



25.04.2000 Present: Mr.Krishan Mahajan counsel for the petitioners  
Mr.R.C.Pandey with Ms.Prem Lata Bansal, counsel  
for the respondent

CWP No. 901/2000 & CM-1454/2000

Notice to show cause why the petition be not  
admitted.

Mr.R.C.Pandey accepts notice on behalf of the  
respondent.

Since a short point is involved, with the  
consent of learned counsel for the parties, we proceed  
to dispose of this petition.

The main grievance of the petitioner in this  
case is that the claim of the petitioner for deduction  
under Section 80HHC of the Income-tax Act, 1961 has not  
been allowed by the competent authority. The  
petitioners filed a return with respect to the  
assessment year 1994-95 on 9th November, 1994 claiming a  
sum of Rs.3,91,991/- as deduction under Section 80HHC of  
the Income-tax Act in respect of the export turnover of  
the company. The claim appears to have not been allowed  
on the ground that the money was not received within the  
statutory period of six months. The dispute centres  
around the issue as to whether the petitioner was  
required to make an application for extension of time  
for claiming deduction under Section 80HHC(2)(a) of the  
Act and if so, whether it was to be made before the  
expiry of the period of six months or it could be made  
subsequently also. In this connection, besides relying

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on the decision of the Allahabad High Court in Azad Tobacco Factory (P) Ltd. v. CIT 1996 (85) Taxman ~~280~~ Reports 281, the learned counsel for the petitioner has drawn our attention to the provision contained under Section 80HHC. He has particularly relied on the words "....be allowed in computing the total income of the assessee; a deduction of the profits derived by the assessee from the export of such goods and merchandise". On the basis of the said provision it is submitted that it is the function of the Commissioner to allow deduction and no separate application for claiming deduction has to be made. On the other hand, learned counsel for the Revenue submits that the assessee is required to make an application otherwise how the Commissioner is to know the reasons justifying extension of time. The relevant provision dealing with the question of the extension of time as applicable during the assessment year in question was:

"where the Chief Commissioner or the Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further time as the Chief Commissioner or Commissioner may allow in this behalf".

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Relying on this provision, learned counsel for the Revenue emphasised that the assessee has to disclose the reasons justifying extension of time for getting foreign remittance and this can be done only by way of an application. There is merit in the submission of the learned counsel for the Revenue that facts which justify extension of time can be brought to the notice of the Commissioner only by way of an application. However, point for consideration is that there is no time limit prescribed for making such an application. As a matter of fact learned counsel for the Revenue concedes that such an application could be made even after the period of six months.

In our view, a party ought to be able to make the application after expiry of the period of six months. Rather, in the normal course, the occasion for making such an application would arise only when the period of time has already expired. There is some controversy about the application for extension of time having been made by the petitioner on 4th August, 1994. The Revenue denies that any such application was ever made. However, there is no dispute that on 17th February, 1998 the petitioner had again applied to the Commissioner for extension of time under Section 80HHC. This application was rejected vide letter dated 12th May, 1998 simply on the ground that the petitioner had

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not made the application alleged to have been filed on 4th August, 1994. In our view this approach of the Commissioner was not correct. Since we have expressed the view that the application could have been filed even after the expiry of period of six months, the Commissioner should have independently decided the application of the petitioner, dated 17th February, 1998 on merits. Rejection of the application simply on the ground that no application was made on 4th August, 1994 was totally uncalled for. Thus the present petition succeeds and the Commissioner is directed to decide the application of the petitioner dated 17th February, 1998 on merits within four weeks from today. We may add by way of clarification that we are not expressing any opinion about the alleged application dated 4th August, 1994.

This writ petition is disposed of accordingly with no order as to costs.

ARUN KUMAR, J.

25th April, 2000

"v"

D.K. JAIN, J.