



H.C.D.-I(a) Continuation Sheet

Sr. No.	Date	Orders
*	+	<p>IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>CW 4574/2002</p> <p>COMMISSIONER OF INCOME TAX DELHI Petitioner Through Mr.Rakesh Kr.Singh.</p> <p>versus</p> <p>AERO LEATHERS P. LTD. & ORS. Respondent Through None.</p> <p>CORAM: HON'BLE MR. JUSTICE D.K. JAIN HON'BLE MS. JUSTICE SHARDA AGGARWAL</p> <p style="text-align: center;"><u>ORDER</u> 31.07.2002</p> <p>By this ingenious writ petition the Commissioner of Income Tax, Delhi-I, New Delhi prays for an order directing exclusion/waiver of 180 days period of limitation as prescribed under Section 142(2C) of the Income Tax Act, 1961 (for short the Act), by such time, which has been taken in the pending criminal proceedings after 18th February 2002. A further direction is sought to the police authorities and the trial Court to permit the Special Auditor, appointed under Section 142(2A) of the Act, to have inspection of the records of the assessee, lying with them?</p> <p>On a query by the Court as to how a period of limitation, prescribed in a statute could be extended, learned counsel for the petitioner while referring us to Section 153(3) (ii) of the Act, would urge that</p>



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		<p>since assessment in the case is to be made in consequence of an order of the criminal court under Article 226 of the Constitution this Court has ample powers to direct exclusion of time taken by the statutory auditors for completing the audit. In support of the said proposition, learned counsel has placed reliance on a decision of the Supreme Court in <u>Grindlays Bank Ltd. Vs. Income-Tax Officer, Calcutta, & Ors.</u>, (1980) 122 ITR 55 and on a decision of the Calcutta High Court in <u>Cachar Plywood Ltd. Vs. Income-Tax Officer, "A" Ward, Karimganj Dist., Cachar & Anr.</u>, (1978) 114 ITR 379.</p> <p>We are unable to persuade ourselves to agree with the learned counsel. The Act is a complete code. It prescribes a particular period of limitation for completion of assessment. It also provides for enlarging the period of limitation under certain contingencies specified therein. Only the period relating to the specified contingencies can be excluded while computing the period of limitation laid down in Section 153 of the Act. Ordinarily, no Court, including this Court, even while exercising extraordinary jurisdiction under Article 226 is competent to enlarge the time limit prescribed in the Act. Though, in an appropriate case where the Court feels that an assessee may not derive undue advantage</p>



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		<p>on account of delay in the Court proceedings, it may direct making of an assessment even beyond the period of limitation, which, in our opinion, is not the case here. We have not been shown any Court order or direction which had prevented the assessing officer from proceedings with the assessment for the relevant assessment year. We are of the view that the alleged non-co-operation on the part of the assessee with the statutory auditors is no ground for us to direct enlargement of period of limitation for completion of assessment. On a bare reading of Sub-clause (ii) of Sub-section (3) of Section 153, it is clear that it has no application on the facts of the present case.. In the instant case, admittedly, there is no order or direction by any Court with reference to assessment of the assessee, which could raise a bar of limitation under this provision for making the assessment.</p> <p>The two aforementioned decisions relied upon by the learned counsel are of no avail to the petitioner. A bare glance at the judgments would show that in both the cases directions with regard to the completion of proceedings were issued by the Courts after recording a finding that delay in the Court proceedings was responsive for the impasse and, therefore, in order to neutralise unfair advantage to a party, direction to exclude the said period was considered necessary, which</p>



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		<p>is not the case here. As noticed above, in the present case there has been no interdiction by any court. Enlargement of time to complete assessment is being sought by the Commissioner on the ground that the statutory auditors have not been able to complete the audit on account of non-cooperation by the assessee.</p> <p>Insofar as, direction with regard to inspection of the records stated to be lying with the police or the Court, is concerned, the Revenue is free to move the authority concerned for inspection in accordance with the procedure prescribed in the Code of Criminal Procedure, 1973. As and when such an application is moved, we have no doubt that it shall be considered on its own merits in accordance with law.</p> <p>For the foregoing reasons, the petition being without any merit is dismissed in limine.</p> <p style="text-align: right;"><i>D.K. Jain</i> D.K. JAIN, J.</p> <p style="text-align: right;"><i>Sharda Gaggarwal</i> SHARDA GAGGARWAL, J</p> <p>JULY 31, 2002 'SS'</p> <p style="text-align: center;">- RP 8588/02</p>