

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.04.2010

+ **WP(C) 437/2010**

LODHI PROPERTY COMPANY LIMITED ... Petitioner

- versus -

UNDER SECRETARY (ITA-II)
DEPARTMENT OF REVENUE ... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Salil Kapoor with Mr Sanat Kapoor
For the Respondent : Ms Suruchi Aggarwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. In this writ petition, the petitioner sought the quashing of the order dated 29.10.2009 passed by the Central Board of Direct Taxes (hereinafter referred to as 'CBDT'), rejecting the application of the petitioner under Section 119 of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'), whereby a prayer had been made for condoning the delay of one day in filing the return of income in respect of the assessment year 2004-05.

2. It is an admitted position that the due date for filing of the return was 01.11.2004. The return was, in fact, filed on 02.11.2004. According to the petitioner, the petitioner's representative reached the Central Revenue Building, I.P. Estate around 5.15 p.m. on 01.11.2004 for the purposes of filing the said return of income. However, he was sent from one room to the other and by the time he reached room No.398-F, where his return was said to be accepted, it was already 6.00 p.m. and he was told that the return would not be accepted because the counter had been closed. These circumstances are recorded in the letter dated 01.11.2004, which was delivered in the office of the Deputy Commissioner of Income-Tax, Circle 12(1), New Delhi on the very next day, i.e., on 02.11.2004 alongwith the return of income. A copy of the said letter has been placed as Annexure P-3 to this petition. On 03.11.2004, the petitioner's representative met the Commissioner of Income-tax-IV, Central Revenue Building, New Delhi and informed him that the return for the assessment year 2004-05 alongwith the covering letter dated 01.11.2004 was filed on 02.11.2004. A letter dated 03.11.2004 was also sent to the said Commissioner of Income-tax for information and record. A copy of the same was marked to the Additional Commissioner of Income-tax, Range XII, Central Revenue Building, New Delhi. We may point out that in the return of income, the petitioner had declared a loss of Rs 2,74, 83,730/-. This fact is recorded in the assessment order. The assessment order passed on 01.12.2006, wherein it has been noted in the very first line that the assessee had filed his return of income declaring a loss of Rs 2,74,83,730/- on 02/11/2004. The assessment was

completed and by virtue of the same, the petitioner was allowed to carry forward the loss amounting to Rs 2,66,97,383/-.

3. Thereafter, the Commissioner of Income-tax-IV passed an order under Section 263 of the said Act and held that the assessment order was erroneous and prejudicial to the interest of the revenue on the ground that the return had been filed late and there was no order under Section 119 of the said Act by the CBDT condoning the delay. The Commissioner of Income-tax observed that, although the assessee had contended that an application had been filed before the CBDT for condonation of the delay, no order under Section 119 of the said Act had been received till date. Subsequently, on 29.10.2009, the order of the CBDT on the petitioner's application under Section 119 for condonation of delay in filing of the return under Section 139(1)/139(3) of the said Act in respect of the assessment year 2004-05 was communicated to the petitioner. The order is a non-speaking one and it merely states as under:-

“After careful examination of the petition, as well as other related documents, your request for condonation of delay u/s 119 of the I.T. Act, 1961 is rejected.”

4. It is against this order that the petitioner has come up before this court by way of a petition under Article 226 of the Constitution of India seeking quashing of the same. It was contended by the learned counsel for the respondent that since this was a case of a loss return, there was no provision under law for condoning the delay in filing the return. The learned counsel for the respondent drew our attention to the provisions of Section 139(3), Section 80, Section 119 and, in particular, to Section

119(2)(b). She contended that there was no specific provision contained in Section 119 (2)(b) which permitted the board to condone the delay in filing a return and that the said provision only applied to applications or claims for exemption, deduction, refund or any other relief under the said Act.

5. We find that the very same contention was raised before the Karnataka High Court in the case of *Associated Electro Ceramics v. Chairman Central Board of Direct Taxes and Another: 201 ITR 501 (Kar)*. In that case, the board had disposed of the application under Section 119 (2) of the said Act taking the view that Section 119 (2)(b) did not cover the case of a belated return on the basis of which loss, for the purposes of carrying forward the loss, had to be determined and that the matter was regulated by Sections 139, 72, 74 and 157. The view taken by the board was that Section 119 (2)(b) speaks of an ‘application’ or a ‘claim’ and not a ‘return’ to be filed beyond time. Consequently, the board did not accede to the request of the petitioner for condoning the delay. The Karnataka High Court in the case of *Associated Electro Ceramics (supra)* examined the matter in detail and came to the conclusion that though the claim of carry forward of loss in the case of a loss return was not a claim regarding exemption, determination or refund referred to in Section 119 (2)(b), it was definitely relatable to a claim arising under the category of any other relief available under the Act, as indicated in the said provision itself. The court also held that the contention of the department that if no power had been granted to an Income-tax officer or any other officer to condone the delay in making such a claim, the Board could also not extend time, was not correct.

It also held that the provision expressly provided that where any time limit had been fixed, such time limit could be extended and the delay could be condoned by the Board. It rejected the finding of the Board that the application of claim referred to in Section 119 (2)(b) did not cover a loss claim made in a return.

6. The learned counsel for the petitioner has also drawn our attention to Circular No.8/2001 dated 16.05.2001 which was with reference to the Board's order under Section 119 (2)(b) dated 12.10.1993 and Circular No.670 dated 26.10.1993 which laid down the procedure for condonation of delay in the case of belated claims of refund. In paragraph 3 of the said Circular dated 16.05.2001, the decision of the Karnataka High Court in the case of *Associated Electro Ceramics (supra)* has been specifically noted. The said circular also notes the fact that as per the said decision, the Board had the power to condone the delay in cases having claims of carry forward of losses. It also notes that the department did not file any Special Leave Petition against the said order of the Karnataka High Court and subsequently the matter was taken up with the Ministry of Law which also agreed with the view that the Board had the power to condone the delay in filing the return under Section 119 (2)(b) of the said Act in a case having a claim of carry forward of losses. The said circular dated 16.05.2001 further clarified that the delay in making a refund claim as well as a claim of carry forward of losses, both could be condoned in cases where the returned income is a loss provided the other conditions are satisfied.

7. In view of the foregoing, it is absolutely clear that the submissions sought to be raised before us by the learned counsel for the respondent have specifically and categorically been rejected by the Karnataka High Court and the same have been accepted not only by the Board, but also by the Ministry of Law. We notice that a similar view has also been taken by the Bombay High Court in the case of **Sitaldas K. Motwani v. Director General of Income-tax (International Taxation): 187 Taxman 44 (Bom)**. Consequently, agreeing with the Karnataka High Court, we are of the view that the Board has the power under Section 119 (2) to condone the delay in the case of a return which is filed late and where a claim for carry forward of losses is made.

8. Coming back to the facts of the present case, we find that the impugned order under Section 119 passed by the Board is a non-speaking one. Normally, we would have remanded the matter to the Board to consider the application of the petitioner afresh. However, we find that in the present case, the delay is only of one day and the circumstances have been explained and have not been controverted by the respondents. The fact of the matter is that the petitioner did reach the Central Revenue Building before the closure of the counter on 01.11.2004. It is only because he was sent from one room to the other and had to wait in long queues that he could not present the return at the counter which was receiving the returns prior to 6.00 p.m. on that date. We feel that sufficient cause has been shown by the petitioner for the delay of one day in filing the return. If the delay is not condoned, it would cause genuine hardship to the petitioner. Thus, in the

circumstances of this case, instead of remanding the matter back to the CBDT, we direct that the delay of one day in filing of the return be condoned.

The writ petition is allowed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 16, 2010

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