



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION (L) NO.32261 OF 2023

K. S. Bilawala &amp; Ors.

...Petitioners

*Versus*Principal Commissioner of Income Tax 17,  
Mumbai & Ors.

...Respondents

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Mr. Sham Walve, i/b Ms. Sumi Soman, for the Petitioner.  
Mr. Ravi Rattesar, for Respondent No. 1.

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**CORAM: K. R. SHRIRAM &  
DR. NEELA GOKHALE, JJ.**  
**DATED: 16<sup>th</sup> January 2024**

PC:-

1. Petitioner is impugning an order dated 22<sup>nd</sup> September 2023 passed under Section 119(2)(b) of the Income Tax Act, 1961 (“**the Act**”).

2. Petitioner is in the business of acquiring and developing plots of land for resale. During the year under reference, viz. Assessment Year 2022-23, a land admeasuring 300 Sq.Mtrs. belonging to Petitioner was compulsory acquired by the Collector, Dadra and Nagar Haveli, Silvassa under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**the Right to Fair Compensation Act**”). Petitioner was awarded a sum of Rs.39,07,595/- as compensation/award.

3. Due to oversight or inadvertence, Petitioner added the compensation received with the other receipts and declared a total profit of Rs.75,66,345/-. The return of income together with the profit and loss account was filed on 30<sup>th</sup> July 2022 and processed under Section 143(1) of the Act. Petitioner, accordingly, received an intimation on 6<sup>th</sup> April 2023.

4. It is Petitioner's case that much later it dawned upon Petitioner that no tax or stamp duty was payable on any award or agreement that was made under the provisions of the Right to Fair Compensation Act. Petitioner relies upon Section 96 of the said Act. Accordingly, Petitioner sought leave to file a revised return on or about 4<sup>th</sup> August 2023. The time prescribed for filing revised return expired on 31<sup>st</sup> December 2022. Hence, Petitioner made an application for condonation of delay and for leave to file revised return under Section 119(2)(b) of the Act. This application of Petitioner came to be rejected vide the impugned order dated 22<sup>nd</sup> September 2023. The only reason for rejecting the application as we see is, "the assessee has not submitted any genuine hardship is caused due to delay in the application. Therefore, the application of the assessee for condonation of delay would not be entertained."

4. There cannot be a straight jacket formula to determine what is genuine hardship. In our view, certainly the fact that an assessee

feels he has paid more tax than what he was liable to pay will certainly cause hardship and that will be certainly a ‘genuine hardship’. This Court in *Optra Health Pvt. Ltd. v. Additional Commissioner of Income Tax (HQ), Pune & Ors.*<sup>1</sup> in paragraphs No. 9 and 10 held as under:

“9. While considering the genuine hardship, the PCCIT was not expected to consider a solitary ground as to whether the assessee was prevented by any substantial cause from filing the corrections within a due time. Other factors also ought to have been taken into account. The phrase “genuine hardship” used in Section 119(2)(b) of the Act should have been construed liberally. The Legislature has conferred the power to condone the delay to enable the authorities to do substantial justice to the parties by disposing the matters on merits. The expression ‘genuine’ has received a liberal meaning in view of the law laid down by the Apex Court and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay, does not stand to benefit by lodging erroneous returns. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate action. There is no presumption that a delay in correcting an error or responding to a notice of invalid return received under Section 139(9) of the Act is occasioned deliberately or on account of culpable negligence or on account of *mala-fides*. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. The approach of authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim. We find support for this view in *Sitaldas K. Motwani v. Director General of Income-tax (International Taxation), New Delhi*<sup>2</sup>, relied upon by Mr. Walve, where paragraph nos. 13 to 17 read as under :

“13. *Having heard both the parties, we must observe that while considering the genuine hardship, Respondent No. 1 was not expected to consider a solitary ground so as to whether the petitioner was prevented by any substantial cause from filing*

1 Writ Petition No.15544 of 2023 dtd. 19<sup>th</sup> December 2023.

2. 2010 (87) taxman.com 44 (Bombay).

return within due time. Other factors detailed hereinbelow ought to have been taken into account.

14. The Apex Court, in the case of *B.M. Malani v. CIT* [2008] 10 SCC 617, has explained the term "genuine" in following words:

“16. The term ‘genuine’ as per the *New Collins Concise English Dictionary* is defined as under:

‘Genuine’ means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)’.

17. \*\*\*\*\*

18. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind.....” (p. 624).

The Gujarat High Court in the case of *Gujarat Electric Co. Ltd.* (supra) was pleased to hold as under:

“... The Board was not justified in rejecting the claim for refund on the ground that a case of genuine hardship was not made out by the petitioner and delay in claiming the relief was not satisfactorily explained, more particularly when the returns could not be filed in time due to the ill health of the officer who was looking after the taxation matters of the petitioner....” (p. 737).

The Madras High Court in the case of *R. Seshammal (P.) Ltd.* (supra), was pleased to observe as under:

“This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter, seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund.” (p.187)

15. The phrase “genuine hardship” used in section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12-10-1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The

*expression “genuine” has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice-oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.*

*16. Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.*

*17. Having said so, turning to the facts of the matter giving rise to the present petition, we are satisfied that respondent No. 1 did not consider the prayer for condonation of delay in its proper perspective. As such, it needs consideration afresh.”*

10. This was followed by this Court in *Artist Tree (P.) Ltd. v. Central Board of Direct Taxes*<sup>3</sup>, relied upon by Mr. Walve, where paragraph nos. 19, 21 and 23 read as under :

*“19. The circumstance that the accounts were duly audited way back on 14 September 1997, is not a circumstance that can be held against the petitioner. This circumstance, on the contrary adds force to the explanation furnished by the petitioner that the delay in filing of returns was only on account of misplacement or the TDS Certificates, which the petitioner was advised, has to be necessarily filed alongwith the Return of Income in view of the provisions contained in Section 139 of the said Act read alongwith Income Tax Rules, 1962 and in*

3. [2014] 52 taxmann.com 152 (Bombay)

*particular the report in the prescribed Forms of Return of Income then in vogue which required an assessee to attach the TDS Certificates for the refund being claimed. The explanation furnished is that on account of shifting of registered office, it is possible that TDS Certificates which may have been addressed to the earlier office, got misplaced. There is nothing counterfeit or bogus in the explanation offered. It cannot be said that the petitioner has obtained any undue advantage out of delay in filing of Income Tax Returns. As observed in case of Sitaldas K. Motwani (supra), there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It cannot be said that in this case the petitioner has benefited by resorting to delay. In any case when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to prevail without in any manner doing violence to the language of the Act.*

21. *We find that the impugned order dated 16 May 2006 of the CBDT also seeks to reject the application for condonation of delay on account of delay from the date of filing the Return of Income, i.e., 14 September 1999 upto 30 April 2002. This was not the ground mentioned in notice dated 7 February 2006 given to the petitioner by the CBDT for rejecting the application for condonation of delay. Thus the petitioner had no occasion to meet the same. It appears to be an afterthought. However, as pointed out in paragraph 20 hereinabove, the delay in filing of an application if not coupled with some rights being created in favour of others, should not by itself lead to rejection of the application. This is ofcourse upon the Court being satisfied that there were good and sufficient reasons for the delay on the part of the applicant.*

23. *In light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner and a case of genuine hardship was made out. The refusal by the CBDT to condone the delay was a result of adoption of an unduly restrictive approach. The CBDT appears to have proceeded on the basis that the delay was deliberate, when from explanation offered by the petitioner, it is clear that the delay was neither deliberate, nor on account of culpable negligence or any mala fides. Therefore, the impugned order dated 16 May 2006 made by the CBDT refusing to condone the delay in filing the Return of Income for the Assessment Year 1997-98 is liable to be set aside. Consistent with the provisions of Section 119(2)(b) of the said Act, the concerned I.T.O. or the Assessing Officer would have to consider the Return of Income and deal with the same on merits and in accordance with law.”*

5. Therefore, the phrase ‘genuine hardship’ used in Section 119(2)(b) of the Act should be considered liberally. Respondent should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred to enable the

authorities to do substantial justice to the parties by disposing the matters on merits. While considering these aspects, the authorities are expected to bear in mind that no applicant stand to benefit by lodging delayed returns. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

6. Considering the facts and circumstances of the case when Petitioner strongly feels that the award of Rs.39,07,595/- that it received under the Right of Fair Compensation Act need not have been offered to tax, the concerned authority should have condoned the delay and considered the matter on merits.

7. In these circumstances, we dispose the petition with the following order:

- (a) Delay in filing revised returns is condoned.
- (b) Respondent shall open the portal within two weeks from today to enable Petitioner to file revised returns.
- (c) The concerned Authority may pass such order as it deems fit in accordance with law.

8. All rights and contentions of parties are kept open.

9. We clarify that we have not considered the issue as to whether the petitioner's case that the award/compensation that it received under the Right to Fair Compensation Act is taxable or otherwise. That the authority shall decide.

**(DR. NEELA GOKHALE, J.)**

**(K. R. SHRIRAM, J.)**