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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.21626 of 2016

M/s.IG3 Infra Limited
Rep. By its Director Rukmini Thiagarajan
D/o. 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, Wanaparthy Block
   121, Mahatma Gandhi Road
   Nungambakkam, Chennai – 600 034.

2. Central Board of Direct Taxes
   Rep. By its Chairman
   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: Petition filed under Article 226 of the Constitution of India, seeking for a writ of declaration, declaring the provisions of Section 80AC of the Income Tax Act, 1961, to be unconstitutional and ultra

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vires insofar as the provisions restricts the grant of claim to only those cases where the Return of Income have been filed within the time frame set out u/s. 139(1) of the Act.

For the Petitioner	:	Mr.I.Dinesh for Ms.A.Sushma Harini
For the Respondents	:	Mr.A.P.Srinivas Senior Standing Counsel

ORDER

(Order of the Court was made by C. SARAVANAN, J.)

Learned counsel appearing for the petitioner submits that challenge to Section 80 AC of the Income Tax Act, 1961, has become infructuous in light of the order passed by this Court in the case of ***M/s.IG3 Infra Limited vs. Deputy Commissioner of Income Tax and Ors.***[1], wherein, this Court has ordered as under:-

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

1 *W.P.No.21829 of 2016; dated 30.01.2020.*

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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.

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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-126;Section (5) and Sub-126;Section (7) to (12) of Section 80IAB of the Act.

24. As per Sub-126;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-126;Section (2) of Section 288 and the assessee furnishes along with the return of income, the report of such audit in the prescribed form duty signed and verified by such accountant.

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.

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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.

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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 petition, 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

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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."

2. In light of the above, this writ petition stands dismissed. There shall be no order as to costs.

(R.S.K., J.) (C.S.N, J)
20.11.2024

Neutral Citation:Yes/No

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To:

1. Deputy Commissioner of Income Tax
   Corporate Circle 2(2), Room No.512
   5th Floor, Wanaparthy Block
   121, Mahatma Gandhi Road
   Nungambakkam, Chennai – 600 034.

2. The Chairman
   Central Board of Direct Taxes
   Ministry of Finance, Govt. of India
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   North Block, New Delhi – 110 001.

3. The Secretary
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R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

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