NEUTRAL CITATION
2024:GUJHC:55147-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3188 of 2024

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NIRZARI AMITBHAI MEHTA

Versus

PR. COMMISSIONER OF INCOME TAX-1 OR HIS SUCCESSOR

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Appearance:
MR SN DIVATIA(1378) for the Petitioner(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 01/10/2024
ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr.S.N.Divatia for the petitioner and learned Senior Standing Advocate Mr.Varun Patel for the respondent.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the validity of the order dated 24.01.2024 passed under section 119(2)(b) of Income Tax Act, 1961 (for short "the Act") for Assessment Year 2022-23.

3. The petitioner is an individual and citizen of India and as such she is entitled to the fundamental rights enshrined in the Constitution of India.

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4. The petitioner has studied upto M.A., LL.B., (General) of Gujarat University and she is being assessed to tax since last about more than 30 years in respect of salary, dividend and interest income, etc. The petitioner is not being engaged in any economic activity during her entire life except for serving in the office of the advocate as a Clerk for some years.

5. The petitioner married at an advanced age and her husband was serving in a small drug Company but now residing at Mumbai and passing a retired life with simple standard of living.

6. The petitioner filed returns of income regularly for the previous last five years and details of which are as under:

Sr. No.	A.Y./ Date of filing	Total taxable income declared and refund	Amount Refundable
1	2021-22/ 24.12.2021	Rs.4,61,840/-	Rs.32,841/-
2	2020-21/ 28.10.2020	Rs.1,88,440/-	Rs.16,870/-
3	2019-20/ 20.08.2019	Rs.1,72,000/-	Rs.14,319/-
4	2018-19/ 27.07.2018	Rs.2,16,610/-	Rs.16,472/-
5	2017-18/ 29.07.2017	Rs.2,14,750/-	Rs.16,860/-

7. It is the case of the petitioner that the draft return of income for the A.Y. 2022-23 was prepared whereby she is entitled to refund of Rs.52,592/- on the total income of

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Rs.4,55,290/- as on account of the tax deducted at source from dividend, interest income.

8. The petitioner's income tax return was filed by the learned advocate for the petitioner for many years; however, due to inadvertent delay, as such the return could not be filed for the Assessment Year 2022-23.

9. The petitioner therefore, preferred an application under section 119(2)(b) of the Act relying upon the Circular No.9/2015 dated 09.06.2015 issued by the Central Board of Direct Taxes.

10. The respondent however, rejected the application filed by the petitioner on the ground that the petitioner has not provided any proof to prove the genuineness of the hardship she had faced in not filing the return of income as per Para-5 of the Circular No.9/2015.

11. Learned advocate Mr.Divatia for the petitioner has submitted that considering the facts of the case and circumstances, in which, the petitioner is staying at Mumbai and return of income could not be filed by the advocate of the petitioner, the petitioner should not be deprived of legitimate refund which otherwise is available, if the petitioner is

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permitted to file the return of income for the year under consideration.

12. It was further submitted that due date of filing of return for the Assessment Year 2022-23 was 31.07.2022 under section 139(1) and the last date was 31.12.2022 under section 139(4) of the Act whereas the application for condonation of delay has been filed on 11.01.2024 and as such there was a delay of about 375 days i.e. from 01.01.2023 to 11.01.2024, which is required to be condoned by the respondent.

13. It was further submitted that the impugned order is passed without issuing any notice of hearing only on the ground that the petitioner had not provided any proof to prove the genuineness of the hardship which she faced in filing the return of income as per the said Circular. It was therefore submitted that the impugned order is liable to be quashed and set aside.

14. In support of his submissions, learned advocate Mr.Divatia has relied upon the following decision :

(i) Sitaldas Motwani v. DIT (323 ITR 223)

(ii) Bombay Mercantile Co-op. Bank Ltd. (332 ITR 0287) (Bom.)

(iii) M/s.Amit Hospital Pvt. Ltd. vs. Pr.CIT rendered in Special Civil Application No.20543 of 2023 dated 19.12.2023

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15. Learned advocate for the petitioner has submitted that having regard to the aforesaid principles for condonation of delay and relevant aspects of Section 119(2)(b) of the Act, the approach of the respondent in the cases of present type where the petitioner is deprived of the refund, equitious, balancing and judicious rather than technical, strict or literal approach ought to have been taken.

16. It was further submitted that three conditions stipulated in the Circular No.9/2015 are complied with namely -

(i) the income of the petitioner is not assessable in the hands of any other person under any of the provisions of the Act.

(ii) the petitioner is also ready to accept that no interest will be admissible on the belated return.

(iii) the refund arises in case of the petitioner as a result of excess tax deducted/ collected at source.

It was therefore, submitted that the impugned order may be quashed and set aside.

17. On the other hand, learned Senior Standing Counsel Mr.Varun Patel has submitted that the petitioner has failed to point out any genuine hardship as stated in Circular No.9/2015 on which, the reliance is placed.

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18. A reference was made to the Circular to point out that in absence of any genuine hardship, the respondent is justified in rejecting the application filed by the petitioner under section 119(2)(b) of the Act.

19. Considering the submissions made by the learned advocates appearing for the respective parties, it is not in dispute that the petitioner has not filed the return within the time limit prescribed under section 139(1) and under section 139(4) of the Act. It is also not in dispute that the petitioner is entitled to refund of Rs.52,592/- on account of excess tax deducted at source.

20. On perusal of computation of income placed on record at Annexure "B", it is revealed that the petitioner otherwise was not liable to pay the tax and as such the entire tax deducted at source of interest and dividend of Rs.52,592/-, is liable to be refunded to the petitioner.

21. This Court in the case of **Sitaldas Motwani (supra)** with regard to genuine hardship, has held as under:

> "The phrase "genuine hardship" used in s.119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dt 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

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> the matters on the merits. 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 bear in mind that ordinarily the applicant applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold an cause of justice being defeated..... When substantial justice and technical justice are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of 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....."

22. Similarly, in the case of **Bombay Mercantile Co-op. Bank Ltd. (supra),** the Hon'ble Bombay High Court has held that in matters of condonation of delay, a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities.

23. In view of the above settled legal preposition, the respondent ought to have considered the application filed by the petitioner under section 119(2)(b) of the Act, in accordance with law, without adopting any pedantic technical approach. It is not in dispute from the facts on the record that the petitioner is entitled to the refund of Rs.52,592/-. The petitioner is permitted to file the return of income belatedly by exercising the powers under Section 119(2)(b) of the Act.

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24. In view of the foregoing reasons, the present petition is allowed. The impugned order dated 24.01.2024 passed under section 119(2)(b) of Income Tax Act, 1961 for Assessment Year 2022-23 in case of the petitioner is hereby quashed and set aside and the matter is remanded back to the respondent to pass an appropriate order, in accordance with law while exercising the jurisdiction under Section 119(2)(b) of the Act, within a period of 12 weeks from the date of receipt of copy of this order. The petition is accordingly disposed of. Notice is discharged.

(BHARGAV D. KARIA, J)

(MAUNA M. BHATT,J)

DIPTI PATEL