



DEL HC: Paying Tax Twice Over Same Income Constitutes Hardship, Permits Belated Revised Return U/S 119(2)(B)

Facts of the Case:

Sojitz Asia Pte. Ltd. ('Petitioner' or 'Assessee'), a Singapore-based entity, earned interest income of Rs. 7,58,90,455, which was initially reflected by the deductor in Form 26AS for AY 2016-17. Accordingly, the Assessee offered the said interest income to tax in its return for AY 2016-17. Subsequently, the deductor revised Form 26AS and reflected the very same interest income in AY 2018-19 instead of AY 2016-17. Relying on the revised Form 26AS, the Assessee again offered the same income to tax in AY 2018-19, resulting in the same income being taxed twice.

Upon subsequently discovering the error, the Assessee filed three rectification applications u/s 154 on March 4, 2019, June 7, 2019 and July 31, 2019. The applications remained pending and the final application was rejected by the Assessing Officer on December 26, 2022. The Assessee thereafter pursued remedies u/s 264, but the revision applications were also rejected. Consequently, the Assessee filed an application u/s 119(2)(b), seeking permission to file a revised return for AY 2016-17 by excluding the interest income which had already been taxed in AY 2018-19.

Contentions of the Petitioner:

The Assessee submitted that the double taxation was purely inadvertent and occurred because the deductor initially reported the interest income in Form 26AS for AY 2016-17 and subsequently revised the Form 26AS, without the Assessee being aware that the same income had been shifted to AY 2018-19. It was contended that the Assessee had acted bona fide and had not slept over its rights, as it had initiated remedial proceedings soon after discovering the mistake.

The Assessee further submitted that payment of tax twice on the very same income constituted genuine hardship and represented a fit case for exercise of the discretionary power u/s 119(2)(b). It was therefore requested that the delay in filing the revised return be condoned and the Assessee be permitted to file a revised return for AY 2016-17 excluding the amount of Rs. 7,58,90,455 which had already been offered to tax in AY 2018-19.

Contentions of Revenue:

The Revenue contended that the application u/s 119(2)(b) was liable to be rejected on account of the substantial delay of approximately six years. It was argued that the Assessee had repeatedly invoked remedies which, according to the Revenue, were not appropriate, and therefore the delay could not be attributed to the Department.

The Revenue further contended that the Assessee had failed to establish the existence of any special circumstances or genuine hardship warranting exercise of the discretionary power u/s 119(2)(b). It was also submitted that the Assessee had failed to establish that the interest income did not properly pertain to AY 2016-17 and that the delay and laches justified rejection of the application.

Observations and ruling of High Court:

The Delhi High Court observed that the undisputed facts clearly established that the same interest income of Rs. 7,58,90,455 had been offered to tax in both AY 2016-17 and AY 2018-19 because of the subsequent revision of Form 26AS by the deductor. The Court noted that the Assessee had acted bona fide and, after discovering the mistake, had pursued the available remedies through rectification and revision proceedings.



The Court held that the expression “special circumstances” for purposes of section 119(2)(b) cannot be restricted to any predefined formula or limited set of circumstances. Such circumstances must be appreciated having regard to the facts and surrounding circumstances of each case. The Court held that payment of tax twice on the same income itself constituted genuine hardship. Since tax is required to be paid only once in respect of a particular income, refusal to provide appropriate relief in such circumstances could result in unjust enrichment of the Union of India.

The Court also noted that the Assessee had filed three rectification applications within a reasonable period after discovering the mistake, demonstrating promptness on its part. The Court therefore rejected the view that the Assessee had failed to establish hardship and observed that payment of tax twice over the same income was, by itself, sufficient to constitute hardship.

Accordingly, the High Court quashed the order of the CIT(International Taxation) rejecting the application u/s 119(2)(b) and allowed the Assessee's application. The Assessee was permitted to file an online or offline revised return for AY 2016-17. The Assessing Officer was directed to examine the revised return in accordance with law, after verification of the facts, and pass an appropriate order within three months from the date of filing of the revised return.

Citation:

Sojitz Asia Pte. Ltd TS-1436-HC-2026(DEL)

Our Comments:

The judgment recognises that genuine hardship u/s 119(2)(b) has to be determined contextually and that double taxation of the same income can itself constitute sufficient hardship. It is also relevant for demonstrating that an Assessee's prompt pursuit of rectification and other statutory remedies supports a claim for condonation of delay, particularly where the Assessee is seeking correction of an inadvertent duplication of income rather than claiming a fresh or otherwise inadmissible deduction.