IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6089 OF 2024

Bhatewara Associates ...Petitioner

Versus

Income Tax Appellate Tribunal, Pune & Ors. ...Respondents

Mr. Sanket Bora with Ms. Vidhi Punmiya, for Petitioner.
Mr. Vikas Khanchandani, for Respondents/Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 29th April 2024

PC:-

1. Petitioner, which had entered into a joint venture agreement with one Sanghvi Premise Private Limited, for whatever reason had not filed its return of income ("**ROI**") for Assessment Year 2011-12. Therefore, an assessment order dated 14th March 2024 came to be passed. Petitioner was not given a deduction under Section 80IB of the Income Tax Act, 1961 ("**the Act**") because of filing belated ROI. Petitioner's appeal came to be dismissed by the Commissioner of Income Tax (Appeals) [**CIT(A)**] vide an order dated 31st March 2017 on the same ground that Petitioner did not file the ROI on time. Petitioner challenged that order of the CIT (A) by filing an appeal before the Income Tax Appellate Tribunal ("**ITAT**"). During the pendency of the appeal, Petitioner also filed an application under Section 119(2)(b) of the Act before the Central Board of Direct Taxes

("**CBDT**"). The CBDT rejected Petitioner's application on 7th May 2021. Against that order passed by the CBDT under Section 119(2)(b) of the Act rejecting Petitioner's application for condonation of delay in filing the ROI, Petitioner preferred a writ petition being Writ Petition No.4832 of 2021. That petition came to be disposed on 23rd August 2022. In between, Petitioner also filed application under the Direct Tax Vivad Se Vishwas Act, 2020 ("**DTVSV**") which application, Mr. Bora states, is still pending. During the pendency of the writ petition before this Court, Petitioner's appeal came to be dismissed on 4th May 2022 on the ground that the ROI filed by Petitioner under Section 139(1) of the Act was well beyond the due date. The High Court in its order dated 23rd August 2022, condoned the delay by observing in paragraph 22 that the Income Tax Authority should consider the claim for deduction under Section 80IB(10) of the Act for AY 2011-12 made by Petitioner in accordance with law, as if there was no delay in filing the return. Paragraphs 21, 22 and 23 of the order passed by the High Court read as under:

> *"21. In our view, the affidavit of the income tax consultant which has neither been disputed nor controverted by the respondents is sufficient cause for condonation of delay in filing the application under Section 119 (2)(b) of the Act. Besides it is not in dispute that the return for AY 2011-12 was in fact filed by the petitioner albeit 365 days later on 30th September, 2012. That in respect of the other years from 2010-11 to 2013-14 except 2011-12, the income tax authorities have allowed the deduction under Section 80 IB (10) through the petitioner. In our view, substantial injustice would be caused to the petitioner if the order dated 7th May, 2021 is not set aside. This is clearly a case falling within the phrase "genuine hardship". As mentioned above. Technical consideration above cannot come in the way of substantial*

> *justice. It is neither an allegation of malafide nor an allegation that the delay has been deliberate. We do not find that the omission to file petitioner's return by the income tax consultant to be an act of negligence. Any person in his situation would have been mentally disturbed. The very fact that not only the petitioner's ITR was not filed in time, there were also 28 others whose return filing was delayed beyond the due date. The authorities should refrain from over analysis which leads to paralysis of justice. We are, therefore, of the view that the impugned order dated 7th May 2021 deserves to be set aside and is hereby set aside.*
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> *22. The income tax authority to act accordingly and consider the claim for deduction under Section 80 IB(10) for AY 2011-12 made by the petitioner in accordance with law, as if there was no delay in filing the return. The authorities under the DTVSV Act also to act in accordance with the said findings and amend Form 3 in respect of the amounts to be paid by the petitioner.*
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> *23. We make it clear that we have not delved into the merits of petitioner's claim under Section 80 IB (10) for AY 2011-2012 and if any observation has been made in this regard, it has only been for considering the impugned order under Section 119 (2)(b) of the Act."*

2. Armed with this order of the High Court, Petitioner filed a Miscellaneous Application under Section 254(2) of the Act before the Tribunal seeking to recall Tribunal's order dated 4th May 2022. By an order pronounced on 31st July 2023, the Tribunal rejected the Miscellaneous Application by observing that the High Court states the Income Tax Authority and the ITAT is not an authority and there was no apparent mistake in its order dated 4th May 2022 as required within the four corners of Section 254(2) of the Act. It is this order, which is impugned in this Petition.

3. Though we would agree with the view expressed by the ITAT that in the order dated 4th May 2022 there was no error, the ITAT failed to appreciate the spirit in which the order dated 23rd August

2022 was passed by the Hon'ble High Court. The High Court had very categorically observed that the authority should refrain from over analysis which leads to paralysis of justice. Therefore, the delay having been condoned by the High Court, we hereby quash and set aside the assessment order dated 14th March 2014 and remand the matter to the stage of the Assessing Officer ("**AO**"), who shall pass fresh assessment order in accordance with law by considering the claim for deduction under Section 80IB(10) of the Act for AY 2011-12 made by Petitioner as if there was no delay in filing the return. In fact, what we understand from paragraph 22 of the order dated 23rd August 2022 of the High Court is that the matter was being remanded to the AO. Instead, Petitioner has approached the ITAT by filing an application under Section 254(2) of the Act.

4. The AO shall pass fresh assessment order on or before 31st August 2024 and before he passes any order, shall give a personal hearing to Petitioner, notice whereof shall be communicated atleast five working days in advance. The assessment order shall be a reasoned order dealing with all submissions of Petitioner.

5. We hasten to add that we have not delved into the merits of Petitioner's claim under Section 80IB(10) of the Act for AY 2011-12.

6. Petition disposed. No order as to costs.

7. Since we have quashed and set aside the original assessment

order based on the order passed by the High Court on 23rd August 2022, consequence thereof will be that the orders passed by the CIT(A) as well as the ITAT will also not survive.

(DR. NEELA GOKHALE, J.) (K. R. SHRIRAM, J.)