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

Date of order: January 24, 2019.

\+ W.P.(C) 8436/2018

G.V.INFOSUTIONS PVT. LTD. ..... Petitioner
Through: Mr. Salil Kapoor, Ms. Soumya Singh, Mr. Sumit Lalchandani, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 10(2), & ANR. ..... Respondents
Through: Mr. Sanat Kapoor, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

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S. RAVINDRA BHAT, J. (ORAL)

1. The petitioner is aggrieved by an order of the Commissioner of Income Tax, rejecting its application under Section 119(2)(b). It had applied for condoning the delay in filing a refund application.

2. Facts for the purpose of deciding this writ petition are that the petitioner/assessee filed its Income Tax Return on 20.09.2013, covering Assessment Year 2013-2014. Its return reflected the tax deducted at source (TDS) as Rs.15,62,500/-. It appears, however, that a larger amount – Rs.31,25,000/- had escaped the attention of the Assessee; so it could not be claimed. As an adjustment or for the purpose of consequent refund, the assessee paid the amounts due in terms of its calculation and assessment was framed under Section 143(1). The period for revising the demands ended on 31.03.2015

(Assessment year 2013-2014), however the error that had crept in while furnishing the returns was not rectified through an application or a refund undertaken. The petitioner claims that when it did discern the error or claim, it had applied on 12.09.2016 to the Chief Commissioner, for condoning the delay for filing the application for refund. The application was rejected by the Commissioner – on 28.03.2018. In its application, the assessee had claimed that its Chartered Accountant had inadvertently overlooked the TDS amounts, as a consequence it could not have sought appropriate refund at the first instance or even claimed it before the period of seeking refund had expired.

3. The Chief Commissioner rejected the application, giving reasons as follows:

> *"5. Explaining reasons/causes for not claiming the TDS of Rs.31,25,000/- while filing return of income for AY 2013-14 it was submitted that due to the mistake of the Chartered Accountant of the assessee Company the claim of the TDS was omitted to be made while filing return of income for the year under consideration. However, on being specifically questioned to furnish evidence that the credit of TDS was not available in form 26AS at the time of filing of ITR on 29.09.2013, the AR for the assessee failed to produce any evidence to prove that credit of TDS was not available in form 26AS at the time of filing of ITR on 29.09.2013, the AR for the assessee failed to produce any evidence to prove that credit of TDS was not actually available in form 26AS at the time of filing ITR on 29.09.2013. It is amply clear from the facts of the case that the claim of the assessee that information of TDS of Rs.31,25,000/- was actually available to it at the time of filing ITR has not been proved during the course of proceedings before me. In absence of any such relevant evidence, the claim of the*

assessee that due to the mistake of the CA, claim of TDS was not made has remained unproved.

6. In this case, return for the AY 2013-14 was filed on 29.09.2013 and the assessee could have revised the return by 31.03.2015. However, the assessee had not filed the revised ITR to claim refund of Rs.31,25,000/-. Considering no action by the assessee to claim substantial amount of refund of Rs.31,25,000/- during available period of more than one and a half year from the date of filing of ITR, the assessee was asked to explain reason for such inaction when the company had incurred substantial expenditure in seeking professional help of Chartered Accountants. IN response to the query, it was as submitted by the AR for the assessee that revised return could not be filed due to lack of knowledge about claim of credit of TDS of Rs.31,25,000/-. It is pertinent to mention here that as per audited account the assessee had disclosed a net profit of Rs.24,78,142/- for the year and the claim of the assessee was that due to the lack of information about non-credit of TDS of Rs.31,25,000/- (the amount of TDS was more than the income) revised return could not be filed. However, the claim of the assessee was not substantiated with any evidence and it is difficult to believe that the assessee would be so careless that it was not aware about the pending TDS credit which was more than the profit for the year under consideration.

7. The assessee is a company which has availed services of independent auditor, inhouse finance professional and Chartered Accountant engaged for the purpose of filing ITRs and other compliance issues for the year under consideration and for subsequent years. Both, under the Company Act as well as under the Income Tax Act, the assessee company was liable to record each transaction i.e. gross receipt, net receipt, tax deducted at source and expenses etc. and get its accounts audited. The claim of the assessee company that even after having gone through the process of audit, credit of TDS of Rs.31,25,000/- could not be made at the time of

filing of return of income or during time available to file the revised return of income for bonafide reason cannot be accepted in absence of any verifiable credible material evidence in support of the claim."

4. It is pointed out on behalf of the assessee by Mr. Kapoor, that the TDS portal maintained by the Revenue in fact reflected at the relevant time that for Assessment Year 2013-2014, additional TDS credit to the extent of Rs.31,25,000/- was payable which in turn implied that the amounts were paid. Counsel relied on statements made in the application to say that inadvertence or omission in claiming appropriate adjustment and consequent refund was on account of its auditor/chartered accountant's lack of diligence. The petitioner relied upon a Division Bench ruling of this court in *Indglonal Investment & Finance Ltd.* vs. *Income Tax Officer*, [2012 343 ITR 44(Delhi)].

5. The learned counsel for the revenue relied upon the impugned order and submitted that the petitioner's claim for condonation of delay was justifiably rejected. Counsel submitted that as pointed out by the Chief Commissioner there was no material to substantiate the plea urged, i.e. that the concerned auditor or chartered accountant had inadvertently omitted to claim the refund amount. It is further pointed out that in fact the period provided by law for claiming the refund ended on 31.03.2015 and only much later did the assessee claim refund, and move to application under Section 119(2)(b) – on 12.09.2016.

6. Concededly the facts disclose; firstly, that according to the petitioner a sum of Rs.31,25,000/- was inadvertently left out by its

auditor/chartered accountant in the calculation while filing the return; secondly, the court notices that the amount in fact reflected on the web portal maintained by the Income Tax Department itself at the relevant time. It is also a fact that the petitioner does not seem to have noticed its omission, at least before September 2016. In the meanwhile, the period of limitation to claim refund ended on 31.03.2015.

7. In *Indglonal Investment & Finance Ltd.* (supra) a Division Bench of this court, while dealing with the claim for refund, which was made belatedly but rejected by the Revenue, considered the relevant judgments of the Supreme Court including *Commissioner of Income Tax Vs. Shelly Products and Anr.*, (2003) 261 ITR 367, and held as follows :

> *"11. Provisions of assessment are independent of provisions of refund, but the provisions relating to refund may be dependent on the assessment. (See Commissioner of Income Tax, West Bengal vs. Central India Industries Ltd. (1971) 82 ITR 555). An assessment order or an order quantifying the income/net wealth can be rectified or modified in the proceedings as contemplated by the enactment. The assessment order or the order quantifying the income or taxable wealth cannot be challenged on merits while the authorities examine the question of refund. The authorities cannot go behind the assessment order or the order quantifying net wealth/income. Section 242 of the 1961 Act is apposite and is reproduced below:-*
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> > *"242. Correctness of assessment not to be questioned.--In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or*

> *ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.*
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> *12. Another principle is that the refund provisions should be interpreted in a reasonable and practical manner and when warranted liberally in favour of the assessee. If there is substantial compliance of the provisions for refund, it may not be denied because it is not made strictly in the form or the prescribed manner. The forms prescribed may be merely intended to facilitate payment of refund. The tax authorities have to act judiciously when they exercise their power under an enactment. The power given to the tax authorities under the enactments are mandated with the duty to exercise them when the statutory provisions so warrant. It is imperative upon them to exercise their authority in an appropriate manner. In case the Assessing Officer or tax authority comes to know that an assessee is entitled to deduction, relief or refund on the facts of the case and the assessee has omitted to make the claim, he should draw the attention of the assessee. The tax authorities should act as facilitators and not occlude and obstruct. The role of tax authorities has been aptly described in CIT versus Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2008) 14 SCC 208 as :-*
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> > *"19……. The function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers."*

8. The rejection of the petitioner's application under Section 119(2)(b) is only on the ground that according to the Chief Commissioner's opinion the plea of omission by the auditor was not substantiated. This court has difficulty to understand what more plea or proof any assessee could have brought on record, to substantiate the inadvertence of its advisor. The net result of the impugned order is

in effect that the petitioner's claim of inadvertent mistake is sought to be characterised as not bonafide. The court is of the opinion that an assessee has to take leave of its senses if it deliberately wishes to forego a substantial amount as the assessee is ascribed to have in the circumstances of this case. "Bonafide" is to be understood in the context of the circumstance of any case. Beyond a plea of the sort the petitioner raises (concededly belatedly), there can not necessarily be independent proof or material to establish that the auditor in fact acted without diligence. The petitioner did not urge any other grounds such as illness of someone etc., which could reasonably have been substantiated by independent material. In the circumstances of the case, the petitioner, in our opinion, was able to show bonafide reasons why the refund claim could not be made in time.

9. The statute or period of limitation prescribed in provisions of law meant to attach finality, and in that sense are statutes of repose; however, wherever the legislature intends relief against hardship in cases where such statutes lead to hardships, the concerned authorities – including Revenue Authorities have to construe them in a reasonable manner. That was the effect and purport of this court's decision in *Indglonal Investment & Finance Ltd.* (supra). This court is of the opinion that a similar approach is to be adopted in the circumstances of the case.

10. For the above reasons, the impugned order dated 28.03.2018 rejecting the petitioner's application under Section 119(2)(b) is hereby set aside and quashed. The application for condonation of delay is hereby allowed for these reasons. The petitioner is permitted to prefer

its refund claim within two weeks from today. In such event, the concerned Assessing Officer shall verify the concerned claim and pass the order in accordance with law within six weeks thereafter. Any amount due to the petitioner shall also be remitted to it within three weeks thereafter.

11. The writ petition is disposed of in the aforesaid terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 24, 2019
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