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

Madras High Court<sup>1</sup> upholds validity of a revised return of income filed (in paper form) by an amalgamated company pursuant to amalgamation of another company into itself beyond the time limit prescribed in the Indian Income-tax Act, 1961 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.
- 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 of amalgamation 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).

#### Issue for consideration:

Whether a revised return filed (in paper form) by an amalgamated company pursuant to the amalgamation after the expiry of the statutory time limit specified under Section 139(5) of the Act, as permitted by the scheme of amalgamation approved by the NCLT, is valid in law, even in the absence of seeking a condonation of delay from the CBDT?

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<sup>1</sup> W.P. Nos.25314, 25315, 25317 & 25318 of 2018.

## **Ruling of the Court:**

- The Court noted that the scheme of amalgamation 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.
- The Court further noted that Section 139(5) of the Act applies to a revised return filed where an error or omission was detected in the original return by the taxpayer, and could not be stretched to cases where filing a revised return became necessary due to an amalgamation having a retrospective appointed date.
- Similarly, the Court noted that the CBDT Circular No. 9 of 2015 issued under 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. The Court held that such provisions would not govern a case where the scheme of amalgamation permitted filing a revised return even after the expiry of the statutory time limit.
- The Court noted that a scheme of amalgamation when approved, ceases to be a mere agreement and acquires statutory force binding all parties. The Court noted that the tax department had not objected to the amalgamation in the course of the NCLT proceedings despite a notice of the same, and had also not impugned the NCLT order sanctioning the amalgamation. In such a scenario, the NCLT order has attained finality and all consequences (including tax consequences) of a retrospective appointed date, will be determined accordingly and will be binding on the tax department<sup>2</sup>. The Court held that the tax department cannot have recourse to Section 139(5) of the Act to reject a revised return filed in such a situation<sup>3</sup>, as held by the Court earlier in the case of *Pentamedia Graphics Limited vs ITO [2010] 236 CTR 204 (Mad)*.
- The Court noted that there was no express statutory bar on filing a revised return even after the expiry of the statutory time limit if permitted by the scheme of amalgamation. In the absence of such express statutory bar, no such restriction or limitation could be imposed to override the scheme of amalgamation which upon approval had obtained a statutory force.
- The Court also held that Rule 12(3) of the Rules that required a return to be filed in electronic form, being a procedural provision, cannot override a substantive right of the taxpayer, and hence, a revised return filed in paper form in the current situation could not be regarded as invalid on this ground.

## **Conclusion:**

While such position was being practically adopted by amalgamated companies, this decision of the Madras High Court serves as a very useful direction so as to avoid unnecessary litigation and hardship for the concerned taxpayers.

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<sup>2</sup> On this point, reliance was placed on the landmark decisions of the Supreme Court in the case of *J.K. Bombay Private Limited vs New Kaiser-I-Hind Spinning & Weaving Co. AIR 1970 1041 SC* and *Marshall Sons & Co. (India) Limited vs ITO [1997] 223 ITR 809 (SC)*.

<sup>3</sup> The Court held the same earlier in the case of *Pentamedia Graphics Limited vs ITO [2010] 236 CTR 204 (Mad)*.



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