Filing of Revised Return of income by Amalgamated company beyond the prescribed time limit

1. Brief overview

- Dalmia Power Limited ('Dalmia Power') and Dalmia Cement (Bharat) Limited ('Dalmia Cement') entered into 4 interconnected schemes of amalgamation with 9 companies wherein Dalmia Power and Dalmia Cement are transferee/ amalgamated companies with appointed date being **1 January 2015**. The scheme of amalgamation was approved by the National Company Law Tribunal ('NCLT') Guwahati and NCLT Chennai in August 2017 and May 2018 respectively which would come into effect from 30 October 2018.

- Both companies filed their revised return of income for AY 2015-16 and AY 2016-17 in November 2018 in paper form, as the statutory time limit to file a revised return (in electronic form) for the subject years 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 Income tax department treated the revised returns, filed by Dalmia Power and Dalmia Cement as invalid on the following grounds –

  (i) 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');

  (ii) 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

  (iii) The companies did 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').

2. Ruling by the Court (Single Bench)

- 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.

- Further, 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 the department had not objected to the scheme of amalgamation despite intimating the same and had also not impugned the NCLT order sanctioning the said scheme. 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 as well.

- 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 noted that Rule 12(3) of the Rules, that requires returns 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, which is the matter in the current case, could not be regarded as invalid on this ground.

- In arriving at the conclusion, the Court also referred to the decision of the Supreme court in the case of **Marshall Sons & Co. (India) Ltd. Vs ITO** wherein it was held that when the Court does not prescribe any specific date but merely sanctions the scheme presented, it would follow that the date of amalgamation/date of transfer is the date specified in the scheme as 'the transfer date'.

3. Ruling by the Court (Division Bench)

- Aggrieved by the decision of the Single Bench court, the department filed an appeal before the Division bench of the Court against the order of the Single judge bench.

- The Court held that the specific clause relating to filing of revised returns, as mentioned in the scheme of amalgamation, would have to be interpreted as an enabling provision that merely permits companies to file revised returns even after the expiry of the statutory time limit, but the same has to be done only as per the prescribed statutory procedure and not as a matter of entitlement that binds the other statutory authorities.

- The Court noted that the contrary view as being argued by the companies would effectively render the NCLT taking over the jurisdiction of other statutory authorities, a result that is inconsistent with the fact that the NCLT merely exercises supervisory jurisdiction while approving any scheme of arrangement and is also not a subject matter expert in the areas dealt by other statutory authorities.

- Accordingly, the Court held that the companies may file revised returns after the expiry of the statutory time limit prescribed in the Act by complying with the prescribed statutory procedure, which is seeking a condonation of delay from the CBDT.

4. Ruling by Supreme Court

- Aggrieved by the decision of the Division Bench court, the assessee filed an appeal before the Supreme court against the order of the Division judge bench.

- The Supreme court noted that the department did not raise any objection within the stipulated period of 30 days despite service of notice and therefore it was presumed that the department did not have any objection on the proposed scheme of amalgamation.

- The Supreme court held that section 139(5) of the Act makes it clear that where an assessee furnishes a return under sub-section (1) or sub-section (4) of section 139 and later discovers an omission or mistake therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. The said provision cannot be applied in the current case as the delay occurred is on account of the time taken to obtain sanction of the Schemes of Arrangement and Amalgamation from the NCLT.

- The Supreme Court also held that Section 119(2)(b) of the Act applies in cases of genuine hardship to admit an application, claim any exemption, deduction, refund or any other relief under this Act after the expiry of the stipulated period under the Income Tax Act. The same could not be applied where an assessee has restructured its business and filed a revised return of income with the prior approval and sanction of the NCLT.

- Further, section 170(1) of the Act provides that the successor of an assessee shall be assessed in respect of the income of the previous year after the date of succession. In the present case, the predecessor companies/ transferor companies have been succeeded by the Appellants/ transferee companies and hence the transferee companies have to be assessed after taking into account the income of the transferor, from the appointed date.

- In light of the above, the Supreme Court directed the income-tax department to accept the revised returns of income for the years in question and to complete the assessment after taking into account the Schemes of Arrangement and Amalgamation as sanctioned by the NCLT.

5. Concluding remarks

The position as adopted in this case was being practically adopted by various amalgamated companies as they could not file electronic revised return after the timeline prescribed. This decision of the Supreme court would help amalgamated companies to support their claim of paper return and would avoid unnecessary litigation and hardship faced by them.

Further, this judgement could lead to more scrutiny of scheme of amalgamation or arrangement by tax authorities before approval by the NCLT so as to protect the interest of the Revenue.

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