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19 December 2019

Supreme Court decision on filing of revised return of income by an amalgamated company beyond the prescribed time limit

Supreme Court¹ upholds validity of a revised return of income filed (in paper form) beyond the prescribed time limit in the Indian Income-tax Act, 1961, by an amalgamated company pursuant to amalgamation of another company into itself. This would be for filing a revised return of income without obtaining a condonation of delay from the Central Board of Direct Taxes.

Background:

- Dalmia Power Limited (Dalmia Power) and Dalmia Cement (Bharat) Limited (Dalmia Cement) were part of separate amalgamation transactions, both having the appointed date of 1 January 2015 (in Assessment Year (AY) 2015-16). The scheme of amalgamation in the context of Dalmia Power was approved by the National Company Law Tribunal (NCLT) in October 2017 and that of Dalmia Cement was approved in May 2018 (collectively referred to as "Scheme").
- Both companies filed their revised returns of income (return) for AY 2015-16 and AY 2016-17 in November 2018 in paper form, as electronic filing was not possible by that time as the statutory time limit to file a revised return for the years in question had expired by then. The Scheme permitted the companies to file such a revised return even after the expiry of the statutory time limit.
- The tax department treated the revised returns as invalid on the following grounds –
 - the revised returns were filed after the expiry of the statutory time limit specified under Section 139(5) of the Indian Income-tax Act, 1961 (the Act) for revision of a return;
 - the revised returns were filed in paper form, instead of being filed in electronic form as required under Rule 12(3) of the Indian Income-tax Rules, 1962 (the Rules); and
 - the companies had not sought a condonation from the Central Board of Direct Taxes (CBDT) under Section 119(2)(b) of the Act, read with CBDT Circular No. 9 of 2015 for the delay in filing the revised returns.
- The companies challenged the rejection of the revised returns by way of writ petitions before the Madras High Court (Court). A single judge bench allowed the writ petition by way of detailed order² after examining the above aspects.
- The tax department filed an appeal before the Division Bench of the Court against the order of the single judge bench. The Division Bench of the Court allowed the appeal by way of detailed order³ and observed that the tax department is bound to consider revised returns filed pursuant to a scheme of amalgamation approved by the NCLT beyond the statutory time limit prescribed in the Act, only if the revised returns are filed in accordance with the prescribed statutory procedure including seeking condonation of delay.

¹ Civil Appeal Nos.9496-99 of 2019.

² W.P. (MD) Nos. 25314, 25315, 25317 & 25318 of 2018.

³ W.A. (MD) Nos. 566 to 569 of 2019.

- The companies filed an appeal before the Supreme Court against the order of the Division Bench of the Court.

Issue for consideration:

Whether the tax department ought to have permitted the companies to file the revised return after the expiry of the due date prescribed under Section 139(5) of the Act, on account of the pendency of proceedings for amalgamation under Sections 230-232 of the Companies Act, 2013?

Ruling of the Supreme Court:

- The Supreme Court noted that the Scheme had a specific mention to address the situation and permitted the companies to file a revised return even after the expiry of the statutory time limit. Accordingly, the companies filed their revised returns belatedly. The re-computation would have a bearing on the total income of the companies particularly on matters in relation to carrying forward losses, unabsorbed depreciation etc.
- The Supreme Court noted that the tax department had not objected to the Scheme in the course of the NCLT proceedings despite a notice of the same. Once the schemes were sanctioned by NCLT, the Scheme attains statutory force⁴.
- The Supreme Court observed that with effect from the appointed date, the amalgamating companies ceased to exist, and the assets, profits and losses etc. were transferred to the books of the amalgamated companies.
- The Supreme Court observed that provisions of section 139(5) of the Act was not applicable to the facts and circumstances of the case since the revised returns were not filed on account of an omission or wrong statement or omission contained therein. The delay occurred on account of the time taken to obtain sanction of the Scheme from the NCLT. It was impossible for the appellants to file revised returns before the due date.
- The Supreme Court noted that provisions of section 119(2)(b) of the Act applied in the context of delay in making filings on account of genuine hardship faced by the taxpayer at such time. Further, it held that such provisions would not be applicable in a case where the taxpayer has restructured their business and filed a revised return with the prior approval and sanction of the NCLT, without any objection from the tax department.
- The Supreme Court relying on judicial precedents⁵ observed that Rules of procedure have been construed to be the handmaiden of justice. The purpose of assessment proceedings is to assess the tax liability of an assessee correctly in accordance with law⁶.
- Section 170(1) of the Act provides that the successor of assessee shall be assessed in respect of income of previous year after date of succession. Accordingly, the Supreme Court observed that in view of the provisions of section 170(1) of the Act, the tax department was required to assess the income of the companies after taking into account the revised returns filed after amalgamation of the companies.

⁴ On this point, reliance was placed on the decisions of the Supreme Court in the case of J.K. Bombay Private Limited vs New Kaiser-I-Hind Spinning & Weaving Co. (AIR 1970 SC 1041).

⁵ Kailash vs Nankhu (2005) 4 SCC 480; State of Punjab vs Shamlal Murari (1976) 1 SCC 719.

⁶ National Thermal Power Co. Ltd. vs CIT (1977) 7 SCC 489

Comments:

The decision of the Supreme Court will provide relief from prolonged litigation and hardship, to companies where there is a need to file revised return beyond the due date prescribed under the Act and without seeking condonation of delay from CBDT. Further, it may be prudent to incorporate a clause in the Scheme enabling companies to file revised returns beyond limit prescribed under the Act without incurring liability on account of interest and penalty.



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