SUPREME COURT OF INDIA

Dalmia Power Limited

Vs.

Assistant Commissioner of Income Tax Circle 1,

C.A.No.9496-99 of 2019

(Uday U.Lalit and Indu Malhotra,JJ.,)

18.12.2019

JUDGMENT

Indu Malhotra,J.,

SLP(C)No.19678-681 of 2019

1. Leave granted.

2.The issue which arises for consideration in the present Civil Appeals is whether the Department ought to have permitted the assessee companies to file the revised Income Tax Returns for the Assessment Year 2016-2017 after the expiry signatu^No,verified of the due date prescribed under Section 139(5) of the Income Tax Act, 1961 on account of the pendency of proceedings for amalgamation of the assessee companies with other companies in the group under Sections 230-232 of the Companies Act, 2013.

2. The factual background of this case briefly stated, is that:

2.1. The Appellant No.1 - M/s Dalmia Power Limited and Appellant No.2 - M/s Dalmia Cement (Bharat) Limited are public limited companies, incorporated under the Companies Act, 1956. The Appellants have their registered offices at Dalmiapuram Lalgudi Taluk, Dalmiapuram, District Tiruchirappalli, Tamil Nadu.

2.2 The Appellant No.1 is engaged in the business of building, operating, maintaining, and investing in power and power related businesses, directly or through downstream companies. The Appellant No.2 is engaged in the business of manufacturing and selling of cement, generation of power, maintaining and operating rail systems and sold waste management system which provide services to the cement business.

2.3 The Appellant No.1 filed its original Return of Income under Section 139 (1) of the Income Tax Act on 30.09.2016 for A.Y. 2016-2017 declaring a loss of Rs. 6,34,33,806/-. Similarly, Appellant No.2 filed its original Return of Income under Section 139 (1) of the

Income Tax Act on 30.11.2016 for A.Y. 2016-2017 declaring NIL income (after setting off Brought Forward Loss amounting to Rs. 56,89,83,608/- against Total income of Rs. 56,89,83,608/-).

2.4 With a view to restructure and consolidate their businesses, and enable better realisation of the potential of their businesses, which would yield beneficial results, and enhanced value creation for their shareholders, better security to their creditors and employees, the Appellants (also referred to as "Transferee Companies" or "Amalgamated Companies") entered into 4 interconnected Schemes of Arrangement and Amalgamation with 9 companies viz. DCB Power Ventures Ltd., Adwetha Cement Holdings Ltd., Odisha Cement Ltd., OCL India Ltd., Dalmia Cement East Ltd., Dalmia Bharat Cements Holdings Ltd., Shri Rangam Securities & Holdings Ltd., Adhunik Cement Ltd., Adhunik MSP Cement (Assam) Ltd. (also referred to as "Transferor Companies" or "Amalgamating Companies") and their respective shareholders and creditors.

The Appointed Date of the Schemes was 01.01.2015, and would come into effect from 30.10.2018.

2.5 The Transferor and Transferee Companies filed Company Petitions under Sections 391 to 394 of the Companies Act, 1956 before the Madras and Guwahati High Courts.
On the coming into force of the Companies Act, 2013, the Company Petitions were transferred to NCLT, Chennai and NCLT, Guwahati.

2.6 The Schemes were duly approved and sanctioned by the NCLT, Guwahati vide Orders dated 18.05.2017 and 30.08.2017. NCLT, Chennai sanctioned the Schemes vide Orders dated 16.10.2017, 20.10.2017, 26.10.2017. 28.12.2017, 10.01.2018, 20.04.2018 and 01.05.2018.

2.7 The Appellants/ Transferee Companies manually filed revised Returns of Income on 27.11.2018 with the Department after the Schemes were sanctioned and approval was granted by the NCLT. The revised Returns were based on the revised and modified computation of total income and tax liability of the Transferor/Amalgamated Companies. In the revised Returns of Income, the Appellant No.1 claimed losses in the current year to be carried forward amounting to Rs.2,44,11,837/-; whereas Appellant No.2 claimed losses in the current year, to be carried forward, amounting to Rs.1105,93,91,494/-.

2.8 The Appellants submit that the revised Returns were filed after the due date for filing revised Returns of Income u/S. 139(5) for the Assessment Year 2016¬2017 since the NCLT passed the final Order on 01.05.2018. Consequentially, it was an impossibility to file the revised Returns before the prescribed date of 31.03.2018.

2.9 A summary of the dates relevant to the case of Appellant No.1 are tabulated as under:

Sl. No.	Particulars	A.Y. 2016-17
1.	Appointed Date of the Scheme	01.01.2015
2.	Filing of original Return of Income under Section 139 (1)	30.09.2016
3.	Due date for filing revised Return of Income u/s 139(5)	31.03.2018
4.	Effective Date of the Scheme	30.10.2018
5.	Date of filing revised Return of Income to give effect to approval of the scheme	27.11.2018

2.10 A summary of the dates relevant to the case of Appellant No.2 are tabulated as under:

Sl. No.	Particulars	A.Y. 2016-17
1.	Appointed Date of the Scheme	01.01.2015
2.	Filing of original Return of Income	30.11.2016
3.	Due date for filing revised Return of Income u/s 139(5)	31.03.2018
4.	Effective Date of the Scheme	30.10.2018
5.	Date of filing revised Return of Income to give effect to approval of the scheme	27.11.2018

2.11 On 04.12.2018, the Department issued a Notice under Section 143(2) of the Income Tax Act to give effect to the approval of the Scheme.

2.12 On 05.12.2018, the Department recalled the Notice dated 04.12.2018 on the ground that the Appellants had belatedly filed their revised Returns without obtaining permission from the Central Board of Direct Taxes ("CBDT") for condonation of delay under Section
119(2)(b) of the Income Tax Act, 1961 read with CBDT Circular No. 9/2015 dated 09.06.2015.

2.13 On 28.12.2018, the Department passed an Assessment Order u/S. 143(3) of the Income Tax Act, stating that in view of the Scheme of Arrangement and Amalgamation, the notice issued under Section 143(2), and the assessment proceedings for A.Y. 2016-2017 had become infructuous with respect to Appellant No.2.

2.14 The Appellants filed Writ Petitions before the Madras High Court praying for quashing of the Order dated 05.12.2018, and for a direction to the Department to complete the assessment for A.Y. 2015-2016 and A.Y. 2016-2017 after taking into account the revised Income Tax Returns filed on 27.11.2018, as well as the Orders dated 20.04.2018 and 01.05.2018 passed by the NCLT, Chennai approving the Schemes of Arrangement and Amalgamation.

2.15 The learned Single Judge of the Madras High Court vide common Judgment and Order dated 30.04.2019 allowed the Writ Petitions filed by the Appellants, and quashed the Order dated 05.12.2018 passed by the Department. The Single Judge held that Clause 64 (c) of the Scheme enabled the Appellants to file their revised Returns of Income beyond the prescribed period under the Income Tax Act. The Department could not override an approved Scheme of Arrangement and Amalgamation, which has statutory force, by rejecting the revised Returns of Income filed by the Appellants as being invalid. The Department did not object to the Schemes notified under Section 230(5) of the Companies Act, 2013. Sections 139(5) and 119(2)(b) of the Income Tax Act as well as the Circular No. 9/2015 issued by the CBDT are not applicable to a case where a revised Return of Income has been filed pursuant to a Scheme of Arrangement and Amalgamation, which has been approved and sanctioned by the NCLT. The Department was not justified in rejecting the revised Return of Income on the ground that it had been filed manually, instead of being filed electronically. Rule 12(3) of the Income Tax Rules requires filing of revised Returns of Income electronically, which is not applicable where revised Returns of Income are filed by the assessee pursuant to a Scheme of Arrangement and Amalgamation approved and sanctioned by the NCLT. Accordingly, the Single Judge directed the Department to receive the revised Returns filed pursuant to the approval of the Schemes of Arrangement and Amalgamation by the NCLT, Chennai and complete the assessment for A.Y. 2015-2016 and A.Y. 2016-2017 in accordance with law within a period of 12 weeks.

2.16 The Department filed Writ Appeals under Clause 15 of the Letters Patent Act challenging the Judgment & Order dated 30.04.2019 passed by the Single Judge. A Division Bench of the Madras High Court vide the impugned Judgment dated 04.07.2019 allowed the Writ Appeals, and reversed the Judgment of the Single Judge. The Division Bench directed the Appellants to comply with the procedure for filing belated revised Returns of Income, and held that Clause 64 of the Scheme can only be construed as an enabling clause. It cannot be inferred that the Department agreed to consider the revised Returns of Income, irrespective of

whether it complies with the procedural and statutory requirements under the Income Tax Act, merely because Clause 64 of the Scheme was not objected to the Department. The NCLT, while sanctioning the Schemes, clarified that the Appellants would be required to approach the relevant statutory authorities for obtaining necessary permissions and compliances. The Department did not consent to waive the procedures or statutory requirements prescribed under S.139(5) and 119(2)(b) of the Income Tax Act in respect of filing of revised Returns of Income.

2.17 The Department vide letter dated 11.07.2019 informed the Appellants that in case they fail to file the revised Returns before the expiry of the limitation period prescribed for completion of assessment in accordance with Explanation 1 to Section 153 r.w. Proviso (1) i.e. 60 days from the date of the impugned Judgment, the assessment for A.Y. 2016-2017 would be conducted on the basis of the original Returns filed by them.

2.18 The Appellants made a representation on 22.07.2019 stating that subsequent to the approval and sanction of the Scheme of Arrangement and Amalgamation, the income of the Transferor companies merged in the hands of the Appellants w.e.f. 01.01.2015, being the Appointed Date as the "date of succession" under S. 170 of the Act. Accordingly, the Appellants requested the Department to give cognizance to the Scheme, and accept the revised Return of Income filed on 27.11.2018,while completing the assessment for the A.Y. 2016-2017.

2.19 The Department informed the Appellants on 05.08.2019 that since the revised Returns were not in accordance with Sections 139(5), 139(3) of the Act r.w. Rule 12(3) of the Income Tax Rules, 1962, the revised Returns were invalid, and could not be considered in view of the procedural requirement under Section 119(2)(b) read with CBDT Circular No. 9 of 2015.

2.20 Aggrieved by the Judgment of the Division Bench, the Appellants have filed the present common Civil Appeals on 09.08.2019 before this Court.

3.We have heard Mr. S. Ganesh, Senior Counsel appearing for the Appellants, and Mr. Arijit Prasad, Senior Advocate appearing for the Department. We have perused the pleadings and written submissions filed by the parties.

4. Discussion and Analysis

4.1 A perusal of Clause 63 (c) of the Scheme of Arrangement and Amalgamation between DCB Power Ventures Ltd., Adwetha Cement Holdings Ltd., Appellant No.1 and Appellant No.2 and their respective shareholders and creditors, as approved and sanctioned by the NCLT, Chennai vide Orders dated 16.10.2017, 20.10.2017 and Corrigendum dated 26.10.2017 shows that the Appellants were entitled to file revised Returns of Income, after the prescribed time limit for filing or revising the returns had lapsed, without incurring any liability on account of

interest, penalty or any other sum. Clause 63 (c) of the said Scheme is set out hereinbelow for ready reference:

"(c) DCBL [Appellant No.2] shall be entitled to, amongst others, file/or revise its income tax returns, TDS/TCS returns, wealth tax returns, service tax, excise duty, sales tax, value added tax:, entry tax:, cess, professional tax or any other statutory returns, if required, credit for advance tax paid, tax deducted at source, claim for sum prescribed under Section 43B of the Income Tax Act on payment basis, claim for deduction of provisions written back by DCBL previously disallowed in the hands of (i) DCB Power pertaining to Power Undertakings and (ii) ACHL and/or pertaining to Amalgamating Undertaking 1, under the Income Tax Act, credit of tax under Section 115JB read with Section 115JAA of the Income Tax Act, credit of foreign taxes paid/withheld etc. if any, as may be required consequent to implementation of this Scheme and where necessary to give effect to this Scheme, even if the prescribed time limits for filing or revising such returns have lapsed without incurring anu liability on account of interest, penaltu or anu other sum. DCBL shall have the right to claim refund.s, tax credits, set-offs and./or adjustments relating to its income or transactions entered into by it by virtue of this Scheme with effect from Appointed Date I and Appointed Date II, as applicable. The taxes or duties paid by, for, or on behalf of the Power Undertakings and Amalgamating Undertaking 1 relating to the period on or after Appointed Date I and Appointed Date II respectively shall be deemed to be the taxes or duties paid by DCBL, and accordingly DCBL shall be entitled to claim credit or refund for such taxes or duties. DPL [Appellant No.1] shall be entitled to, amongst others, file/or revise its income tax returns, TDS/TCS returns, wealth tax returns, service tax, excise duty, sales tax, value added tax, entry tax, cess, professional tax or any other statutory returns, if required, credit for advance tax paid, tax deducted at source, claim for sum prescribed under Section 43B of the Income Tax Act on payment basis, claim for deduction of provisions written back by DPL previously disallowed in the hands of DCB Power pertaining to Amalgamating Undertaking 2 under the Income Tax Act, credit of tax under Section 115JB read with Section 115JAA of the Income Tax Act, credit of tax under Section 115JB read with Section 115 JAA of the Income Tax Actt, credit of foreign tax paid/withheld etc., if any, pertaining to Amalgamating Undertaking 2 as may be required consequent to implementation of this Scheme and where necessary to give effect to this Scheme, even if the prescribed time limits or revising such returns have lapsed without incurring any liability on account of interestt, penalty or any other sum. DPL shall have the right to claim refunds, tax credits, set¬offs and./or adjustments relating to its income or transactions entered into by it by virtue of this Scheme with effect from Appointed Date I. The taxes or duties paid by, for, or on behalf of the Amalgamating Undertaking 2 relating to the period on or after Appointed Date I shall be deemed to be the taxes or duties paid by DPL, and accordingly DPL shall be entitled to claim credit or refund for such taxes or duties."

[emphasis supplied]

4.2 Similarly, Clause 64 (c) of the Scheme of Arrangement and Amalgamation

between Odisha Cement Ltd., OCL India Limited, Dalmia Cement East Ltd., Shri Rangam Securities & Holdings Ltd., Dalmia Bharat Cement Holdings Ltd., Appellant No.1 and Appellant No.2 and their respective shareholders and creditors, as approved and sanctioned by the NCLT, Chennai on 20.04.2018 and 01.05.2018, shows that provisions were incorporated to enable the Appellants to file revised Returns even after the prescribed time limit for filing or revising such Returns had lapsed, without incurring any liability on account of interest, penalty or any other sum. Clause 64 (c) of the said Scheme is extracted hereinbelow for ready reference:

"(c) Amalgamated Company and Transferee [Appellant Nos. 1 and 2] Company shall be entitled to, amongst others, file/or revise its income tax returns, TDS/TCS returns, wealth tax returns, service tax:, excise duty, sales tax:, value added tax:, entry tax, cess, professional tax or any other statutory returns, if required., credit for advance tax paid., tax deducted at source, claim for sum prescribed under Section 43B of the Income Tax Act on payment basis, claim for deduction of provisions written back by Amalgamated Company and Transferee Company previously disallowed in the hand.s of Amalgamating Company and Transferor Company (relating to the Transferred Undertaking) respectively under the Income Tax Act, credit of tax under section 115JB read with section 115JAA of the Income Tax Act, credit of foreign tax paid./withheld., if any, pertaining to Amalgamating Company and Transferor Company (relating to the Transferred Undertaking) as may be required consequent to implementation of this Scheme and where necessary to give effect to this Scheme, even if the prescribed time limited for filing or revising such returns have lapsed without incurring any liability on account of interest, penalty or any other sum. Amalgamated Company and Transferee Company shall have the right to claim refunds, tax credits, set-offs and./or adjustments relating to the income or transactions entered into by them by virtue of this Scheme with effect from Appointed Date. The taxes or duties paid by, for, or on behalf of, Amalgamating Company and Transferor Company (pertaining to Transferred Undertaking) relating to the period on or after Appointed Date, shall be deemed to be the taxes or duties paid by the Amalgamated Company and Transferee Company respectively and Amalgamated Company and Transferee Company shall be entitled to claim credit or refund for such taxes or duties."

[emphasis supplied]

4.3 In compliance with Section 230(5) of the Companies Act, 2013, notices under Form No. CAA. 3 under sub¬Rule (1) of Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules,2016 were sent to the Department. Sub-Section (5) of Section 230 of the Companies Act, 2013 provides as under:

"(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities. the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the

Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals."

[emphasis supplied] Sub-section (5) of Section 230 requires that a notice of the meeting under sub-section (3) of Section 230 along with all the documents pertaining to the scheme, shall be sent to the Central Government, and statutory authorities such as the Income Tax Department, RBI, SEBI, ROC etc. and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement. The statutory authorities could raise objections within 30 days from the date of receipt of the notice, failing which, it would be presumed that they had no representation to make on the proposed schemes of compromise, arrangements and amalgamations.

4.4 Similarly, Rule 8(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 provides that any representation made to the statutory authorities notified under Section 230(5), shall be sent to the NCLT within a period of thirty days from the date of receipt of such notice, and a copy of such representation shall simultaneously be sent to the concerned companies. In case no representation is received within thirty days, it shall be presumed that the statutory authorities have no representation to make on the proposed scheme of compromise or arrangement. Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is set out hereinunder for ready reference:

"(3) If the authorities referred to under sub-rule (1) desire to make any representation under sub-section (5) of section 230, the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case no representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement."

[emphasis supplied]

4.5 The Department did not raise any objection within the stipulated period of 30 days despite service of notice.

4.6 Pursuant thereto, the Schemes were sanctioned by the NCLT, Chennai vide Orders 16.10.2017, 20.10.2017, 26.10.2017, 28.12.2017, 10.01.2018, 20.04.2018 and 01.05.2018; and, vide Orders dated 18.05.2017 and 30.08.2017 by the NCLT, Guwahati. Accordingly, the Schemes attained statutory force not only inter se the Transferor and Transferee Companies, but also in rem, since there was no objection raised either by the statutory authorities, the Department, or other regulators or authorities, likely to be affected by the Schemes.

4.7 As a consequence, when the companies merged and amalgamated into another, the amalgamating companies lost their separate identity and character, and ceased to exist upon the approval of the Schemes of Amalgamation.

4.8 Every scheme of arrangement and amalgamation must provide for an Appointed Date. The Appointed Date is the date on which the assets and liabilities of the transferor company vest in, and stand transferred to the transferee company. The Schemes come into effect from the Appointed Date, unless modified by the Court.

This Court in Marshall Sons & Co. (India) Ltd. v. ITO held that where 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". It was held that:

"14. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz. 1-1-1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it — as has happened in this case — it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under Section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound to take some time because several steps provided by Sections 391 to 394-A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e., the Transferor Company and the Transferee Company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation."

It was further held that pursuant to the Scheme of Arrangement and Amalgamation, the assessment of the Transferee Company must take into account the income of both the Transferor and Transferee Companies. The Court observed as follows:

"15. The counsel for the Revenue contended that if the aforesaid view is adopted then several complications will ensue in case the Court refuses to sanction the scheme of amalgamation. We do not see any basis for this apprehension. Firstly, an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Companies. Secondly, and probably the more advisable course from the point of view of the Revenue would be to make one assessment on the Transferee Company

taking into account the income of both of Transferor or Transferee Companies and also to make separate protective assessments on both the Transferor and Transferee Companies separately. There may be a certain practical difficulty in adopting this course inasmuch as separate balance-sheets may not be available for the Transferor and Transferee Companies. But that may not be an insuperable problem inasmuch as assessment can always be made, on the available material, even without a balance-sheet. In certain cases, best judgment assessment may also be resorted to. Be that as it may, we need not pursue this line of enquiry because it does not arise for consideration in these cases directly."

4.9 In the present case, Appellant Nos.1 and 2/Transferee Companies filed their original Returns of Income on 30.09.2016 and 30.11.2016 respectively. Thereafter, they entered into Schemes of Arrangement and Amalgamation with 9 Transferor Companies in 2017. The Schemes were finally sanctioned and approved by the NCLT, Chennai vide final orders dated 20.04.2018 and 01.05.2018. The Appointed Date as per the Schemes was 01.01.2015. Consequently, the Transferor/ Amalgamating Companies ceased to exist with effect from the Appointed Date, and the assets, profits and losses etc. were transferred to the books of the Appellants/ Transferee Companies/Amalgamated Companies. The Schemes incorporated provisions for filing the revised Returns beyond the prescribed time limit since the Schemes would come into force retrospectively from the Appointed Date i.e. 01.01.2015. Accordingly, the Appellants filed their Revised Returns on 27.11.2018. The re-computation would have a bearing on the total income of the Appellants with respect to the A.Y. 2016-2018, particularly on matters in relation to carrying forward losses, unabsorbed depreciation etc.

5. The counsel appearing for the Department relied on Section 139(5) and 119(2)(b) of the Income Tax Act r.w. Circular No.9 of 2015 issued by the CBDT to contend that the Appellant ought to have made an application for condonation of delay, and sought permission from the CBDT, before filing the revised Returns beyond the statutory period of 31.03.2018. The Appellants having belatedly filed their revised Returns on 27.11.2018, which was beyond the due date of 31.03.2018 for A.Y. 2016-2017, the assessment could only be done on the basis of the original Returns filed by the Appellants.

6. Section 139(5) of the Income Tax Act, as it stood at the relevant time, 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. Section 139(5) of the Income Tax Act is set out hereinunder for ready reference:

"139(5). If any person, having furnished a return under sub-section (1) or sub-section (4) of Section 139, discovers an omission or wrong statement 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"

7. In our view, this provision is not applicable to the facts and circumstances of the present case since the revised Returns were not filed on account of an omission or wrong statement or omission contained therein. The delay occurred on account of the time taken to obtain sanction of the Schemes of Arrangement and Amalgamation from the NCLT.

8. In the facts of the present case, it was an impossibility for the assessee companies to have filed the revised Returns of Income for the A.Y. 2016-2017 before the due date of 31.03.2018, since the NCLT had passed the last orders granting approval and sanction of the Schemes only on 22.04.2018 and 01.05.2018.

9. The counsel appearing for the Department submitted that the Appellants ought to have made a representation to the Board under Section 119(2)(b) of the Income Tax Act for condonation of delay while filing the revised Returns. A perusal of Section 119(2)(b) shows that it is applicable 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. Section 119(2)(b) of the Income Tax Act is reproduced hereinunder for ready reference:

> "119. Instructions to subordinate authorities. (2) Without prejudice to the generality of the foregoing power,—
>
> (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 this 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."
>
> On a plain reading of Section 119(2)(b), we find that this provision would not be applicable where an assessee has restructured their business, and filed a revised Return of Income with the prior approval and sanction of the NCLT, without any objection from the Department. Rules of procedure have been construed to be the handmaiden of justice. The purpose of assessment proceedings is to assess the tax liability of an assessee correctly in accordance with law.

10. Section 170(1) of the Income Tax 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. S.170(1) of the Income Tax Act provides as under:

> "170. Succession to business otherwise than on death. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business

or profession,-
(a) the predecessor shall be a.ssessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession."

Sub-section (1) of Section 170 makes it clear that it is incumbent upon the Department to assess the total income of the successor in respect of the previous assessment year after the date of succession. In the present case, the predecessor companies/transferor companies have been succeeded by the Appellants/transferee companies who have taken over their business along with all assets, liabilities, profits and losses etc. In view of the provisions of Section 170(1) of the Income Tax Act, the Department is required to assess the income of the Appellants after taking into account the revised Returns filed after amalgamation of the companies.

11. In light of the aforesaid discussion, we find that the learned Single Judge had rightly allowed the Writ Petitions. We accordingly set aside the impugned Judgment and Order dated 04.07.0219 passed by the learned Division Bench, and restore the judgment dated 30.04.2019 passed by the learned Single Judge. Accordingly, the Civil Appeals are allowed. The Department is directed to receive the revised Returns of Income for A.Y. 2016-2017 filed by the Appellants, and complete the assessment for A.Y. 2016-2017 after taking into account the Schemes of Arrangement and Amalgamation as sanctioned by the NCLT.

12. Pending Applications, if any, are accordingly disposed of. Ordered accordingly.