in the show cause notice the petitioner had not paid MAT till the date of audit was incorrect as MAT was paid before November 2009 itself.

11. He submits that the lapses resulting in filing of the returns in time for the two assessment years in question are liable to be condoned. It is further submitted that the Chartered Accountant committed mistake in not

preparing the returns in time though the accounts were audited.

12. The learned counsel for the petitioner submitted that the delay in filing the returns ought to have been condoned on humanitarian grounds as well as the company functions through its officers and since the petitioner's Managing Director was indisposed at the time coupled with the fact that the Chartered Accountant services also were terminated. It is therefore submitted that the 2nd respondent ought to have liberally exercised the power vested with it while passing the impugned order.

13. Defending the impugned order, the learned counsel for the respondents submits that the impugned order is well reasoned and require no interference. It is further submitted that the petitioner had deliberately delayed the filing of the returns and has wrongly stated that the accounts were hacked without any direct proof substantially the same.

14. I have considered the arguments advanced on behalf of the petitioner and the respondents.

15. The petitioner had filed a petition under Section 119 (2)(b) of the Income Tax Act, 1961 before the 2nd respondent with the request to condone the delay in filing the returns under Section 139 of the Income Tax Act, 1961.

16. The petitioner was thereafter issued with a notice by the 2nd respondent on 18.9.2015 to show cause as to why the said application filed by the petitioner should not be rejected as during the course of the audit on 23.3.2010 it was noticed that the book profit of the petitioner company was Rs.20.134 crores whereas, tax due as per MAT provisions was not found to be paid till that date.

17. Similarly, for the assessment year 2008-09, also the petitioner had not paid the tax due on the book profit and it is for this reason the petitioner had failed to file the return of income in time.

18. The petitioner replied to the above notice vide reply dated 21.9.2015 wherein it was stated that right from the assessment years 2004-05 upto 2007-08, the petitioner had filed the returns in time and only for the 2 years in question there was a marginal delay of little over 3 months and 50 days respectively in filing the returns.

19. To claim the benefit of Section 10 B of the Income Tax Act, 1961, an assessee is required to file the returns by the due date prescribed under Section 139 of the Income Tax Act, 1961. In this case, the last date for filing the return fell on 30.9.2008 and 30.9.2009 respectively. However, the returns were filed by the petitioner belatedly on 7.1.2009 and 20.11.2009. By filing the returns belatedly, the petitioner did not gain anything. On the contrary, the petitioner risked

losing the benefit of deduction under Section 10 B of the Income Tax Act, 1961.

20. An assessing officer has no powers to condone the delay in filing returns under Section 139 (1) of the Income Tax Act, 1961 for allowing deduction under Section 10 B of the Income Tax Act, 1961 .

21. Therefore, mandatory it was for the petitioner to have filed the returns in time to claim deduction under Section 10B of the Act. Only the 2nd respondent has been vested with the powers to grant relaxation, if strict application of any provisions of the Income Tax Act, 1961 results in denial of any legitimate benefit which may otherwise be available to an assessee.

22. It is for this very purpose, the 2nd respondent has been given powers to mitigate the hardship to assessee. Thus, the 2nd respondent may therefore by a general or a special order authorise any income tax authorities (other than Commissioner (Appeals)) to admit an application for claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under the Act on application.

23. The claim for deduction under Section 10 B is dependent on the returns filed by the due date as per Section 139 (1) of the Income Tax Act, 1961. However, the failure on the part of the petitioner to claim deduction on account of the delay comes in the legitimate way of the petitioner claiming deduction. The failure to file the returns in time has to be construed liberally to allow the benefit, provided such applications are made within a reasonable time.

24. In this case, the assessment orders have been passed for the respective assessment years on 28.12.2010 and on 26.12.2011. While passing the assessment order, the assessing officer could have extended the benefit to the petitioner but for the delay in filing returns in time. Legitimate export incentives that are genuinely available to an 100% Export Oriented Unit should not be denied if such unit is otherwise entitled to such relief on merits. Failure on the part of the petitioner to file such returns in time ought to have been condoned by the 2nd respondent. After all the procedures are meant only to discipline and regulate the conduct of assessts. However, strict application of procedure should not come in the grant of legitimate export incentive to an assessee.

25. In the light of the above discussion, I am inclined to allow the above writ petitions by directing the 5th respondent to complete the re-assessment on merits by accepting the returns filed by the petitioner belatedly for the purpose of grant of deduction under Section 10 B of the Income Tax Act, 1961.

26. In case, the petitioner is otherwise entitled to the benefit of the deduction under the aforesaid provision but for the delay in filing the returns, the second respondent is directed to allow the benefit and pass appropriate orders in accordance with law.

27. Since the dispute pertains to the assessment years 2008-09 and 2009-10, the 5th respondent is therefore requested to pass appropriate orders and finalise the assessment within a period of three months from the date of receipt of copy of this order after due notice to the petitioner and after hearing the petitioner.

28. The writ petitions stand disposed with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

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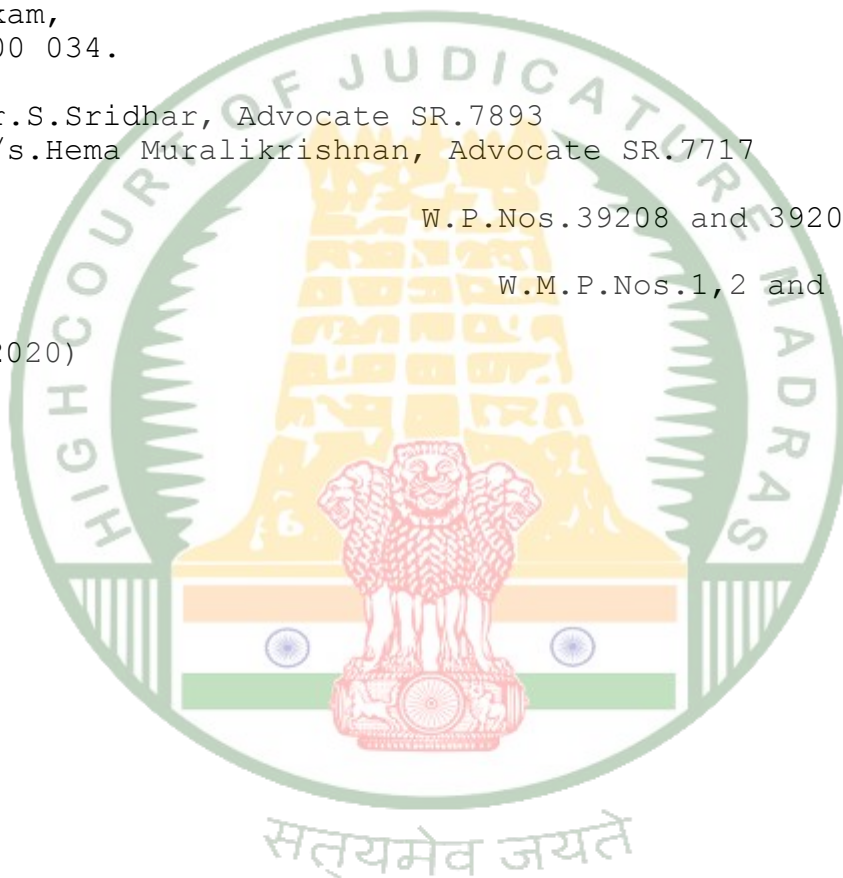
+1cc to Mr.S.Sridhar, Advocate SR.7893

+1cc to M/s.Hema Muralikrishnan, Advocate SR.7717

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SV(CO)
CB(11/03/2020)



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