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

+ **WRIT PETITION(CIVIL) No. 6537/2017**

Date of decision: 12th March, 2018

B.U, BHANDARI NANDGUDE PATIL ASSOCIATES... Petitioner
Through Ms. Mihira Sood & Mr. Prateek Krishan
Chadha, Advocates.
versus

CENTRAL BOARD OF DIRECT TAXES & ORS. Respondents
Through Mr. Sanjay Kumar & Mr. Rahul
Chaudhary, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

M/s B.U. Bhandari Nandgude Patil Associates, an association of persons, has filed the present writ petition under Articles 226 and 227 of the Constitution of India impugning the order dated 8th February, 2017 passed by the Central Board of Direct Taxes (CBDT, for short) under Section 119(2)(b) of the Income Tax Act, 1961 (Act, for short).

2. The impugned order passed by the CBDT dismisses application dated 11th May, 2011 (wrongly mentioned in the impugned order as 11th May, 2015) for extension of time for filing of the income tax return for the Assessment Year 2006-07.

3. The return for the Assessment Year 2006-07 was due under Section 139(1) of the Act on 31st October, 2006. However, the return was filed by

the petitioner on 30th March, 2007 before expiry of the assessment year in question as per the extended time provided under Section 139(4) of the Act.

4. By assessment order dated 26th November, 2018, the Assessing Officer disallowed deduction under Section 80IB of the Act on the ground that the return of income was not filed within the time limit specified under Section 139(1) as mandated. Reliance was placed on Section 80AC of the Act. Disallowance was upheld in the first appeal by the Commissioner of Income Tax (Appeals) vide order dated 12th October, 2009. The second appeal preferred before the Income Tax Appellate Tribunal (Tribunal, for short) was also dismissed vide order dated 31st October, 2012, inter alia, holding that for claiming deduction under Section 80IB, return of income should have been filed before the due date prescribed under Section 139(1) of the Act.

5. Counsel for the petitioner has stated and accepted that the petitioner has not preferred any appeal under Section 260A of the Act against the order of the Tribunal dated 31st October, 2012, which has attained finality.

6. The Tribunal had, however, noted that the petitioner had filed an application for extension of time in filing of the return before the CBDT and observed that the Assessing Authority would be free to consider the decision of the CBDT as per law. Tribunal, for the present, had observed that the denial of claim for deduction under Section 80IB on account of violation of Section 80AC of the Act was justified and in accordance with law.

7. Counsel for the petitioner submits that the delay in filing of the return was on account of illness of the Chartered Accountant, i.e., the statutory auditor and consequently the return due on 31st October, 2006 was filed on

30th March, 2007. This delay was the sole ground to deny deduction under Section 80IB for the Assessment Year 2006-07, which deduction was allowed in the previous and subsequent Assessment Years 2005-06 and 2007-08, respectively. Consequently, the petitioner would suffer disallowance of deduction of Rs.3.50 Crores that had resulted in demand of more than Rs.95.75 lacs, which would cause genuine and grave hardship.

8. In the present case, we are not examining merits of the order dated 31st October, 2012 passed by the Tribunal denying or rather upholding disallowance of deduction under Section 80IB of the Act. Subject matter of challenge before us is the order passed by the CBDT dated 8th February, 2017 rejecting the petitioner's application for extension of time for filing of the return for the Assessment Year 2006-07 under Section 119(2)(b) of the Act.

9. Learned counsel for the petitioner is correct that the date of the application for extension of time has been incorrectly recorded in the impugned order as 11th May, 2015 as the application for extension of time was dated 11th May, 2011. However, wrong date recorded in the first paragraph of the impugned order dated 8th February, 2017, would not be a good ground and justification to set aside the impugned order, unless date of the application was the reason for rejection. The date of filing of the application is not the reason for rejection. This was inconsequential. Typographical errors are also noticed in other paragraphs. For example, paragraph 2 refers to purported letter dated 29th November, 2006 and hearing held on 5th January, 2007, whereas the letter in question was dated 29th November, 2016 and hearing was held on 5th January, 2017. Mere wrong mention of the date, a typographical error, in our opinion, would not

be a justification to set aside the impugned order and remit the case for reconsideration.

10. The fact remains that the petitioner had filed application under Section 119(2)(b) for extension of time for filing of return for Assessment Year 2006-07 on 11th May, 2011, more than four years after the return of income was belatedly filed under Section 139(4) on 30th March, 2007. The due date for filing of return was 31st October, 2006. The Assessing Officer had rejected the claim for deduction under Section 80IB of the Act vide order dated 26th November, 2008 and the first appeal was dismissed vide order dated 12th October, 2009. It was only when the matter was pending before the Tribunal that the petitioner filed the said application for extension of time.

11. The impugned order also examines whether the reason and justification given by the petitioner for the delay in audit, i.e., the illness of the auditor. Field unit authorities were asked to verify the assertion on merits and had queried with the auditor who had responded as under:-

“Query (i) Whether submission of the assessee that audit was not completed in time by the Auditors is true?

Reply: Yes, the submission of the assessee that the “delay in completing the audit was on my part” is correct.

Query(ii) If so, please explain in detail the reasons for not completing the audit in time.

Reply: The delay in completing the audit of the aforesaid assessee for the A.Y.2006-07 was due to some medical urgency at my end.

Query(iii) If no, confirm accordingly the lapses if any on the part of the assessee.

Reply: --

Query(iv) Has assessee taken any action against the CA firm for stated delay in completion of audit with details thereof; if any.

Reply: No action has been taken against me by the assessee.

Query (v) Whether delay in audit was caused by some illness or any other factor? If so, details of such illness factor.

Reply: No response received.

Query(vi) Evidence in support of such illness and evidence in support of any such factor causing delay.

Reply: No response received.

Query(vii) How many audits were delayed during the relevant year?

Reply Our all other audits are completed in time and this being the big Audit assignment, my personal attention was required to complete the same.

Query(viii) No. of audits conducted for A.Y.2006-07 and details thereof

No	Name and Address of the Assessee	Due date of Audit	Date of completion of Audit

Reply: No response received.

4. In the showcause letter dated 15.11.16, the above response was confronted to the assessee and it was put to him that the above response did not show the existence of a reasonable cause for delay on the part of the auditor. In the reply dated 29.11.16, the assessee has stated that he is not aware of the auditor's response on the issues stated. It was also argued that "the assessee

has adopted the percentage completion method in recognizing revenue. Project completion method could also have been alternatively adopted by the assessee resulting in postponement of revenue and deferment of the claim u/s 80IB(10). In such an event, the issue of claiming deduction u/s 80IB(10) would have arisen in a subsequent year and would have been allowed. This proposition is also supported by the Hon. CBDT's Instruction No. 4/2009 dated 30/06/2009.”

Answers given in response to the queries were ambivalent and abstruse for the auditor had failed to give details of his illness or dates/ period when he was allegedly incapacitated on account of illness. Auditor did not also furnish any evidence and material in support of his illness. Interestingly, in response to one of the queries, the auditor had accepted that all other audits were completed in time. Audit in the case of the petitioner was the only audit that was delayed because it was a big assignment and personal attention of the auditor was required. The petitioner had not taken any action against the auditor.

12. Subsequently, the petitioner had filed an affidavit of the auditor to the following effect:-

“Affidavit.

“I, CA Hitesh Badani (Mem. No. 37649) of Badani Associates, Chartered Accountants from Pune do hereby state on solemn affirmation as under:

1. Badani Associates, of which I was the proprietor, was the Tax Audit of M/s B U Bhandari Nangude Patil Associates (PAN AAGPB8429C) for F.Y. 2005-06 relevant to A.Y. 2006-07.
2. “I had conducted the audit of M/s B U Bhandari Nangude Patil Associates for the said year and completed the same on 21.03.2007.

3. In relation with the petition u/s 119(2)(b) filed by M/s B U Bhandari Nangude Associates for condoning the delay in the filing of return for A.Y. 2006-07, I had filed letter dated 25.07.2014 confirming the delay in audit at my end.
4. Further, in response to a letter dated 05.01.2015 sent to me by the Income Tax Officer, Ward 2(1), Pune, I had responded vide letter dated 12.01.2015 acknowledged by the office of the Income Tax Officer, Ward 2(1), Pune on 14.01.2015. There was no further communication between us.
5. I have been informed that M/s B U Bhandari Nandgude Patil Associates has received a letter dated 15.11.2016 observing that the Auditor has not filed any evidence to substantiate the illness/medical urgency. In this context, I wish to state that this issue raised in Dec., 2014 and the illness pertains to the year 2006-07 and that I had no to maintain record/evidence of such illness which was 8 to 9 years old.
6. I wish to reiterate the aforesaid facts in confirmation of the submission that the delay in conducting of the audit was ay my end.

I declare that whatever is stated above is true and correct to the best of my knowledge belief.”

13. The auditor it is accepted had failed furnished even a single document or prescription regarding his illness, purportedly for the reason that he had not maintained record or evidence of illness that had occurred 8 to 9 years back. This was notwithstanding that the purported illness would have been serious and prolonged for this was the sole reason and ground for delay of 5 months. Interestingly, as observed above, the petitioner had belatedly filed the application for extension of time on 11th May,2011 more than four years after the return of income was filed. Petitioner was responsible and would have to suffer if evidence had dissipated with efflux of time and due to delay.

14. CBDT after examining the entire aspects, has come to the following finding and conclusion:-

“7. In the submission dated 5.1.2007, it is also argued that “no steps were taken by the auditor in 2007 as the assessee was given to understand that the claim would be available even if the return filed upto 31.03.2007. However, the assessment order for A.Y. 2006-07 was passed on 26.11.2008 where the claim u/s 80IB(10) was rejected. Even the appeal filed before the CIT(A) was rejected vide order dated 12.10.2009. Steps were then taken for change of auditors and the audit for A.Y. 2010-11 was carried out by the new auditors M/s V.L. Jain and Co.”

At the time of hearing on 5.1.2007 the issues raised earlier was reiterated.

8. The facts of case the assessee's submissions and the authorised representative's arguments have been considered. The argument that the assessee could have followed percentage completion method in which case the issue of claiming deduction u/s 80IB(10) would have arisen in a subsequent year, is a hypothetical argument and therefore, not relevant to the present proceedings.

9. The main issue raised by the assessee in this case is that the delay in audit has led to delay in filing of return which had led to his claim of 80IB(10) being disallowed and this had caused genuine hardship to him. It should be noted first that disallowance of any claim will normally lead to hardship. The Legislature has provided time limits for certain obligations under the Act and these time limits have to be observed to be able to claim certain deductions, allowances and avoid interest and penalty. This may be termed a hardship but it is hardship imposed by law in the interest of proper regulation of the Act. If these time limits were to be relaxed in a particular case, mere fact that a default occurred due to some reason is not enough to establish the claim of genuine hardship.

10. In determining whether genuine hardship is caused to the assessee one has to see whether the delay in filing of return was due to a reasonable cause or not. In this case, delay is attributed to (sic to) the Auditor. However in such a case one has to see whether the Auditor had a reasonable cause for delay and whether the assessee pursued the matter due to diligence to get his audit done in time.

11. On the question whether the auditor had a reasonable cause or not, the facts do not show any medical exigency of the kind which would cause so much delay when a statutory deduction of such a large amount was at stake. The auditor has not even been able to mention the nature of illness. In fact considering the hardship caused to the assessee, it would be expected that the assessee will himself have information on the illness having obtained it from the auditor at the relevant time. In this connection, it is noted that the auditor has mentioned that it was a big audit assignment and it needed his personal attention. Yet such an assignment is the only one delayed without any mention of the extraordinary medical exigency which had caused it. It is also noted that the delay in audit is of five months and not a few days and therefore, a general explanation of medical exigency without any details does not explain the justification for long delay.

12. The assessee has also not been able to show that it pursued the matter with any diligence after all the responsibility of filing the return in time is the assessee and he is expected to be even more diligent if a large claim of deduction is involved. There is nothing to show that the assessee pursued the matter with auditor to get audit done. The fact that all other audits were done timely by the auditor except for this audit also does not help the assessee's case as any medical exigency of the magnitude being claimed would have delayed at least a few more audits."

15. We have considered the said findings recorded by the CBDT, which are primarily factual and also lucid and cogent. Deduction under Section

80IB was not examined and considered on merits by the Assessing Officer. The contention that if the petitioner had followed percentage completion method claim for issue of deduction under Section 80IB would have arisen in subsequent year was a hypothetical. Petitioner was required and CBDT was justified in asking the petitioner to establish the reason propounded. In the absence of details of alleged illness and a single document to support the bland assertion, we are not inclined to hold that the impugned order suffers from perversity or error in decision making process in reaching the conclusion. Impugned order is not arbitrary or whimsical, to justify interference in exercise of our power of judicial review. The respondent authorities have taken all the arguments and materials into consideration. Procedural flaw is not alleged.

16. The findings recorded in the impugned order and the facts discussed above reveal :-

- (i) Return for the assessment year 2006-07, which was to be filed under Section 139 (1) of the Act on 31st October, 2006 was filed by the petitioner after five months on 30th March, 2007.
- (ii) The petitioner was denied benefit of deduction under Section 80IB in terms of Section 80AC of the Act.
- (iii) The order passed by the Tribunal confirming the findings of the Assessing Officer and the first appellate authority denying deduction under Section 80IB has attained finality.
- (iv) The petitioner had applied to extension of time for filing of return under Section 119 (2)(b) for the assessment year 2006-07 vide application dated 11th May, 2011, nearly four years after the return was filed.

(iv) This delay in filing of application for extension of time to file return of income was entirely attributable to the petitioner.

(v) Sole and only reason given was medical exigency and illness of the auditor that had consequently resulted in delay in filing of the return.

(vi) Auditor did state that due to medical emergency at his end, there was delay in completing audit. However, the auditor did not give (a) details of illness and nature of medical emergency (b) how long did the medical treatment or emergency last and (c) prescription or documents in support of his assertion. Auditor had also accepted that other audits were completed in time.

(vii) Contention that medical evidence had dissipated and therefore not produce is unacceptable, for the petitioner cannot take benefit and advantage of the delay and failure.

(vii) CBDT has refused to grant extension of time for filing of return in view of the vague assertions, absence of details and adequate proof.

(viii) Delay of 5 months was substantial.

17. Statutory time limits fixed have to be adhered to as it ensures timely completion of assessments. Discipline on time limits regarding filing of returns have to be complied and respected, unless compelling and good reasons are shown and established for grant of extension of time. Extension of time cannot be claimed as a vested right on mere asking and on the basis of vague assertions without proof. Statutory audits it is a common knowledge are not undertaken by one person but by a team consisting of auditor(s), article clerks and others.

18. In the present case, we do not know the nature of illness or medical emergency suffered by the auditor and how long the auditor was

incapacitated and could not work. The assertions made to justify extension of time have to be proved and established. Any indulgence on the pretext that the petitioner has been denied benefit under Section 80IB, which on merits would have been allowed, would be contrary to law, if it is held that there was no reasonable ground or reason for extension of time in filing of the return.

19. Resultantly, we do not find any merit in the present writ petition and the same is dismissed, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 12, 2018
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