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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3071/2022**

KLJ ORGANIC LTD.

..... Petitioner

Through: Mr.Gaurav Jain with Ms.Akshita
Goyal and Mr.Shubham Gupta,
Advocates.

versus

**COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION) – 2**

..... Respondent

Through: Mr.Sanjay Kumar, Advocate.

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Date of Decision: 18th February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVING CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.8883/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) 3071/2022

1. Present writ petition has been filed challenging the order dated 27th March, 2021 passed by Commissioner of Income Tax (International Taxation) -2 ['CIT(IT)'] , New Delhi for the Assessment Year 2018-19. Petitioner also seeks a direction to the Respondent to consider the Revision Petition filed on behalf of the Petitioner under Section 264 Income Tax Act,

1961 ('the Act') on merits after condoning the delay in preferring the petition.

2. Learned counsel for the petitioner states that vide impugned order the Revision petition filed by the Petitioner under Section 264 of the Act was arbitrarily dismissed on the ground of limitation. He states that the Petitioner under the *bona fide* mistake of law and relying on previous orders passed by ITO and CIT(A) in favour of the Petitioner on the same issue, filed an appeal under Section 248 of the Act on 10th April, 2018 under the belief that the said order is appealable. He states that the Petitioner meticulously pursued the said appeal until June, 2019.

3. Learned Counsel for the Petitioner states that the Petitioner came to know that the said appeal is not maintainable as the Petitioner had not paid the tax determined in the order passed under Section 195(2) of the Act. He states that the Petitioner, immediately thereafter, without wasting any time, withdrew the appeal vide letter dated 07th June, 2019 and filed a Revision Petition under Section 264 of the Act within four days i.e 11th June, 2019 against the order dated 16th March, 2018 passed by the ITO.

4. Learned counsel for the Petitioner states that the impugned order is erroneous in terms of proviso (3) to Section 264 of the Act, since the CIT dismissed the Revision Petition as time-barred despite there being sufficient cause for the delay.

5. Issue notice. Mr.Sanjay Kumar, Advocate accepts notice on behalf of the Respondent. He refers to the impugned order to contend that the reasoning given by the Petitioner for seeking condonation of delay is untenable in law.

6. In the opinion of this Court, Section 14 of the Limitation Act, 1963 is attracted to the facts of the present case and the Petitioner is entitled to exclusion of time spent in prosecuting the proceeding *bona fide* in a court without jurisdiction.

7. This Court is of the view that if the time spent by the Petitioner in prosecuting the appeal under Section 248 of the Act is excluded, then the Revision Petition filed under Section 264 would be within time.

8. Consequently, the present writ petition is allowed and the matter is remanded to the CIT(IT) to decide the Revision Petition on merit in accordance with law. This Court clarifies that it has not commented on the merit of the controversy. The rights and contentions of all the parties are left open.

9. Accordingly, the present writ petition stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 18, 2022
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