

IN THE HIGH COURT FOR THE STATE OF TELANAGANA
AT HYDERABAD

20333
W.P. No. ~~20333~~ OF 2023

Between

M/s. Modi Housing Private Limited,
Rep. by its Managing Director Soham Modi,
S/o. Late Satish Modi, R/o.5-4-187/3&4,
Soham Mansion, M.G. Road, Secunderabad-500003.

...Petitioner.

AND

1. Central Board of Direct Taxes,
Rep. by its Chairman,
Room No.150, North Block,
New Delhi - 110001.
2. Commissioner,
Income Tax Department, Circle No.8,
I.T. Towers, AC Guards, Masab Tank,
Hyderabad - 500004.
3. Additional Commissioner,
Income Tax Department, Circle No.8,
I.T. Towers, AC Guards, Masab Tank,
Hyderabad - 500004.
4. Income Tax Officer,
Ward No.16(3), I.T. Towers,
AC Guards, Masab Tank,
Hyderabad - 500004.

...Respondents

For MODI HOUSING PVT. L.

Director

AFFIDAVIT

I, Soham Modi, S/o. Late Satish Modi, aged 50 Years, Occ: Business,
R/o.5-4-187/3&4, Soham Mansion, M.G. Road, Secunderabad-500 003,
do hereby solemnly affirm and state on oath as follows:

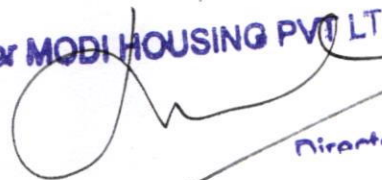
1. I am the Managing Director of the Petitioner Company and as such well acquainted with the facts of the case.
2. I submit that the Petitioner Company is now filing the present Writ Petition questioning the inaction of the Respondent No.1 in considering the representation of the Petitioner dated 18.01.2023 and condoning the non-filing of Form-10-IC for the Assessment Year 2021-22 and considering the same as violation of principles of natural justice and also contrary to the settled position of law.
3. I submit that the Petitioner Company is engaged in the business of construction of residential housing projects. While filing the return of Income for the Assessment Year 2021-22, the Company had availed the benefit of concessional corporate tax regime introduced under Section 115BAA of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The concessional tax regime requires that the Company / Tax payer does

For MODI HOUSING PVT LTD

Director

not avail any of the specified benefits in computing the taxable income of the taxpayer. Therefore, the Company while computing and filing its return of income, did not avail any of the specified benefits and opted to file the return of income by applying the corporate tax regime under Section 115BAA of the Act. The Company filed Form 10IC along with the return of income. It is submitted that subsequently the Company received an intimation under Section 143(1) of the Act, wherein the assessing officer has determined the total income and tax liability of the Company without granting the benefit of the new corporate tax regime as envisaged under Section 115BAA of the Act and raised a demand of Rs.69,97,780/-. This demand was subsequently revised to Rs.71,79,680/- vide order dated 10th January, 2023.

4. It is submitted that the Petitioner Company has instructed its Chartered Accountant, Ajay Mehta to file the Income Tax Returns for the Assessment Year 2021-22 and also instructed him to file Form 10-IC simultaneously at the time of filing the Tax returns for the assessment year 2021-22. It is submitted the said Chartered Accountant had informed the Petitioner Company that all the formalities are completed and the returns along with Form 10-IC was submitted for the assessment year

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Director

2021-22. However, unfortunately the said Chartered Accountant Mr. Ajay Mehta had died on 10.12.2022 and as such the Petitioner Company could not procure the acknowledgement in respect of the submission of Form 10-IC. However, even assuming that Form 10-IC is not filed along with the tax returns in view of the fact that the Petitioner company's tax return for the Assessment Year 2021-22 is filed claiming benefits U/s.115BAA of the Income Tax Act, non-filing of Form 10-IC is not fatal and the same can be considered by condoning the delay in filing the same. Even the settled position of law in this regard clearly indicates that a Form 10-IC even if it is not filed within time the same can be taken into consideration if an application for condoning the delay is filed.

In the case of **Rajkamal Healds and Reeds Pvt Ltd [TS-73-HC-2022(GUJ)]**, the taxpayer filed its return of income for AY 2020-21 by resorting to concessional tax rate U/s.115BAA but failed to file Form No.10-IC electronically, mandatory for availing the concession. Taxpayer's return was thus processed as regular return and a demand was raised. In response to the same, the Hon'ble Gujarat High Court held that the Assessee is at liberty to file an application u/s119(2)(6) seeking permission for condonation of delay in filing of Form No.10-IC and observes that on filing of such application, the Chief Commissioner should expedite it and may exercise discretion keeping in mind the object behind Section 119(2)(b) and also consider the hardships that assessee

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will be face if not permitted to file the Form No.10-IC and that this was not a deliberate default by the assessee. Hon'ble High Court also considers assessee's submission that it was the first return of the assessee filed in accordance with Section 115BAA where inadvertently assessee's Chartered Accountant missed filing the Form No.10-IC. Hon'ble High Court directs the assessee to file an application for condonation of delay.

In the case of **Civitech Developers Private Limited [TS-597-HC-2021(DEL)]**, the taxpayer engaged in the business of real estate projects, was served with draft assessment order on March 10, 2021, in response to which it made a request for personal hearing through video conferencing to explain the disputed issue, and was asked to request for personal hearing through a video link. Despite repeated attempts, the Assessee was unable to make the request through the video link, which was brought to Revenue's notice on April 16, 2021. In this regard, Hon'ble High Court observed that, as the option for personal hearing was not enabled, the petitioner due to technical glitches could not request for personal hearing on the e-portal, consequently, it cannot be said that the petitioner did not opt for personal hearing.

In the case of **L&T Chennai-Tada Tollway Ltd. [2021]** (128 taxmann.com 172 (Madras HC)), the assessing officer rejected the taxpayer's claim of deduction under section 80-IA on the grounds that Form No.10-CCB was not filed along with the return of income. On appeal the matter reached the Hon'ble Madras High Court which held that filing of such form along with the return of income was mandatory,

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however violation of the said rule did not take away the substantive right of the taxpayer in claiming a deduction under section 80-IA of the Act and that a substantive right could not be denied or taken away by virtue of a rule which was only a machinery provision.

5. It is further submitted that the relevant provisions of the Act are as follows:

Relevant Provision of the Act:

As per the provisions of Section 119(2)(b) of Income Tax Act 1961,

*“119(2) Without prejudice to the generality of the foregoing power –
(a)*

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

(c)”

Pursuant to the above, the CBDT has issued **Circular 9/2015 [F.No.312/22/2015-OT]** dated 9th June 2015 (enclosed and annexed as **Annexure-D**) giving instructions to subordinate authorities to deal with applications for condonation of delay in filing refund claim and claim of carry forward of losses under Section 119(2)(b) of the Act. The aforementioned circular contains comprehensive guidelines on the conditions for condonation and procedure to be followed for deciding such matters. Relevant extract of the circular is provided herewith for your ready reference:


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"In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income Tax Act (the Act), the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

(2) The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such application/claims if the amount of such claims is not more than Rs.10 lakhs for any one Assessment Year. The Principal Chief Commissioner of Income-tax/ Chief Commissioner of Income-tax (PLCCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such application/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs.50 lakhs for any one assessment year. The application/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

.....
(3) No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made.

....."

Based on the above circular and relevant provisions of the law, the Petitioner is entitled to seek condonation to file Form 10-IC for AY 2021-22 with the Respondent No.1. Based on the above rulings and facts of the case, it is further submitted that, assuming but not admitting that the form was not filed, the omission was not deliberate and circumstantial and the Company shall be put to extreme hardship if the delay is not condoned. And the procedural requirement of filing the form should not result in denial of the benefits of Section 115BAA as the conditions to avail the same has been complied with by the taxpayer.

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Director

In the light of the provisions of the Act and the judicial interpretations, it can be comprehended that Section 115BAA of the Act is a beneficial provision and shall be construed liberally. The benefits of Section 115BAA cannot be withdrawn merely due to non-filing of Form 10-IC. AY 2021-22 was the first year in which the Company has opted for the concessional tax rate @ 22% wherein the return was not mandating the filing of the acknowledgement number of Form 10-IC due to which corrective action could not taken. As a result of the technical issues, a demand of Rs.71 lakhs has been levied on the Company.

6. I submit that, if the Form 10-IC filed by Petitioner Company is not taken into consideration by condoning the delay, if any, the Petitioner Company would suffer severe hardship as it will not be able to avail the benefits of Section 115BAA on account of the non-compliance of the procedural requirements though the Petitioner Company genuinely pleaded that the same is complied with. Further, the Petitioner Company has already lost the opportunity of availing the specified benefits while filing the return by opting for the Corporate Tax regime U/s. 115BAA of the Act. That being the case the Petitioner Company is deprived from both sides.

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Director

7. It is further submitted that though the Petitioner Company had filed Form 10-IC as per the procedure the same is not reflecting in the Income Tax Portal due to technical glitches and the Petitioner Company is not in a position to prove that the Form is filed in view of the fact that its Chartered Accountant Mr.Ajay Mehta had expired and the Petitioner Company is unable to produce the acknowledgement in this regard. Further it may be seen that the option for availing the benefit U/s. 115BAA has been marked as 'YES' by the Company while filing its Income Tax Returns for the Assessment Year 2021-22 which can be clearly seen in the 143(1) intimation. Thus, even if the company or its Chartered Accountant inadvertently failed to file the Form 10-IC the intention to avail of the Section 115BAA benefit has been expressed thereby further making it clear that the company had foregone the specified benefits that it could have got by filing a return.

8. It is further submitted that as per the guidelines laid down under Circular 9/2015 [F.No.312/22/ 2015-OT] dated 09.06.2015 the amount involved in this application is in excess of Rs.50 lakhs as such the application for condonation of delay is liable only to the 1st Respondent. In view of the facts and circumstances the Petitioner Company has filed

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DIRECTOR

the representation dated 23.01.2023 before the 1st Respondent. However, the 1st Respondent has failed to take any action in this regard or grant condonation of delay in filing Form 10-IC constraining the petitioner company to file the present writ petition.

9. The legal position clearly reflects and mandates that Section 115BAA and its benefits are to be given to the taxpayers liberally and merely due to non-filing of Form 10-IC the Company should not be deprived of the benefits only on technical issues and the Company cannot be penalized and mulcted with a demand of Rs.71,79,680/- which is very huge amount. It is submitted that as against the order the Petitioner Company has already filed an Appeal before the Appellate Authority. It is submitted that subsequently the 1st Respondent herein has issued Circular No.7 of 2023 dated 31.05.2023 whereby the mandatory limits for making application for condonation of delay in filing refund claim etc., U/s. 119(2)(b) of the Income Tax Act, 1961 was altered and the application in respect of the amounts between Rs.50 lakhs and Rs.2 Crores for any assessment year lies to the 2nd Respondent herein. As such the Petitioner herein has immediately made an application dated 14.06.2023 to the 2nd Respondent. In the meanwhile the Appellate

For MODI HOUSING PVT LTD


Authority has sent a communication to the Petitioner to file written arguments in respect of the appeal submitted earlier. The Petitioner immediately submitted the written arguments as well. However, there is no consideration of the appeal or application made by the Petitioner till date. It is further submitted that as it is within the jurisdiction of the 1st Respondent to consider the Form 10-IC which is belatedly filed. The present writ petition is being filed praying the Hon'ble Court to issue a direction to the 1st Respondent to consider the representation of the Petitioner Company for condoning the delay in filing Form 10-IC.

10. It is further submitted that there is every likelihood of the 4th Respondent herein taking coercive action against the Petitioner Company for recovery of the amount under the order passed on 10.01.2023 demanding Rs.71,79,680/- and as such the Petitioner is praying for a stay of recovery of the said amounts before this Hon'ble Court pending disposal of the writ petition.

11. The petitioner has got no other equally efficacious alternative remedy except invoking the extra ordinary original jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

For MODI HOUSING PVT LTD

Director

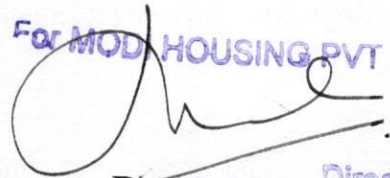
12. The Petitioner has not filed any other Writ Petition or proceeding for the same relief which is claimed in the present Writ Petition and no other proceedings are pending before any other forum with respect to the same subject matter.

13. It is necessary that this Hon'ble court may be pleased to direct the Respondents not to take any coercive action against the Petitioner Company pursuant to the order passed in proceedings no.825482160291122 dated 10.01.2023 pending disposal of the Writ Petition.

14. It is therefore prayed that this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction declaring the inaction in considering the representation filed by the Petitioner Company dated 18.01.2023 praying for condonation of the delay in filing Form 10-IC for the Assessment Year 2021-22 as arbitrary and illegal and consequently direct the Respondents 1 and 2 to condone the said delay and pass such other consequential or procedural order or orders in the interest of justice.

Sworn and signed before me on this
the 5th day of July 2023 at Hyderabad.

Advocate, Hyderabad

For MOD HOUSING PVT LTD

Deponent. Director

VERIFICATION

I, Soham Modi, S/o. Late Satish Modi, Aged 50 Years, Occ: Business, R/o.5-4-187/3&4, Soham Mansion, M.G. Road, Secunderabad-500 003, being the Managing Director of the Petitioner Company do hereby declare that the contents of the above paragraphs are true and correct to the best of knowledge, information and belief and hence verified on this the 3rd day of July, 2023 at Hyderabad.

For MODI HOUSING PVT LTD

Director
Deponent

Counsel for petitioner

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
APPELLATE SIDE

No. OF 2023

AGAINST

No. OF 2023

On the file of the Court of
Modi Housing Pvt Ltd

Appellant/
Petitioner

V E R S U S

Central Board of Direct Taxex & 3 Other's

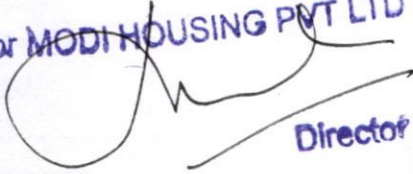
...Respondent

I/We Modi Housing Pvt Ltd Rep by its Managing Director
Soham Modi, Occ: Business, R/o 5-4-187/3&4, MG Road
Secunderabad.

Appellant/Respondent in the above application do hereby
appoint and retain

PERI PRABHAKAR (6390)
ADVOCATE

Advocate/s of the High Court to appear for ME/US in the
above APPEAL/PETITION and to conduct and prosecute (or
defend) the same and all proceedings that may be taken in
respect of any application connected with the same or any
decree or order passed therein including all applications for return of
documents or the receipt of any money that may be payable to ME/US in
the said Appeal/ Petition and also to appear in all applications under
Clause XV of the Letters patent and in all applications for review and for
leave to the Supreme Court of India and in all applications for review of
Judgment.

For MODI HOUSING PVT LTD

Director

I certify that the contents of this Vakalat were read out and explained in
(.....) in my presence to the executants of executants who
appeared perfectly to understand the same and made his /her/their
signatures or mark in my presence.

Executed before me this.....day of2023

Advocate, Hyderabad

S.R. No.

_____ District

IN THE HIGH COURT FOR THE STATE
TELANGANA AT HYDERABAD

APPELLATE SIDE

W.P. No. 20333 of 2023
AGAINST

No. _____ of 2023

VAKALAT

ACCEPTED

Modi Housing Pvt Ltd

..Appellant

Versus

Central Board of Direct Taxes
& 3 Other's

..Respondent

PERI PRABHAKAR (6390)
ADVOCATE

Advocate for Petitioner

Address for Service:

Ph:23210956

102, NARVEN'S VAISHNO
SUDHAM, 6-3-1089 & 1089/A,
GULMOHAR AVENUE, VILLA
MARIE COLLEGE LANE, RAJ
BHAVAN ROAD, SOMAJIGUDA,
HYDERABAD-82, TELANGANA.
9849026415

Email: periprabhakar@yahoo.co.in
periprabhakar9@gmail.com