



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION (ST.)NO.2348 OF 2024

Smita Dilip Ghule

... Petitioner

Versus

The Central Board of Direct Taxes
& Others

... Respondents

Mr. Ajay Singh with Mr. Akshay Pawar, for the Petitioner.
Mr. Suresh Kumar, for the Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 8th OCTOBER, 2024

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RULE. Rule made returnable forthwith and heard finally by consent of the parties.

2 This Petition, under Article 226 of the Constitution of India, seeks the following substantive reliefs:-

“(a) that this Hon’ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the order dated 20.10.2023 passed by Respondent No.1 under section 119 (2)(b) of the Income Tax Act, 1961, being Ex. ‘N’ and condone the delay of 80 days in filing the return of income and allow carried forward of losses in accordance with law (Exh. ‘A’) hereto;

(b) that this Hon’ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the order passed by the Respondent No.1 dated

20.10.2023, being Ex. 'N' hereto and ordering and directing Respondent No.1 to allow its application dated 31st March 2021 under section 119 (2)(a)(b) of the Act and consequently ordering and directing the Respondent No.4 to grant to the Petitioner the carry forward and set off of losses as claimed by it.”

3 The Petitioner is an individual and is a doctor by profession. The Petitioner's Return of Income, under Section 139 (1) of the Income Tax Act, 1961 (the Act), for the Assessment Year 2020-2021, was due to be filed on 10th January, 2021 as per the extended due date, however, the Return of Income was filed on 31st March, 2021, declaring total income of Rs.6,75,837/-. The Petitioner had a claim of carry forward of long term capital loss of Rs.99,88,535/-. The Petitioner had claimed that, during the year under consideration, she had transferred two ancestral lands which were jointly owned by her with other family members.

4 The Petitioner made an Application dated 31st March, 2021 to the Central Board of Direct Taxes (the CBDT), Respondent No.1, requesting it to condone the delay in filing the Return and allowing the claim of carry forward of long term capital loss of Rs.99,88,535/- by exercising power vested in Respondent No.1 under Section 119 (2)(b) of the Act. The Petitioner subsequently, by a letter dated 14th October, 2021, filed an Addendum to the said Application for condonation of delay, along with supporting evidence.

5 In the Application for condonation of delay, the Petitioner had given reasons for the delay in filing the Return of Income. The Petitioner had stated that she was the co-owner, along with other family members, of certain ancestral lands located at Mangdewadi, Tal. Haveli, District Pune. These ancestral lands were transferred during that year. On the above transaction, the Petitioner had to work out long term capital gain and file a Return. During Financial Year 2019-2020, the Petitioner had paid Advance Tax of

Rs.8 lakhs. The original due date for filing of Return of Income was 31st July, 2020 but due to the Covid-19 pandemic it was extended upto 31st December, 2020 and subsequently it was extended up to 10th January, 2021. The Petitioner further stated that due to the Covid-19 pandemic lock down being announced, the Petitioner, being a doctor, was rendering services to Covid-19 patients. Further, due to various Covid-19 restrictions and the nature of occupation of the Petitioner, she was unable to approach her tax consultant in advance in respect of computation of long term capital gain. Somewhere around October, 2020, when the Petitioner approached her Chartered Accountant on the subject matter of filing of return and computation of long term capital gain, she was advised to get the valuation of the property done by a Registered Valuer to ascertain the cost of acquisition as on 1st April, 2001. The Petitioner further stated that, as suggested by her Chartered Accountant, one valuer, Shri Vinay Chande, was approached for the purpose of valuation. Further, for the purpose of valuation, past title deeds, records of property and registered documents were required to be provided to the valuer Shri Vinay Chande from time to time. These documents were provided to the valuer Shri Vinay Chande time to time during the months of November and December, 2020. However, the valuer was required to physically visit the site to provide the valuation report and was reluctant to do so due to the Covid-19 pandemic and increase of cases of Covid-19 as the valuer himself was a senior citizen, aged 75 years, having respiratory issues. Due to requirement of physical visit to the site by the valuer for the valuation of the property to ascertain the cost of acquisition for computation of capital gain under Section 49 of the Act, the valuation could not be completed before the due date of filing of return of income.

6 The Petitioner further clarified that, on 30th November, 2020, the Petitioner had lost her father due to Covid-19. Around the same time, other

family members were also affected by Covid-19. Due to this misfortune, the Petitioner was not able to collect information required for valuation nor was able to coordinate with the tax consultant. This also resulted in delay in getting the valuation done which led to belated filing of income tax return. The Petitioner further stated that the valuer conducted the physical verification of the site in February, 2021 and submitted a Valuation Report on 16th March, 2021. After obtaining the Valuation Report dated 16th March, 2021, the Petitioner's Chartered Accountant was able to calculate the capital gain/ loss on the transaction in respect of each co-owner. The total long term loss in case of the Petitioner was worked out at Rs.99,88,535/-. In ordinary course, this loss would be carried forwarded and set-off against the income of the subsequent year. But due to delay in filing the Return for Assessment Year 2020-2021 within the prescribed due date, the Petitioner was not able to carry forward such loss unless the delay was condoned by Respondent No.1 under Section 119 (2)(b) of the Act. The Petitioner has stated that, it was in these circumstances, that the Petitioner had filed the Application before Respondent No.2 under Section 119(2)(b) of the Act.

7 By letters dated 26th July, 2021 and 5th November, 2021, Respondent No.1 asked the Petitioner to file further documents. By letters dated 14th October, 2021 and 20th October, 2021, the Petitioner submitted further details and explanation before the Respondents.

8 Thereafter, the Petitioner received a letter dated 25th October, 2021 from Respondent No.4. The Petitioner, by an e-mail dated 25th October, 2021, informed Respondent No.4 that the details were already furnished by her by her letter dated 20th October, 2021.

9 Thereafter, Respondent No.4, by a letter dated 16th December, 2021, asked the Petitioner to file further documents. The Petitioner, by letters

filed on 1st February, 2022, 4th February, 2022 and 3rd March, 2022 submitted further particulars that were sought by Respondent No.4

10 By a letter dated 31st August, 2023, Respondent No.2 had forwarded a detailed report on the subject matter. The said report was not made available to the Petitioner for rebuttal. Thereafter, by a letter dated 21st September, 2023, the Petitioner was given a final opportunity to present her case on 29th September, 2023 at 12.30 p.m. The Petitioner, thereafter, by a letter dated 4th October, 2023 filed her submissions.

11 By an Order dated 20th October, 2023, Respondent No. 1 rejected the Petitioner's Application for condonation of delay of 80 days in filing the Return of Income. It is this Order dated 20th October,2023 which has been impugned in the present Petition.

12 Mr. Ajay Singh, the learned Counsel appearing on behalf of the Petitioner, submitted that, considering the reasons furnished by the Petitioner, Respondent No.1 ought to have condoned the delay of 80 days in filing the Return of Income. Mr. Singh, relied upon the judgement of this Court in *Jyotsna M. Mehta v/s. Principal Commissioner of Income Tax*¹ in support of his submissions.

13 Mr. Suresh Kumar, the learned Counsel appearing on behalf of the Respondents, defended the Order dated 20th October,2023, and submitted that Respondent No.1 had given valid reasons to refuse the condonation of delay on the part of the Petitioner in filing the Return of Income.

14 We have heard the learned Counsel for the parties and perused the documents on record.

¹[2024] 166 taxmann.com 442 (Bombay)

15 At the outset, it would be useful to refer to Section 119 (2)(b) of the Act, which reads as under:-

“(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 [any income-tax authority, not being [a Joint Commissioner (Appeals) or], a 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.”

16 A perusal of the provisions of Section 119 (2)(b) of the Act shows that the power conferred therein upon Respondent No.1 is for the purpose of “avoiding genuine hardship”. In our view, the Petitioner would be put to genuine hardship, if the delay in filing the Return of Income is not condoned. This is because the Petitioner has given valid reasons for not filing the Return of Income on time. The Petitioner has mentioned that her father had passed away on 30th November, 2022 due to Covid-19 and that her family members were affected by Covid-19 in November, 2020. The Petitioner, who is a doctor, was involved in Covid-19 duty at that time. The valuation of land for working out capital gain could not be completed prior to the due date of filing of the Return due to the said reasons and as the valuer was not able to carry out physical verification of the site until 13th February, 2021 and provide the Valuation Report until 16th March, 2021. In this context, it is important to note that the valuer was also a senior citizen aged 75 years. In our view, if for these reasons, the delay of 80 days in filing of the Return of Income by the Petitioner was not condoned, then definitely the Petitioner would be put to genuine hardship as the Petitioner was prevented by genuine and valid reasons for not filing the Return of Income on time. In this context, we may observe that it can never be that technicality and rigidity of rules of law would not

recognize genuine human problems of such nature, which may prevent a person from achieving certain compliance. It is to cater to such situations that the legislature has made a provision conferring a power to condone the delay. These are all human issues which prevented the assessee, who is otherwise diligent, in filing the Return of Income within the prescribed time.

17 In our view, Respondent No.1 failed to consider the same. Respondent No.1 has, in the impugned Order dated 20th October, 2023, rejected the Application for condonation of delay on the ground that the Petitioner had failed to provide any justifiable reason for condoning the delay. It was also held that the Petitioner had not established any genuine hardship and that the Petitioner had not stated any worthwhile plausible reason for her failure to file the Return of Income within the stipulated time limits. In our view, this finding of Respondent No.1 is clearly wrong because, as stated in detail hereinabove, the Petitioner had given various justifiable reasons for condoning the delay in filing the return of income. In our view, Respondent No.1 completely lost sight of the fact that not only was the Petitioner a doctor who was on covid duty but that the Petitioner faced various other problems due to the Covid-19 pandemic, and that was the reason why the Petitioner could not file her Return of Income within time.

18 Further, in the impugned Order, Respondent No.1 has also rejected the Application on the ground that the Petitioner, being an educated person, was well equipped with basic taxation law knowledge and, had accessibility to tax practitioners and, therefore, the claim of the Petitioner that she was not able to collect various information regarding income tax calculation, was not tenable. Again, we are afraid that we are unable to accept this reason of Respondent No.1. The Petitioner has not claimed lack of accessibility to a tax practitioner. It is the case of the Petitioner that, for various reasons, which arose due to the Covid-19 pandemic, she was not able

to obtain the Valuation Report in respect of the property on time and, therefore, was not able to compute the capital loss and file the Return of Income.

19 In this view of the matter, we are unable to accept the said reasons given by Respondent No.1 for rejecting the Petitioner's Application for condonation of delay.

20 In the context of the Petitioner's case, and the reasons given in the impugned Order dated 20th October, 2023 by Respondent No.1 for rejecting the Application of the Petitioner for condonation of delay, it would be apt to refer to paragraphs 6 and 7 of the judgement of this Court in Jyotsna Mehta (supra) which read as under:-

"6. In our opinion, the approach of PCIT appears to be quite mechanical, who ought to have been more sensitive to the cause which was brought before him when the petitioner prayed for condonation of delay. In such context, we may observe that it can never be that technicalities and rigidity of rules of law would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations the legislature has made a provision conferring a power to condone delay. These are all human issues and which may prevent the assessee who is otherwise diligent in filing returns, within the prescribed time. We may also observe that the PCIT is not consistent in the reasons when the cause which the petitioners has urged in their application for condonation of delay was common.

7. We may observe that it would have been quite different if there were reasons available on record of the PCIT that the case on delay in filing returns as urged by the petitioners was false, and/or totally unacceptable. It needs no elaboration that in matters of maintaining accounts and filing of returns, the assesseees are most likely to depend on the professional services of their Chartered Accountants. Once a Chartered Accountant is engaged and there is a genuine dependence on his services, such as in the present case, whose personal difficulties had caused a delay in filing of the petitioners returns, was certainly a cause beyond the control of the petitioners / assesseees. In these circumstances, the assessee, being at no fault, should have been the primary consideration of the PCIT. It also cannot be overlooked that any professional, for reasons which

are not within the confines of human control, by sheer necessity of the situation can be kept away from the professional work and despite his best efforts, it may not be possible for him to attend the same. The reasons can be manifold like illness either of himself or his family members, as a result of which he was unable to timely discharge his professional obligation. There could also be a likelihood that for such reasons, of impossibility of any services being provided/performed for his clients when tested on acceptable materials. Such human factors necessarily require a due consideration when it comes to compliances of the time limits even under the Income Tax Act. The situation in hand is akin to what a Court would consider in legal proceedings before it, in condoning delay in filing of proceedings. In dealing with such situations, the Courts would not discard an empathetic /humane view of the matter in condoning the delay in filing legal proceedings, when law confers powers to condone the delay in the litigant pursuing Court proceedings. This of course on testing the bonafides of such plea as may be urged. In our opinion, such principles which are quite paramount and jurisprudentially accepted are certainly applicable, when the assessee seeks condonation of delay in filing income tax returns, so as to remove the prejudice being caused to him, so as to regularise his returns. In fact, in this situation, to not permit an assessee to file his returns, is quite counter productive to the very object and purpose, the tax laws intend to achieve. In this view of the matter, we have no manner of doubt that the delay which is sufficiently explained in the present case would be required to be condoned.

21 In the light of the aforesaid discussion, and for the reasons given by us hereinabove, we pass the following orders:-

- (a) The impugned order dated 20th October, 2023 passed by Respondent No.1 is hereby quashed and set aside;
- (b) The delay of 80 days in filing of the Return of Income for Assessment Year 2020-2021 by the Petitioner is hereby condoned;
- (c) The Respondents are directed to permit the Petitioner to file the Return of Income without penalty, fees and interest within a period of two weeks from the date of uploading of this order;

- (e) All contentions of the parties on the merits of the Return of Income are expressly kept open;
- (f) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)