IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 7783 OF 2024

Pankaj Kailash Agarwal, an adult Indian)
Inhabitant, having address at 51, Jolly)
Maker Apartment – 3, 1, Cuffe Parade,)
Mumbai 400 005) ...Petitioner

Versus

1 Assistant Commissioner Of Income Tax)
Officer, 17(1) Mumbai,)
Bandra Kurla Complex Kautilya Bhavan)
Mumbai 400 051)

2 Central Board of Direct Taxes)
Having office at Department of Revenue)
Government of India, Noth Block,)
New Delhi 110 001)

3 Principal Commissioner of Income Tax)
17, Mumbai)
Room No.120, 1st Floor, Kautilya Bhavan)
C-41 to C-43, G Block, BKC, Bandra (E))
Mumbai 400 051) ...Respondents

MR. Rahul Sarda a/w Mr. S. S. Nargolkar i/b PDS Legal for Petitioner.
Mr. Ravi Rattesar for Respondents-Revenue.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 8th APRIL 2024

(ORAL JUDGMENT PER K. R. SHRIRAM J.) :

1 Petitioner is an individual carrying on business at the address given in the cause title. Respondent no.1 is the Jurisdictional Assessing Officer (JAO). Respondent No. 2 is the Central Board of Direct Taxes. Respondent

No. 3 is the Principal Commissioner of Income Tax who exercises administrative jurisdiction over respondent No. 1.

2 Petitioner has approached this Hon'ble Court alleging that non disposal of petitioner's application filed under Section 154 of the Income Tax Act 1961 (the Act) amounts to unreasonable and unlawful refusal by respondent no. 1 to exercise statutory powers vested in it and the violation of its statutory duty to decide applications for rectification of mistakes apparent from the record under Section 154 of the Act. Respondent no.1 has failed to pass orders on the application for rectification filed by petitioner despite numerous reminders being issued by petitioner.

3 For AY 2016-17, petitioner got his books of accounts audited and an audit report dated 19th August 2016 was issued by the auditors M/s Shankarlal Jain & Associates, Chartered Accountants. Petitioner filed his return of income on 7th September 2016 well before the due date of 30th September 2016 prescribed under Section 139(1) of the Act.

4 In his return of income, petitioner claimed a deduction under Section 80-IC of the Act in respect of an industrial unit/ undertaking that petitioner was operating in the name and style of M/s Creative Industries in an export processing zone (EPZ) at Haridwar (Uttaranchal). In terms of Section 80IC of the Act, no deduction under Section 80-IC of the Act could be allowed to an assessee unless the return of income was filed on or before the due date specified under Section 139(1) of the Act. Since petitioner had duly filed

his return of income within the said due date, petitioner could not have been denied the deduction under Section 80IC of the Act. In terms of Section 80-IC of the Act, petitioner got the accounts of his industrial unit/ undertaking also audited and an audit report dated 19th August 2016 in Form No.10CCB was issued by the Chartered Accountants of petitioner. While filing the return of income on 7th September 2016, the figures/ details of the deduction under Section 80-IC of the Act from the audit report dated 19th August 2016 were duly mentioned. The return of income of petitioner was processed under Section 143(1) of the Act and an Intimation dated 29th March 2018 (the "said Intimation") under section 143(1) of the Act was issued to petitioner. In the said Intimation, petitioner was denied the deduction under Section 80IC of the Act. According to petitioner, while the Intimation did not mention any reason for the denial of deduction under Section 80-IC of the Act, petitioner addressed a letter dated 16th April 2018 to respondent no.1 requesting for a rectification of the intimation.

5 Some time in January 2019, the Chartered Accountant of petitioner realized that the audit report dated 19th August 2016 in Form 10CCB, due to inadvertence, had not been uploaded online, which possibly could be the reason for denial of deduction under Section 80IC of the Act. Therefore, on 12th January 2019, the said audit report dated 19th August 2016 in Form 10CCB was uploaded on line.

6 It appears that immediately after the rectification application was filed and upon Form 10CCB being uploaded on line, on 13th January 2019 the rectification application was transferred to respondent no.1 who was the JAO. Despite repeated reminders, as respondent no.1 did not dispose petitioner's rectification application, petitioner filed an application under Section 264 of the Act before respondent no.3 on 19th November 2020 seeking the grant of deductions which were denied to petitioner in the intimation under Section 143(1) of the Act. Petitioner's application under Section 264 of the Act came to be dismissed on the ground that petitioner had not applied for revision within the limitation time prescribed and there was a delay of about 2 and ½ years. Since the application under Section 264 of the Act was rejected without deciding on merits, petitioner continued to pursue the pending rectification application. According to petitioner, till date no decision has been taken by respondent no.1 on the rectification application filed by petitioner under Section 154 of the Act, though almost 6 years have passed since the same was filed.

7 Therefore, left with no option, petitioner approached respondent no.2 for condoning the delay, if any, and to direct respondent no.1 to allow the rectification application. Petitioner explained to respondent no.2 in the application under Section 119(2)(b) of the Act that the reason for not filing Form 10CCB on time was on account of the inadvertence/over sight by the Chartered Accountants and relying on a judgment of the Apex Court in ***CIT***

Vs. G. M. Knitting Industries Private Limited[1], submitted that filing Form 10CCB was directory and not mandatory. Reliance was also placed on the Circular No.689 dated 24th August 1994 and Circular No.669 dated 25th October 1993 issued by CBDT as per which, respondent no.1 was bound to consider Form 10CCB and decide the application for rectification. Petitioner's application was rejected by respondent no.2 on the ground that the reasons stated by petitioner, i.e, inadvertence on the part of the auditors/Chartered Accountants of petitioner in uploading Form 10CCB was very general in nature and no reasonable cause was shown to justify the genuine hardship being faced by petitioner. It is this order of respondent no.2 which is impugned in this petition. Petitioner is also seeking a direction to respondent no.1 to dispose petitioner's application that was filed on 14th April 2018 under Section 154 of the Act.

8 Innumerable grounds have been raised in the petition but the primary ground is that it was not the case that there was failure on the part of petitioner to comply with the requirements specified in Chapter VI-A of the Act but petitioner relied upon his Chartered Accountants to do the needful as required under the Act. Petitioner had engaged the services of Chartered Accountants who audited petitioner's accounts and also of the undertaking M/s Creative Industries, which was run by petitioner as the sole proprietor. Petitioner was also issued the audit report within the stipulated time and the figures / details of the deductions under Section 80IC of the Act were

1 (2015) 376 ITR 456 (SC)

mentioned in the return of income filed by petitioner. The audit report obtained under Section 44AB of the Act was filed alongwith the return of income and there was no reason to believe that Form 10CCB had not been uploaded by the Chartered Accountants. According to petitioner, an error committed by a professional engaged by petitioner should not be held against petitioner. According to Mr. Sarda the objective of the Act is not to penalize an assessee for such technical/ inadvertent error and deny benefits of statutory provisions. Mr. Sarda submitted no unfair advantage has been obtained by petitioner on account of this inadvertent error. Therefore, the inadvertence/ oversight in uploading Form No. 10CCB by the auditor/ the Chartered Accountants of petitioner were circumstances beyond the control of petitioner and would constitute a reasonable cause for not uploading Form No.10CCB along with the return of income.

9 Mr. Sarda also submitted that refusal to exercise of powers under Section 119 of the Act by respondent no.2 on a pedantic and narrow interpretation of the expression 'genuine hardship' to mean only a case of 'severe financial crises' is unwarranted. Mr. Sarda submitted that petitioner having set up an industrial undertaking in one of the states which is not regarded as a developed state in the country, providing employment to around 100 persons and making a huge investment for such setting up has a legitimate expectation of grant of statutory benefits under section 80-IC of the Act. The business decisions including pricing of the products

manufactured at the said undertaking are taken keeping in mind the entitlements to such statutory benefits. Therefore, the refusal to exercise its powers under Section 119 of the Act in a manner that would further legislative intention on the grounds that there was no case of severe financial crisis, should be rejected by the court. Mr. Sarda also submitted that the phrase 'genuine hardship' used under Section 119(2)(b) of the Act ought to be liberally construed. Mr. Sarda further submitted that there is nothing to indicate that the application filed by petitioner before respondent no. 2 has been considered by a Member of the Board. Mr. Sarda submits that the order only says that it has been issued with the approval of the Member (IT&R), CBDT. But no order passed by the said Member has been made available to petitioner or filed alongwith the affidavit in reply. Mr. Sarda submitted that even in the affidavit in reply, respondents have not even bothered to deal with the specific allegations made in ground (W) of the petition. Mr. Sarda further submitted that this court in its order in ***TATA Autocomp Gotion Green Entergy Solutions Pvt Ltd. Vs. Central Board of Direct Taxes & Ors.***[2] has held that the orders of CBDT shall be written, passed and signed by the Member of CBDT who has given a personal hearing. Relying on ***R. K. Madani Prakash Engineers Vs. Union of India & Ors.***[3] , Mr. Sarda submitted that on this ground alone this order has to be quashed and set aside.

2 Writ Petition No.3748 of 2024 dated 18th March 2024
3 2023(458) ITR 48 (Bom)

10 On the issue of genuine hardship, relying on *R. K. Madhani Prakash Engineers* (Supra), Mr. Sarda submitted that while considering this aspect of genuine hardship, the authorities are expected to bear in mind that ordinarily applicant applying for condonation of delay does not stand to benefit by lodging its claim late. Moreso, when applicant is claiming the deductions under Section 80IC of the Act. Mr. Sarda submitted that CBDT has failed to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties and the approach of the CBDT should be justice oriented so as to advance cause of justice.

11 In the affidavit in reply, respondents have only reiterated what was stated in the impugned order and Mr. Rattesar resubmitted the same.

12 We would agree with Mr. Sarda that no assessee would stand to benefit by lodging its claim late. Moreso, in case of the nature at hand, where assessee would get tax advantage/benefit by way of deductions under Section 80IC of the Act. Of course, there cannot be a straight jacket formula to determine what is 'genuine hardship'. In our view, certainly the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction under Section 80IC of the Act, that will be certainly a 'genuine hardship'. It would be apposite to reproduce paragraph 4 of judgment in ***K. S. Bilawala & Ors. Vs. PCIT & Ors.***[4], which reads as under:

4 (2024) 158 taxmann.com 658 (Bombay)

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. (Writ Petition No.15544 of 2023 dtd. 19th December 2023) 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, relied upon by Mr. Walve, where paragraph nos. 13 to 17 read as under :*
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> *"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 return within due time. Other factors detailed hereinbelow ought to have been taken into account.*
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> *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, (2014) 52 taxmann.com 152 (Bombay) 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 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."

The Court has held that the phrase 'genuine hardship' used in Section 119(2)(b) of the Act should be considered liberally. CBDT should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred is to enable the authorities to do substantial justice to the parties by disposing the matters on merits and while considering these aspects, the authorities are expected to bear in mind that no applicant would stand to benefit by lodging delayed returns. The court also held that 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. Similar issue came to be considered in *R. K. Madhani Prakash Engineers* (Supra), where paragraph 8 reads as under :

> *"8 Further it is recorded in the impugned order that petitioner has failed in proving the genuine hardship. In this regard, we would refer to the judgment of a Division Bench of this court in the case of Sitaldas K. Motwani Vs. Director General of Income Tax (International Taxation) & Ors.,(2009 Scc Online Bom 2195) where the court has discussed the phrase "genuine hardship" used in Section 119(2)(b) of the Act. The court has held that the phrase "genuine hardship" should be construed liberally particularly when the legislature had conferred the power to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. While considering this aspect of genuine hardship, the authorities are expected to bear in mind that ordinarily applicant applying for condonation of delay does not stand to benefit by lodging its claim late. More so, in the case at hand where applicant was seeking refund of a large amount of Rs.82,13,340/-. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. The authorities fail to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. In our view, the approach of the authority should be justice oriented so as to advance cause of justice. If refund is legitimately due*

to applicant, mere delay should not defeat the claim for refund.

Paragraphs 13 to 16 of Sitaldas K. Motwani (Supra) 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 as to whether the petitioner was prevented by any substantial cause from filing return within due time. Other factors detailed hereinbelow ought to have been taken into account.*
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> *14. The Apex Court, in the case of B.M. Malani v. CIT and Anr. MANU/SC/4268/2008 : (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).*
> *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.*
> *The Gujarat High Court in the case of Gujarat Electric Co. Ltd. V. CIT MANU/G1/0407/2001: 255 ITR 396, 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 was looking after the taxation matters of the petitioner.*
> *The Madras High Court in the case of Seshammal (R) v. ITO MANU/TN/0879/1998: (1999) 237 ITR 185 (Madras), 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 plea of limitation in such a situation to avoid return of the amounts. Section sit 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.*
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> *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 12th October, 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 malafides. 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."

(emphasis supplied)

This court in *R.K. Madhani Prakash Engineers* (Supra) had quashed

and set aside the impugned order on the ground that the impugned order is not passed by the CBDT but only with the approval of the Member (IT & R), CBDT. So also in the case of *TATA Autocomp* (supra) wherein paragraphs 11, 12 and 13 read as under:

> *"11. Moreover, the order says, "This issues with the approval of Member (IT&R), Central Board of Direct Taxes" and is signed by one Virender Singh, Additional Commissioner of Income Tax (ITA Cell), CBDT, New Delhi. If a personal hearing has been granted by the Member (IT&R), the order should have been passed by him. Mr. Sharma states there could be file notings. If that is so, that has not been made available to Petitioner.*
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> *12. In the circumstances, on these two grounds alone, we quash and set aside the impugned order dated 5th December 2023 and remand the matter to CBDT. The Member/Members shall within three weeks from the date this order is uploaded make available to Petitioner all Field Reports/documents/instructions received by the CBDT from the Field Authorities and within two weeks of receiving the same, Petitioner shall file, if advised, further submissions in support of their application for condonation of delay.*
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> *13. Thereafter, an order shall be written, passed and that order shall be authored and signed by the Member of CBDT, who has given a personal hearing and when we say this, it is not the Member holding the same designation. The same individual who gave a personal hearing, shall write and sign the order. All rights and contentions of Petitioner are kept open. Before passing any order which shall be a reasoned order dealing with all submissions of Petitioner, a personal hearing shall be given to Petitioner, notice whereof shall be communicated at least seven working days in advance."*

13 In our view, legislature has conferred power on respondent no.3 to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. Routinely passing the order without appreciating the reasons why the provisions for condonation of delay has been provided in the act, defeats the cause of justice.

14 In the circumstances, we hereby quash and set aside the impugned

order dated 1st September 2023.

15 As regards the application filed by petitioner before respondent no.1 on 14th April 2018 for rectification of the intimation dated 29th March 2018, we have to note our disappointment with the conduct of respondent no.1 in not even replying to petitioner. Mr. Rattesar relies on the affidavit in reply filed through on Shyam Lal Meena, ACIT, affirmed on 8th April 2024 to submit that rectification order under Section 154 of the Act was not passed as there was no mistake apparent from record for which rectification sought to be done was to be passed. Respondent no.1 was duty bound to pass orders on the application which has been pending for almost 6 years, instead of making such baseless statements in the affidavit in reply. Perhaps, respondent no.1 thinks that he or she is not accountable to any citizen of this country. Copy of this order shall be placed before the PCCIT to take disciplinary action against respondent no.1 for dereliction of duty.

16 We shall also note that, despite this court had observed in *R. K. Madhani Prakash Engineers* (Supra) on 18th July 2023, as under:

> *"6 Before we proceed further, we should note that pursuant to Circular F No.312/22/2015-OT dated 9th June 2015 issued by CBDT, application / claim for amount exceeding Rs. 50 lakhs shall be considered by the Board. We say this because the last sentence in the impugned order dated 24th December 2020 reads; " This order is passed with the approval of the Member (TPS & Systems), CBDT." There is nothing to indicate that Board has considered petitioner's application. We also find that copy of the impugned order dated 24th December 2020 is sent to, (a) the Principal Chief Commissioner of Income Tax, Mumbai, (b) Principal Commissioner of Income Tax-21, Mumbai, (c) Director of Income Tax, Centralized Processing Cell, Bengaluru, (d) the applicant and (e) the Guard File but it is not sent to the Member on whose approval the said order is supposed to have been passed. In our view, this means the Member has not passed the*

> *order but has been passed by the Director. On this ground alone, this order has to be quashed and set aside."*
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> *(emphasis supplied)*

The impugned order dated 1st September 2023 has been passed in the same manner. This indicates the utter disregard that the CBDT has for judicial orders. Copy of this order shall be sent to the Chairman of CBDT, so that suitable actions are taken to comply with the directions given by this court.

17 In view of the above, respondent no.1 shall on or before 31st May 2024, dispose the pending application under Section 154 of the Act on merits and before passing any order shall give a personal hearing to petitioner, notice whereof shall be communicated at-least five working days in advance.

18 Petition disposed.

(Dr. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**