

Bal Kishan Dhawan (HUF) Vs Deputy Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 10, 2014

Acts Referred: Income Tax Act, 1961 " Section 119, 139, 139(1), 260A, 80AC

Citation: (2014) 366 ITR 639 : (2014) 365 ITR 581

Hon'ble Judges: Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Avneesh Jhingan, Advocate for the Appellant; Denesh Goyal, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.

C.M. No. 32082-CII of 2012

1. Delay in refiling the appeal is condoned. CM stands allowed. This appeal has been preferred by the assesses u/s 260A of the income tax Act,

1961 (in short, "the Act") against the order dated December 16, 2011, annexure A 4 passed by the income tax Appellate Tribunal Amritsar

Bench, Amritsar in I.T.A. No. 236/ASR/2011 for the assessment year 2007-08, claiming following substantial questions of law:

(i) Whether, in the facts and in the circumstances of the case, the time period prescribed u/s 80AC read with section 139 is directory or

mandatory?

(ii) Whether, in the facts and in the circumstances of the case, once the audited accounts have been filed with the Department within the prescribed

period, still the deduction u/s 80IB can be disallowed on mere late filing of the return?

(iii) Whether, in the facts and in the circumstances of the case, the time period to file the return does get extended by section 139(1) fourth

proviso?

(iv) Whether, in the facts and in the circumstances of the case, the provisions of section 80AC along with section 80IB should have been given a

liberal construction and on their substantial compliance the deduction should have been allowed?

(v) Whether, in the facts and in the circumstances of the case, the charging of the interest in the facts and circumstances of the present case is

sustainable in law?

2. Briefly, the facts necessary for adjudication of the controversy involved, as narrated in the appeal, may be noticed
The appellant was a Hindu

undivided family (HUF) duly registered with the income tax Department The Hindu undivided family was a proprietor of
M/s. BKD Enterprises,

Amritsar. After the death of Shri Bal Kishan Dhawan, Kapil Dhawan became the karta of the Hindu undivided family.
The appellant commenced a

new industrial undertaking at Daman. The unit was set up in the assessment year 2004-05, which was eligible for
deductions u/s 8010 of the Act,

The appellant filed return for the financial year 2003-04, i.e., the assessment year 2004-05 and claimed deduction u/s
801B of the Act with regard

to the new unit at Daman for Rs. 7,65,258. The assessment was finalized in scrutiny on December 11, 2006, and the
claim of the assessee u/s

801B was accepted. Similarly, the claim u/s 801B for the assessment year 2005-06 was accepted. With regard to the
assessment year 2007-08,

the appellant got its accounts of the unit audited and the same were filed with the income tax Department on
September 12, 2007. According to

the appellant since the information with regard to income from other sources was not ready, the return could not be filed
up to the due date, i.e.,

October 31, 2007. There was delay in filing the return and the same was filed on November 26, 2007. Since the claim
u/s 801B of the Act had

been made in the return and the return was late as provided u/s 139 of the Act show-cause notice was issued by the
Department to the appellant

on October 27, 2009. The assessment was finalised, vide order dated December 15, 2009, and the claim u/s 801B of
the Act was disallowed by

holding that the return had not been filed within the stipulated period as provided u/s 80AC read with section 139 of the
Act. Feeling aggrieved,

the appellant filed an appeal before the Commissioner of Income tax (Appeals) (CIT(A)). The Commissioner of income
tax (Appeals) dismissed

the appeal, vide order dated March 7, 2011, annexure A.3, holding that since the return had been filed late, the
deduction had been rightly

rejected. Still not satisfied, the appellant filed appeal before the Tribunal. Vide order dated December 16, 2011,
annexure A.4, the Tribunal

dismissed the appeal Hence, the instant appeal by the assessee.

3. Learned counsel for the appellant submitted that the claim of the assessee for the assessment year 2007-08 was
declined on the ground that the

return which was filed u/s 139 of the Act was belated as the same was e-filed on November 15, 2007, whereas the due
date was October 31,

2007. It was urged that the Central Board of Direct Taxes (CBDT) had issued notification dated October 31, 2007,
annexure A5, whereby in

exercise of powers u/s 119 of the Act, the Board had extended the date for filing of the returns and reports of audit up to
November 15, 2007,

instead of October 31, 2007. It was urged that in view thereof in terms of sub-sections (6) and (7) of section 260A of the Act, since these matters

go to the root of the case, the same require to be taken up by this court and the case is required to be remanded to the Tribunal to adjudicate

afresh in the light of the aforesaid notification.

4. Learned counsel for the Revenue on the other hand besides supporting the order passed by the Tribunal submitted that the said notification was

applicable in the case of companies and firms and the assessee was not covered by this. However, we are not impressed by the argument. After

hearing learned counsel for the parties and in the interest of justice, we are of the view that the matter requires to be adjudicated afresh as the said

notification goes to the root of the matter and in view of sub-sections 6 and 7 of section 260A of the Act the same can be entertained by this court.

Accordingly, while setting aside the order dated December 16, 2011, annexure A-4 passed by the Tribunal, the matter is remanded to the Tribunal

to decide it afresh in accordance with law after affording an opportunity of hearing to the parties. The appeal stands disposed of.