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

\+ W.P.(C) 5845/2023

SHRI SRI RAM KHANNA .....Petitioner

Through: Mr. Gagan Kumar, Ms. Palak Sharma and Mr. Rohit Tripathy, Advs.

versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI -15 & ANR. .....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar and Mr. Rishabh Nangia, Standing Counsel and Mr. Nikhil Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **31.07.2024**

1. The writ petitioner is aggrieved by the order dated 31 March 2023 and in terms of which, the Principal Commissioner of Income Tax [“**PCIT**”] has proceeded to reject a revision application, both on the grounds of delay as well as on merits.

2. As we read the order impugned, we note that the revision application was in respect of a concluded assessment for Assessment Year [“**AY**”] 2017-18. The application itself came to be preferred on 02 June 2022. The petitioner appears to have contended that the assessment made for the aforesaid AY was clearly erroneous since the amounts received by it under the head of ‘Leave Encashment’ would be exempt under Section 10(10AA) of the Income Tax Act, 1961

["**Act**"].

3. The PCIT took note of the fact that the Return of Income for AY 2017-18 had been electronically furnished on 05 August 2017. The same had come to be accepted on 21 November 2017. It proceeded thereafter to observe that the petitioner was guilty of inordinate delay of more than three years in preferring the application.

4. However, and having so observed insofar as the question of limitation is concerned, the PCIT also proceeded to observe as follows:-

> "**5.** The matter has been examined on merits as well. It is noted that the assessee was employed with University of Delhi, which is an Autonomous Body and has neither an employee of State Government nor of Central Government. Since, the assessee is neither covered under State Government nor under Central Government, so the assessee is not entitled for the full exemption of leave encashment under section 10(10AA) of the I.T. Act as claimed by the assessee. Therefore, the application of the assessee for revision of Order u/s 264 is found to be defective and not maintainable, therefore, dismissed on both technical as well as on merits, thus dismissed."

5. Before us, it is contended by leaned counsel that notwithstanding the strict contours of limitation that stand constructed under Section 264(2) of the Act, the PCIT stands clearly empowered to examine sufficient cause that may be established. According to learned counsel, apart from the above, the petitioner may also be entitled to the benefit of the orders passed by the Supreme Court in Suo Moto W.P(C) 3/2020.

6. We note that although the aspect of extension of limitation in terms of Suo Moto W.P(C) 3/2020 does not appear to have been addressed before the PCIT, in our considered opinion, the interest of justice would merit the petitioner being accorded an opportunity to press its case of condonation of delay afresh.

7. Insofar as the observations appearing in para 5 are concerned, we find that once the PCIT had come to hold against the petitioner on the ground of condonation of delay, there was no occasion for any observations being rendered on merits.

8. Accordingly, while we strike down para 5 as contained in the impugned order and to the extent aforesaid, we remit the matter to the PCIT to examine and consider the application for condonation of delay afresh bearing in mind all contentions that may be chosen to be addressed by the petitioner on that score.

9. In case the PCIT ultimately comes to conclude that the petitioner has been able to establish sufficient cause justifying condonation of delay in preferment of the revision application, it shall proceed thereafter to examine the issue on merits.

10. All rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 31, 2024
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