

## HC rejected application for condonation of delay as claim raised in revised return was a debatable issue

**Summary – The High Court of Karnataka in a recent case of Sharavathy Conductors (P.) Ltd., (the Assessee) held that A return of Income could not be revised to claim debatable benefit or deduction**

### Facts

- The assessee filed return of income after claiming deduction under section 80-IA and same was accepted. Later, the assessee filed revised return of income after claiming deduction under section 80HHC and prayed for refund. However, same was filed after period of limitation. Therefore, the assessee filed the application before CBDT seeking the condonation of delay in filing the revised return of income under section 119(2)(b).
- The Chief Commissioner rejected the said application filed by assessee on ground that the claim of refund/supplement claim of refund should be arisen as a result of excess tax deducted/collection at source/or excess advance tax payment and/or excess payment of self-asst tax as per the provision of Act. Whereas in the instant case, the supplement claim of refund had arouse on account of claim of deduction under section 80HHC which was claimed afresh in the revised return of income. Whether the deduction under section 80HHC could be claimed, when the deduction under section 80-IA was already claimed was debatable in view of section 80-IA(9). The return of income filed might be revised under section 139(5) only when there was a *bona fide* omission or an inadvertent mistake. Since whether the deduction under section 80HHC was allowable in addition to the deduction claimed under section 80-IA was debatable and not an inadvertent mistake or omission, the revised return of income could not be acted upon. The assessee had already claimed deduction under section 80-IA in the revised return of income also and therefore, it was debatable. Hence a debatable claim could not be the matter of condonation petition.
- On writ:

### Held

- This Court is of the opinion that firstly, the condonation of delay is a discretionary matter and a fair exercise of discretion cannot be interfered with in exercise of the extra jurisdiction under Article 226 of the Constitution of India. This Court does not find anything arbitrary in the impugned order passed by the Chief Commissioner.
- Moreover since admittedly, the claim of the petitioner both under sections 80HHC and 80-IA is an issue which is highly debatable. As is recorded in the impugned order also, the matter is pending before the Larger Bench of the Supreme Court in the case of *Asstt. CIT v. Micro Labs Ltd.* [\[2015\] 380 ITR 1/237 Taxman 74/64 taxmann.com 199.](#)
- In view of the same it could not be said to be a *bona fide* omission in original return to make a claim of the deduction clearly admissible to the assessee thus, issue being a debatable one, the revised

return for that purpose could not have been filed by the assessee and Chief Commissioner could not be faulted in rejecting such condonation of delay application.

- The clause 5(i) of the Circular No. 9/15 clearly stipulates that the Authority concerned, in exercise of power under section 119(2)(b), shall ensure that the income/loss declared and/or refund claimed is correct and genuine and also that it is the case of a genuine hardship on merits. When the claim of rejection under sections 80HHC and 80-IA is a debatable issue, unless the law is finally declared in favour of the assessee by the Larger Bench of the Supreme Court (*supra*), it cannot be said to be inadvertent mistake on the part of the assessee to make the claim as clearly admissible deduction under both these provisions of the Act.
- The petitioner-assessee cannot seek the condonation of delay in filing the revised return for such purposes as a matter of right even though such claim is not clearly admissible in law on merits. The use of discretion by the authority concerned, in such circumstances, rejecting the very application seeking the condonation of delay, cannot be said to be wrong in any manner.
- Therefore, this Court finds the impugned order passed by the Chief Commissioner in accord with the Guidelines laid down by the Central Board of Direct Taxes in Circular No. 9/15, dated 9-6-2015 and the present writ petition found to be devoid of merit and the same is liable to be dismissed and the same is dismissed accordingly.