



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 4252/2017

Padam Raj Bhandari S/o Shri Ajit Raj Bhandari, R/o 42, Gali No. 3, Shyam Nagar, Pal Link Road, Jodhpur - 342008.

----Petitioner

Versus

1. Union of India through the Secretary, Ministry of Finance, North Block, New Delhi - 110001.
2. Pr. Commissioner Of Income Tax-2, Paota C Road, Jodhpur - 342010.
3. Income Tax Officer, Ward-34, Paota C-Road, Jodhpur -342010

----Respondents

For Petitioner(s) : Mr. T.C. Gupta (through VC).
For Respondent(s) : Mr. Sunil Bhandari.

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Order

Reportable

01/07/2024

1. This writ petition under Article 226 & 227 of the Constitution of India has been preferred claiming the following reliefs:

“1. In view of the facts and grounds enumerated above, it is most respectfully prayed that by an appropriate writ, order or direction in the nature of certiorari, order dated 27.02.2017 passed by the CIT may kindly be quashed and set aside and the respondents may be directed to condone the delay and allow refund as claimed.

2. Any other appropriate writ, order or direction, which may be considered just and proper in the facts and circumstances of the case, may be issued in favour of the petitioner.”

2. The petitioner, who is an Insurance Surveyor, filed an application on 12.05.2016 seeking condonation of delay under



Section 119(2)(b) of the Income Tax Act in order to claim a refund for the assessment year 2009-10 to 2014-15. However, the respondents rejected the application for condonation of delay on 27.02.2017.

3. Mr. T.C. Gupta, learned counsel appearing on behalf of the petitioner, submits that the petitioner, a senior citizen now aged about 72 years, faced genuine hardship, and thus, ought to have been granted benefit under Section 119(2)(b) of the Income Tax Act read with CBDT Circular dealing with the relaxation/delay condonation dated 09.06.2015 (Annexure-3).

3.1 Mr. Gupta, learned counsel has relied upon the precedent law laid down by the Hon'ble Apex Court in the matter of ***B.M. Malani Vs. Commissioner of Income Tax & Anr. : Civil Appeal No.5950 of 2008 (Arising out of SLP (C) No.4091 of 2007)***, the relevant excerpt whereof is reproduced hereunder:

8. 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)"

For interpretation of the aforementioned provision, the principle of purposive construction should be resorted to. Levy of interest although is statutory in nature, inter alia for re-compensating the revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

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 said principle, it is conceded, has not



been applied by the courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas Pvt. Ltd. & Anr. v. Union of India & ors. 1991 Suppl. (1) SCC 102, para 39, Union of India & ors. v. Major General Madan Lal Yadav (Retd.) (1996) 4 SCC 127 at 142, paras 28 and 29, Ashok Kapil v. Sana Ullah (dead) & ors. (1996) 6 SCC 342 at 345, para 7, Sushil Kumar v. Rakesh Kumar (2003) 8 SCC 673 at 692, para 65, first sentence, Kusheshwar Prasad Singh v. State of Bihar & ors. (2007) 11 scc 447, paras 13, 14 and 16).

Thus, the said principle, in our opinion, should be applied even in a case of this nature. A statutory authority despite receipt of such a request could have kept mum. It should have taken some action. It should have responded to the prayer of the appellant.

However, another principle should also be borne in mind, namely, that a statutory authority must act within the four corners of the statute. Indisputably, the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised. He has to arrive at a satisfaction that the three conditions laid down therein have been fulfilled before passing an order waiving interest.

Compulsion to pay any unjust dues per se would cause hardship. But a question, however, would further arise as to whether the default in payment of the amount was due to circumstances beyond the control of the assessee.

Unfortunately, this aspect of the matter has not been considered by the learned Commissioner and the High Court in its proper perspective. The Department had taken the plea that unless the amount of tax due was ascertainable, the securities could not have been sold and the demand draft could not have been encashed. The same logic would apply to the case of the assessee in regard to levy of interest also. It is one thing to say that the levy of interest on the ground of non-payment of correct amount of tax by itself can be a ground for non-acceding to the request of the assessee as the levy is a statutory one but it is another thing to say that the said factor shall not be taken into consideration at all for the purpose of exercise of the discretionary jurisdiction on the part of the Commissioner. Appellant volunteered that the securities be sold. Why the said request of the appellant could not be acceded to has not been explained. It was a voluntary act on the part of the appellant.

It was not even a case where sub-Section (3) of Section 226 of the Act was resorted to. As the offer was voluntary, the authorities of the Department subject to any statutory interdict could have considered the request of the appellant. It was probably in the interest of the revenue itself to realize its dues. Whether this could be done in law or not has not been gone into.





9. The same ground, however, was not available to the appellant in respect of the demand draft, as in relation thereto no such request was made. The demand draft was in the name of a Company. It may be true that when any document is seized, a presumption is raised that the same belongs to the person from whose possession or control it was seized as is laid down in sub-Section (4A) of Section 132 of the Act, but such a presumption is a rebuttable one. In the absence of any request made by the Assessee himself, probably at that point of time, the same could not have been encashed. Appellant did not own the same in law. He did not make any request for its encashment.

Whether such a presumption should be raised or not was the subject matter of consideration by the Assessing Officer at the time of making its final assessment as the appellant himself filed an application before the Settlement Commission in terms of Section 245C(1) of the Act.

10. We are, therefore, of the opinion that interests of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the Commissioner of Income Tax for consideration of the matter afresh."

4. Mr. Sunil Bhandari, learned counsel for the respondents submits that the ambit of Section 119(2)(b) of the Income Tax Act could have been considered only if there was a genuine hardship and that too only for a period of six years, which is stipulated in the CBDT Circular No.09/2015 dated 09.06.2015 in pursuance of Section 119(2)(b) of the Income Tax Act, which prescribes for six years of maximum power to the authority to condone the delay.

4.1 Mr. Bhandari, learned counsel has also relied upon the judgment rendered by the Hon'ble Patna High Court in the matter of **Deep Narayan Gupta Vs. Central Board of Direct Taxes** reported in **2003 264 ITR 251 Patna**, in which, para 5 has been referred to, which reads as follows:

"5. The only ground, on which the extension can be granted in genuine hardship. That has rightly not been defined under the Act. Whether there is genuine hardship or not depends upon the facts of each case and no fixed criteria in the strait jacket formula can be laid down for the said purpose. In the given case, admittedly, the returns were filed much beyond time. Nothing has been stated on



behalf of the petitioner explaining the delay in filing the returns, on the other hand, the Board has found that this is a very deliberate attempt on the part of the petitioner to escape the liability under the Act. Detailed reasons are stated in paragraph 4 of the order, the relevant part whereof is quoted hereunder:

“The due dates for filing the return were before March 31, 1995, and March 31, 1996. However, the returns were filed on October 9, 1998. It is further noted that the assessee has deliberately filed his returns much after the due date only to escape the scrutiny assessment. For example for the assessment year 1993-94, the net profit shown by the assessee is very low. There is no audit report enclosed with the return. In the balance-sheet, the assessee has shown unsecured loans and other finance as liabilities. The late filing of return apparently indicates that the assessee has manipulated his accounts and has prevented scrutiny assessment by the Department.”

4.2 Mr. Bhandari, learned counsel further submits that the assessee had earlier filed the tax returns and was also claiming refunds. He also vehemently submits that the petitioner has not provided any evidence regarding depression or illness.

5. After hearing learned counsel for the parties as well as perusing the record of the alongwith the precedent law cited at the Bar, this Court finds that the petitioner is now 72 years of age and works as an Insurance Surveyor and is seeking to file tax returns for the assessment years 2009-10 to 2014-15.

6. Section 119(2)(b) of the Income Tax Act is reproduced hereunder:

“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 11[any income-tax authority, not being a 12*** 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;”

7. The relevant part of CBDT Circular, particularly, Paragraph 3 & 5 are reproduced hereunder:

“3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CcsIT/CcsIT/Pr.CsIT/CsIT in case of such claim will be subject to following conditions:

At the time of considering the case under Section I 19(2) (b), it shall be ensure that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits. The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.”

8. This Court has examined the reason given by the petitioner before the authority was that he is a senior citizen with a limited income from survey fee payments from an Insurance Company. As a result, he was unable to file his income tax returns for the relevant assessment years on time. The impugned order also takes notice of the fact that the assessee has deposed that he was under depression during that period, which was coupled by the old age.

9. This Court considered the vehement opposition of the respondents that no genuine hardship reason has been



established in the instant case, and thus, once the key word of the legislation i.e. the genuine hardship does not operate, then the provisions of Section 119(2)(b) of the Income Tax Act would not apply, but this Court does not agree with such proposition.

10. This Court also finds that judgment rendered by the Hon'ble Patna High Court in the case of Deep Narayan Gupta (supra) deals with an assessee, who is trying to escape the scrutiny assessment and was on the wrong side of the revenue collection, and thus, a strict view taken by the Court stands on a different factual pedestal.

11. Another judgment, which has been brought to the notice of this Court by counsel for the petitioner is of Hon'ble Gujarat High Court in the matter of **Gujarat Electric Co. Ltd. Vs. Commissioner of Income Tax** reported in **2002 255 ITR 396 Guj.**, in which, paragraph 6 has been emphasized, which is reproduced hereunder:

"6. We have heard learned counsel for the parties and taken into consideration the documents forming part of the petition. We may state that the respondents have not filed any reply controverting the averments made in the petition. From the record of the case, it is evident that the principal officer of the petitioner-company was bed-ridden around June, 1991, as he was suffering from severe tuberculosis and the doctor had advised him to take complete bed rest for about three months. As per the averments made in the application dated October 1, 1999, the principal officer of the petitioner-company had taken treatment for tuberculosis which lasted for about seven to eight months. It is also clear from the averments made in the said application that around April, 1992, again the principal officer of the company had fallen sick and the doctor had diagnosed the disease to be typhoid and he was once again tied down to the bed. As there was no one to look after taxation matters of the company, the returns could not be filed in time in which refund was claimed. [Section 119\(2\)\(b\)](#) of the Act empowers the Board to authorise any income-tax authority not being Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under the Act, after the expiry of the period specified by or under the Income-tax Act for making such application or claim and deal with the same on the merits in accordance with law. It is





an admitted position that in exercise of power conferred by the above-referred to provision, the Board has issued circular dated October 12, 1993, enabling the income-tax authority to condone delay caused in claiming refund. It is not the case of the respondents that four conditions mentioned in the said circular are not satisfied by the petitioner, but the application for refund is rejected only on the ground that the case of genuine hardship was not made out by the petitioner. At this stage, it would be advantageous to refer to the decision of the Madras High Court which is relied upon on behalf of the petitioner. The Madras High Court in R, Seshammal's case [1999] 237 ITR 185 has held as under (page 187) :

"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."

12. The respondents had opposed the application seeking condonation of delay under Section 119(2)(b) of the Income Tax Act for claiming the refund, stating that the details of the treatment etc. were provided and severe tuberculosis was the reason for leniency in that matter on the ground that such reason does not exist in the present case. However, this Court finds that the senior citizen/considerable age, depression, as mentioned coupled with the fact that the petitioner is not on the wrong side of the law/revenue collections as he is not facing any kind of scrutiny or action by the respondents, and thus, he deserves to be dealt with leniently in this peculiar factual matrix. This Court has also heavily relied on the fact that the tenure of filing the returns sought to be filed in the present case begins about 15 years ago, the impugned order is of 2016, this writ petition is pending for last 07 years and the age of the petitioner is around 72 years, which





do not warrant complete remand of the matter. The core law of Section 119(2)(b) of Income Tax Act read with CBDT Circular No.09/2015 dated 09.06.2015, both reproduced above, clearly reflect that if there is a genuine hardship, then a condonation of upto six years can be permitted.

13. Considering the overall perspective and peculiar facts of this case, including the age of the petitioner, the Section 119(2)(b) of Income Tax Act read with CBDT Circular No.09/2015 dated 09.06.2015, which prescribes 06 years delay condonation on genuine hardship and the precedent law laid down by the Hon'ble Apex Court in the matter on B.M. Malani's case (supra), this Court is of the firm opinion that the depression, old age, long pendency of the issue and the petitioner's status as a small-scale surveyor with no negativity in revenue collection by the tax authorities (like scrutiny) attached, have to be considered as genuine hardship. Thus, in these peculiar facts and circumstances, holding it to be a case of genuine hardship, the impugned order dated 27.02.2017 is quashed and set aside. The authority concerned shall accept the returns and decide the claim of the petitioner, while strictly adhering to the six years limit from the date of petitioner's application as prescribed in the CBDT Circular No.09/2015 dated 09.06.2015, while treating it to be a case of genuine hardship, in accordance with law.

14. With the aforesaid observations and directions, the present writ petition is allowed. All pending applications, if any, stand disposed of.

(MUNNURI LAXMAN),J

(DR.PUSHPENDRA SINGH BHATI),J

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