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

\+ ITA 64/2020 & CM APPL. 4426/2020 (for condonation of delay)

P.R COMMISSIONER OF INCOME TAX-12
NEW DELHI ..….Appellant

Through: Mr. Sanjay Kumar, Advocate with
Ms. Easha Kadian, Advocate.

versus

HARISH KUMAR HUF ..…….Respondent

Through: None.

% **Date of Decision: 25th May, 2022**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CM APPL. 4426/2020 (for condonation of delay)

This is an application filed on behalf of applicant/appellant under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 06 (six) days in filing the present appeal.

For the reasons mentioned in the application, the delay of 06 (six) days in filing the present appeal stands condoned.

The application stands disposed of accordingly.

ITA 64/2020

1. Present Income-tax Appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') against the final judgment and order dated 19th August, 2019 passed by the Income Tax

Appellate Tribunal (in short 'the Tribunal') in ITA No. 1469/Del/2019.

BRIEF FACTS:

2. M/s Harish Kumar HUF i.e. the Respondent/Assessee (hereinafter referred to as 'Respondent') filed its return of income for Assessment Year 2015-16 under Section 139(1) of the Act. In the said return, the Respondent disclosed that it had suffered a loss from the business of trading in derivatives. The Respondent had adjusted the Short Term Capital Loss (hereinafter referred to as 'STCL') of Rs.31,15,27,183/- with Long Term Capital Gain (hereinafter referred to as 'LTCG') to Rs.32,58,81,104/- from the sale of equities and declared income of Rs.1,43,53,921/- under the head 'Income from Capital Gains'. The return further declared the income of interest from saving bank account and fixed deposit receipts of Rs.3,68,077/-. The Respondent claimed exemption under Section 10 of the Act.

3. The case of the Respondent was selected for Limited Scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). During assessment proceedings, the Respondent was directed to provide complete details of all unique equities along with the details of all unique sales. The Respondent was directed to furnish complete details of STCG and loss. The Respondent furnished the requisite details.

4. Upon examination of the exempt income claimed by the Respondent towards dividend received from shares for a sum of Rs.19,24,70,893/- , the Assessing Officer (in short 'the AO') issued notice under Section 142(1) of the Act on 7th December, 2017 to verify the said claim on the touchstone of Section 94(7) of the Act. The Respondent was directed to furnish details of the dividend income earned by it.

The Respondent appeared on 13th December, 2017 before the AO and furnished all the details as sought by the AO in its notice under Section 142(1) of the Act, except the details of the dividend, sought in the notice.

5. Vide order dated 13th December, 2017, the Respondent was directed to furnish the details of the dividend in the format provided by the AO. Significantly, the Respondent attended the hearing on 15th December, 2017 and furnished the details of the dividend in the required format. The Respondent also filed a representation along with the said details and in the said representation, the Respondent, at the outset, acknowledged that it had now come to its attention that a sum of Rs.1,98,51,874/- of dividend income was not considered by the Respondent. The Respondent admitted that the provisions of Section 94(7) of the Act were duly attracted. Therefore, the Respondent stated that it has revised the computation of income and had increased its LTCG from 1,43,53,921/- to 3,42,05,795/-. The Respondent admitted to the disallowance of Rs.1,98,51,874/- under Section 94(7) of the Act.

6. The Respondent submitted that in its return that it has revised the computation of income and has offered the revised income for taxation. The Respondent filed the revised return under the cover of letter dated 15th December, 2017 and also paid the tax demanded on account of the revised assessed income promptly after receiving the assessment order.

7. The scrutiny assessment under Section 143(3) of the Act was completed on 26th December, 2017 and the returned income of the Respondent stood revised from Rs.35,29,470/- to Rs.2,33,81,340/- by making a disallowance of Rs.1,98,51,874/- under Section 94(7) of the Act on account of Dividend Striping. However, the AO concluded that in the

aforesaid facts, the provisions of Section 271(1)(c) of the Act were attracted as the Respondent had furnished inaccurate particulars of income and penalty proceedings were initiated against the Respondent by issuing notice under Section 274 read with Section 271 of the Act.

8. The Respondent filed its reply to the said notice and submitted that it learnt about its mistake while compiling the data as requested by the AO in its notice dated 13th December, 2017. It was submitted that it was an inadvertent mistake caused due to oversight. It, however, submitted that upon realising the said mistake, it had promptly revised the computation of income, filed a revised return and paid the tax demanded on account of revised assessed income promptly after receiving the assessment order.

9. The AO, however, *vide* its order dated 23rd February, 2018 held that the Respondent's case was covered by Explanation 1(B) to Section 271(1) of the Act. The AO held that he did not accept that the explanation offered by the Respondent was *bonafide* or that all facts relating to material for computation were duly disclosed by it. The AO thus, imposed a minimum penalty of Rs.45,52,613/- under Section 271(1)(c) of the Act, being 100% of the tax, sought to be evaded.

10. The Respondent filed an appeal under Section 250 of the Act to the Commissioner of Income Tax, which was dismissed *vide* order dated 26th November, 2018. The Respondent filed a further appeal before the Tribunal. The Tribunal after hearing both the parties and perusing all the records of the Revenue authorities and the Respondent and after appreciating the facts on records, allowed the appeal of the Respondent *vide* order dated 19th August, 2019 and deleted the imposition of the penalty imposed. In this regard, the relevant finding of the Tribunal reads as under :

"7 ...We further note that AO has issued various notices u/s 143(2)/142(1) of the Act, but has not made any enquiry for the disallowance in the case of the Respondent u/s. 94(7) of the Act. AO on the basis of the query for dividend income on 07.12.2017 issued a notice income earned by the Respondent in a specified format and filed all the details in the original return of income. In compliance of the same on 13.12.2017 Ld. Counsel for the Respondent appeared and took adjournment for 15.12.2017 and examined all details of dividend/bonus income and found that there is an inadvertent clerical error committed by the Charted Accountant and on the advice of Senior Chartered Accountant, the Respondent filed voluntary revised computation of income wherein a Long Term Capital Gain (LTCG) OF Rs.1,4353,921/- has been increased to Rs.3,42,95,795/- due to the disallowance of Rs.1,98,51,874/- u/s. 94(7) of the Act at the first opportunity as soon as it came to the notice of the Respondent. We note that Respondent has committed this mistake for furnishing of inaccurate particulars in the return due to the inadvertent bonafide error in the claim due to one entry by the accounts staff posted at wrong date due to huge voluminous transactions and dividend from same security punched at one voucher

i.e. entry of the dividend received on same security (Rs.1,98,51,874/- received on 28.1.2015 and Rs.3,38,62,217/- received on 25.3.2015 made cumulatively on 26.3.2015 i.e. date of sale of investments (26.3.2015) and receipt date of second dividend. We further note that AO has completed the assessment on the basis of details furnished by the Respondent, hence, under the circumstances Respondent has not furnished inaccurate particulars of income..."

11. It, however, appears that during the pendency of the appeal before the Tribunal, the Appellant-Revenue (hereinafter referred to as 'Appellant') initiated prosecution proceedings against the Respondent and the same are pending.

12. The Appellant has filed the present appeal challenging the order dated 19th August, 2019 of the Tribunal deleting the penalty imposed on the Respondent, on the ground that the order of the Tribunal is perverse. It is submitted by the Appellant that the explanation offered by the assessed that the error occurred inadvertently and *bonafide* cannot be accepted, as if the case of the Respondent was not selected for Limited Scrutiny by CASS, the Respondent would have gotton away with its wrongful claim of lower LTCG and tax would have been evaded. It is contended that the disclosure made by the Respondent on 15th December, 2017 is not voluntary but upon the Respondent receiving the notice dated 13th December, 2017, and because it was aware that this non-disclosure would be discovered by the AO and

therefore, the voluntary disclosure made on 15th December, 2017 by the Respondent cannot be considered as *bonafide*. The Appellant reiterated that the facts of this case are squarely covered by Explanation 1(B) to Section 271(1) of the Act and therefore, the AO was correct in imposing the penalty in the present case. The Appellant has further submitted that though the tax effect in this matter is only Rs.45,52,613/- which is below the mandatory limits prescribed in the Amendment to para 10 of the CBDT Circular No. 03/2018 dated 11th July, 2018 issued by the Central Board of Direct Taxes ('CBDT' in short), Department of Revenue, Ministry of Finance, Government of India on 20th August, 2018, however, in view of the prosecution initiated against the Respondent, the present case falls in the 'exception' category under paragraph 3.f of the CBDT Circular.

13. We have considered the submissions of the learned counsel for the Appellant and perused the order of the Tribunal. It is not disputed by the learned counsel for the Tribunal that the Respondent herein had voluntarily filed the revised return on 15th December, 2017 duly disclosing the disallowance of the dividend in terms of Section 94(7) of the Act and revised its returned income to Rs. 2,33,81,340/-. It is also admitted that the Respondent has upon receipt of the assessment order issued by the AO deposited the enhanced amount of tax and the Respondent had not challenged the assessment order. The Respondent, at the first instance, admitted its mistake in computation and filed a revised return. A perusal of the order of the Tribunal reveals that the Tribunal noted that an error had occurred due to the wrong posting of the entry by the book-keeping staff of the Respondent with respect to the relevant dividend entry income to a wrong date. The Tribunal observed that since the Respondent had

voluminous transactions, it committed an error while posting the relevant dividend entry, which was covered by one voucher since it was received on the same security. The Tribunal has observed that it was a reasonable human error which could have been committed on the part of the Respondent. The Tribunal noted that on the same security, dividends were received at two distinct dates, however, the error crept in since, the book-keeping staff posted both the entries of the dividend to the same date. The Tribunal has accepted that upon a perusal of the record that such an error was possible and therefore has accepted the submission of the Respondent that this was a *bonafide* error and there was no intention on its part to evade tax.

14. In our view, the view taken by the Tribunal is reasonable. It is a view taken after perusing the records in detail. The Tribunal, after appreciating the evidence has found that the Respondent has proven that it was a *bonafide* mistake and no substantial question of law would arise. It is not possible to accept the submission of learned counsel for the Appellant that the said finding of the Tribunal is perverse and we, therefore, do not find any merits in this appeal. The questions of law as proposed by the Appellant are not made-out and therefore, dismissed.

15. The appeal is disposed of in above terms. The pending applications also stand disposed of.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

MAY 25, 2022/j