IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

I.T.A.No.35 of 2019

Reserved on : 06.12.2023

Date of decision : 22.12.2023

Pr. Commissioner of Income Tax, Shimla ..Appellant

Versus

M/s H.P. Housing & Urban Development Authority (HIMUDA), Nigam Vihar, Shimla ..Respondent

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Coram :-
The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice

Ms. Justice Jyotsna Rewal Dua, Judge

Whether approved for reporting ?[1] Yes

For the Appellant : Ms. Vandana Kuthiala, Advocate

For the Respondent : Mr. Vishal Mohan, Senior Advocate, with
Mr. Praveen Sharma and Mr.Aditya Sood, Advocates

Jyotsna Rewal Dua, Judge

The revenue has filed this appeal against the order of learned Income Tax Appellate Tribunal (in short ITAT) allowing certain deductions to the assessee under Section 80IB(10) of the Income Tax Act even though its return of income for assessment year 2006-2007 was filed beyond the period prescribed under Section 139(1) of the Act and the deductions were claimed only in the revised return furnished later.

2. Facts

2(i) The assessee is M/s H.P. Housing & Urban Development Authority, (HIMUDA), Nigam Vihar, Shimla. The main function of the

[1]Whether reporters of print and electronic media may be allowed to see the order? Yes.

assessee is to develop housing facilities in the State. It filed return of income on 31.03.2007 for AY 2006-2007 declaring an income of Rs. 2,33,74,215/-. On 31.03.2008, the assessee filed a revised return declaring income of Rs. 11,86,511/- and also claiming deduction of Rs. 2,25,43,724/- under Section 80IB(10) of the Act.

2(ii) The Assessing Officer (AO in short) in his assessment order dated 16.12.2009 under Section 143(3) of the Act declined the deduction claimed by the assessee under Section 80 IB(10) of the Act in its revised return. This was for the reason that the assessee had not filed the original return within the permissible period under Section 139 (1) of the Act. The AO held that return of income was filed by the assessee beyond the due date provided under Section 139(1). In view of provisions of Section 80 AC of the Act, the assessee was not entitled to claim deduction under Section 80IB(10) of the Act. Nevertheless, the merits of assessee's deduction claim was also examined by the AO projectwise and he found that none of the concerned 21 projects was eligible for deduction under Section 80IB(10) of the Act. However, on the basis of revised return, the AO further added administrative charges and transfer charges as revenue receipts of the assessee. This sum was added to the total income of the assessee. The net taxable income was accordingly computed.

2(iii) The Commissioner of Income Tax (Appeals) (CIT in short) passed a common order on 27.02.2012 under Section 250 (6) of the Act in the three appeals preferred by the assessee for the assessment years 2006-2007, 2007-2008 and 2008-2009.

The CIT held that the assessee could not have filed revised return since its original return was filed beyond the period prescribed under Section 139(1) of the Act **;** As per Section 80AC, deduction under Section 80IB cannot be allowed unless the return is filed by the due date specified in Section 139 (1). After concurring with AO regarding non-entitlement of the assessee to the deduction claimed by it under Section 80 IB(10), the CIT also examined the merits of the assessee's deduction claim projectwise. It held that out of claimed deduction, only Rs. 2,11,055.58 was taxable and rest was liable to be deducted under Section 80 IB (10) of the Act. The finding of AO that the transfer charges were to be added to the assessee's taxable income was upheld. The Assessing Officer's order of adding administrative charges in the income of assessee was, however, held wrong. The amount was ordered to be deleted.

2(iv) The assessee approached the **Income Tax Appellate Tribunal** (ITAT) by filing three separate appeals for the assessment years 2006-2007, 2007-2008 and 2009-2010. The assessee claimed that filing of its return was delayed due to delay by the local Audit Department **;** The deduction admissible to it in law cannot be denied owing to this bonafide reason and consequent delay in filing the revised return. Learned ITAT framed following two questions for decision :-

"a) *Whether deduction claimed under section 80IB in a non-est return be allowed or not ?*

b) Whether the deduction claimed by the assessee before the appellate authority which was originally not claimed owing to the fact that the audit of the books of accounts of the assessee

has been delayed and the deduction was claimed after the completion of the audit."

Regarding the issue as to whether the deduction claimed under Section 80IB in a non-est return be allowed or not, learned ITAT held that non-est return does not exist in the eyes of law, hence no beneficial use or adverse conclusion can be drawn from such return. It is a return on which none can act upon. It is simply not there. No views, interpretation, derivation can be taken or given on such legally non-existing document.

However, learned ITAT also held that the CIT ought to have considered the claim of assessee in exercise of its appellate jurisdiction under Section 250 of the Act. If the assessee is otherwise entitled to deduction under Section 80IB(10), but due to its ignorance or for some other reason could not claim the same in the return of income, but has raised its claim before the Appellate Authority, then the Appellate Authority should have looked into the same. The assessee cannot be burdened with taxes which it otherwise is not liable to pay under the law. A duty is cast upon the Income Tax Authorities to charge legitimate taxes from the tax payers. They are not there to punish the tax payers for their bonafide mistakes. Accordingly, for the assessment year 2006-2007,the deduction computed by the CIT on the merits of assessee's claim was confirmed and the appeal was accordingly allowed.

2(v) Feeling aggrieved against the order passed by the ITAT on 10.05.2019 in relation to assessment year 2006-2007, the revenue has preferred instant appeal.

3. We have heard learned counsel for the appellant as well as learned Senior counsel for the respondent. For the sake of convenience, points urged by the learned counsel for the parties are being considered and discussed hereinafter.

4. Consideration

4(i) The contention of the appellant is that the original return was filed by the assessee beyond the period prescribed under Section 139(1) of the Act. Hence, deduction under Section 80IB(10) could not be allowed to it in view of bar imposed under Section 80 AC.

4(ii) Section 80 AC of the Act reads as under :-

> ***"Deduction not to be allowed unless return furnished***
>
> ***80AC.*** *Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after –*
>
> *(i) the 1st day of April, 2006 but before the 1st day of April, 2018 any deduction is admissible under section 80-IA or section 80-IAB or Section 80-IB or section 80-IC or section 80-ID or section 80-IE ;*
>
> *(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.-Deductions in respect of certain incomes",*
>
> *no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."*

In terms of above section, deduction under Section 80 IB is not to be allowed to an assessee unless he furnishes a return of his income for the concerned assessment year on or before the due date specified under Section 139(1).

4(iii) Section 139(1) of the Act gives out following timeline for furnishing return of income :-

*"**139. Return of income.—1(1) Every person**,—*

(a) being a company [or a firm]; or

(b) being a person [other than a company or a firm], if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

***Provided** that a person referred to in clause (b), who is not required to furnish a return under this subsection and residing in such area as may be specified by the Board in this behalf by notification in the Official Gazette, and who 4 during the previous year incurs an expenditure of fifty thousand rupees or more towards consumption of electricity or at any time during the previous year fulfils any one of the following conditions, namely:—*

(i) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf; or

(ii) is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or

*(iii) * * * * **

(iv) has incurred expenditure for himself or any other person on travel to any foreign country; or

(v) is the holder of a credit card, not being an "add-on" card, issued by any bank or institution; or

(vi) is a member of a club where entrance fee charged is twenty-five thousand rupees or more,

shall furnish a return, of his income during any previous year ending before the 1st day of April, 2005, on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided further *that the Central Government may, by notification in the Official Gazette, specify the class or classes of persons to whom the provisions of the first proviso shall not apply:*

Provided also *that every company or a firm shall furnish on or before the due date the return in respect of its income or loss in every previous year:*

Provided also *that a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6, who is not required to furnish a return under this sub-section and who at any time during the previous year,—*

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed:

Provided also *that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act:*

Provided also *that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of clause (38) of section 10 or section 10 or section 10B or section 10BA or Chapter VIA exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.*

Explanation *1.—For the purposes of this sub-section, the expression "motor vehicle" shall have the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).*

Explanation *2.—In this sub-section, "due date" means,—*

(a) where the assessee other than an assessee referred to in clause (aa) is—

*(i) a company ***; or*

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

the 30th day of September] of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in section 92E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this subsection, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year.

***Explanation** 3.—For the purposes of this sub-section, the expression "travel to any foreign country" does not include travel to the neighbouring countries or to such places of pilgrimage as the Board may specify in this behalf by notification in the Official Gazette.*

***Explanation** 4.—For the purposes of this section "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.*

***Explanation** 5.—For the purposes of this section "beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary."*

In the instant case, the assessee filed return of income under Section 139(1) on 31.03.2007. For the assessment year 2006-2007, the due date was 30.11.2006. The return of income was filed beyond the prescribed period. The assessee did not claim any deduction in the original return of income filed by him. The revised return was filed on 31.03.2008 claiming deduction under Section 80 IB (10). The said provision reads as under :-

"80IB(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a

local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place;

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed three per cent of the aggregate built-up area of the housing project or five thousand square feet, whichever is higher;

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—

(i) the individual or the spouse or the minor children of such individual,

(iii) the Hindu undivided family in which such individual is the karta,

(iv) (iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government).”

4(iv) We may note here that in the instant case, the CIT(A) as well as ITAT have concurrently held that the asessee was actually entitled in law to certain deductions under Section 80IB(10) of the Act. The deductions to which the assessee has been held entitled to, have been specifically calculated by the CIT(A) & the ITAT. There is no challenge in this appeal to these factual findings of the CIT(A) as confirmed by the

ITAT in respect of admissibility of precise deductions under Section 80IB(10) to the assessee. The only contention is that since the original return of income was filed by the asessee beyond the period prescribed in Section 139(1), therefore, the embargo placed by Section 80AC on the entitlement of the assessee to the deduction claimed under Section 80IB of the Act comes into play.

Section 139 (4) allows *"any person who has not furnished return within the time allowed to him under sub Section (1) may furnish the returns for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier"***.** Section 139(5) provides that "*if any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."*

4(iv)(a) Consequences of non filing of return in time as per Section 139(1) vis-à-vis resultant action under Section 276-CC was under consideration before the Hon'ble Apex Court in **(2004) 9 SCC 686 Prakash Nath Khanna and another** Vs. **Commissioner of Income Tax and another**. Assessee's submissions inter-alia were that :- 'The expression *to furnish in due time* figuring in Section 276-CC means to furnish within the time permissible under the Act ; The return furnished under Section 139(4) at any time before the assessment is made, has to be regarded as a return furnished under Section 139(1) ; This was so

held by the Apex Court in **1970 (77) ITR 518 Comm. of Income Tax Punjab** Vs. **Kullu Valley Transport Co. Pvt. Ltd** in context of Sections 22(1) & 22 (3) of the Act which were pari-materia to Sections 139(1) & 139(4).'

Hon'ble Apex Court held Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in the statute is determinative factor of legislative intent. Provisions of Section 276-CC are in clear terms. There is no scope of uncertainty. The interpretation sought to be put on Section 276-CC to the effect that a return filed under Section 139(4) would meet requirement of filing a return under Section 139(1), cannot be accepted. The time within which a return is to be furnished is indicated in Section 139(1) and not in 139(4). That being so, even if a return is filed in terms of Section 139(4), that would not dilute the infraction in not furnishing the return 'in due time' as prescribed under Section 139(1). Otherwise, the use of words 'in due time' would lose their relevance and it cannot be said that the said expression was used without any purpose. Relevant extracts from the judgment are as under :-

> "13. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid",

Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage (218 FR 547). The view was re- iterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981), and Padma Sundara Rao (dead) and Ors. V. State of Tamil Nadu and Ors. (2002 (3) SCC 533).

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16 Two principles of construction- one relating to casus omissus and the other in regard to reading the statute as a whole -appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 (1) QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC {1963 AC 557} where at AC p.577 he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges"

17. ……..In the present case as noted above, the provisions of Section 276-CC are in clear terms. There is no scope for trying to clear any doubt or ambiguity as urged by learned counsel for the appellants. Interpretation sought to be put on Section 276-CC to the effect that if a return is filed under sub-section (4) of section 139 it means that the requirements of sub-section (1) of Section 139 cannot be accepted for more reasons than one.

18. One of the significant terms used in Section 276-CC is 'in due time'. The time within which the return is to be furnished is indicated only in sub-section (1) of Section 139 and not in sub- section (4) of Section 139. That being

> so, even if a return is filed in terms of sub-section (4) of Section 139 that would not dilute the infraction in not furnishing the return in due time as prescribed under sub-section (1) of Section 139. Otherwise, the use of the expression "in due time" would loose its relevance and it cannot be said that the said expression was used without any purpose. Before substitution of the expression "clause (i) of sub-section (1) of section 142" by Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1.4.1989 the expression used was "sub-section (2) of section 139". At the relevant point of time the assessing officer was empowered to issue a notice requiring furnishing of a return within the time indicated therein. That means the infractions which are covered by Section 276-CC relate to non-furnishing of return within the time in terms of sub-section (1) or indicated in the notice given under sub-section (2) of Section 139. There is no condonation of the said infraction, even if a return is filed in terms of sub-section (4). Accepting such a plea would mean that a person who has not filed a return within the due time as prescribed under sub-sections (1) or (2) of Section 139 would get benefit by filing the return under Section 139(4) much later. This cannot certainly be the legislative intent."

Therefore, a return of income filed under Section 139(4) cannot be said to be meeting the requirements of Section 139(1) in context of Section 80AC of the Act, which specifically insists upon filing of return by the due date prescribed under Section 139(1) for availing the admissible deductions.

4(iv)(b) In **Writ Petition (Civil) No. 6537 of 2017 (B.U. Bhandari Nandgude Patil Associates** Vs. **Central Board of Direct Taxes & Ors.),** decided on 12.03.2018, by the Delhi High Court, the return of Assessment Year due under Section 139(1) on 31.10.2006 was actually filed on 30.03.2007 before expiry of the assessment year in question as per extended time provided under Section 139(4). The deductions claimed under Section 80IB were disallowed relying upon Section 80AC on the ground that return of income had not been filed

within the time limit specified under Section 139(1). The issue before the Delhi High Court pertained to order passed in the assessee's application under Section 119(2)(6) of the Act seeking extension of time for filing of return. The ground forwarded for late filing of the return was delay in audit. The Court considered the case for condonation of delay as under :-

> *"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 ti(sic to) the Auditor. However in such a case on has to see whether the Auditor had a reasonable for 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 fact 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 delayed without any memory 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 audit 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".

4(iv)(c) 299 CTR 173 Delhi (Fiberfill Engineers Vs. **Deputy Commissioner of Income Tax)** was a case where a re-assessment notice was issued to the assessee on the ground that it could not be granted deduction under Section 80 IC because of belated filing of return of income. However, it was noted that on merits, assessee's claim for deduction was justified. In the circumstances, the Delhi High Court held in favour of asessee that since entitlement of assessee to deduction had not been questioned by the department on merits, there was no justification for not viewing delay in filing the return to be bonafide.

4(iv)(d) In the instant case, the assessee is a statutory organization created by the State for providing & develop housing infrastructure. It took up a defence of late audit for belated filing of its return of income. The veracity of ground so put forth for late filing of return has not been disputed by the appellant. The assessee deals with public money, the State exchequer. The Commissioner of Income Tax and the Income Tax Appellate Tribunal have concurrently held on facts after undertaking a lengthy & pain staking exercise that the assessee was actually entitled to deductions under Section 80IB(10) of the Act. The specific amount of deduction admissible to it has also been computed. The ground put forth by the assessee for not filing the return of income within the time provided under Section 139(1) having been accepted on facts by the appellant, we in the given facts are inclined to hold, in this case, that the

assessee had a reasonable & bonafide cause for not filing the return of income within the time permitted under Section 139(1).

In view of above, we are in agreement with the view of the learned ITAT that once in the given facts, the assessee has been held entitled to claim the specifically computed deductions, then it should not be burdened with taxes which it is otherwise not liable to pay under law.

5. For all the aforesaid reasons, this appeal is dismissed. All pending applications, if any, also to stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

22nd December, 2023(K)

(Jyotsna Rewal Dua)
Judge