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NEWS LETTER  
COMMITTEE

# DTBA NEWS LETTER (Direct Taxes)

JANUARY, 2025

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## *President Message*

Dear Professional Colleagues,

I extend my sincere greetings to you all.

I am deeply grateful to the DTBA family for the trust placed in me to serve as President for 2025. I am also fortunate to have a knowledgeable, dedicated, and energetic executive team. With your support, I assure you that our team will work diligently to achieve comprehensive professional gains for our members.

Following the new team's assumption of office, a meeting with the Bar and Bench was convened on January 29, 2025. During this meeting, the Department urged members to contribute to the success of the "Vivad Se Vishwas, 2024" scheme. Concerns were also raised regarding instances of fraudulent refund claims submitted by unscrupulous taxpayers through unwarranted exemptions and deductions in their ITRs. Members were advised to disassociate themselves from such individuals. The Bar sought to maximize the benefits of this meeting. Several long-standing issues of concern to members were discussed, including the non-grant of credit for prepaid taxes by the CPC, pending applications at the JAO level for credit grants, delays in appeal effects granted by JAOs, and other matters that could be resolved locally rather than at the CPC. A detailed report of this meeting has already been shared with members. The Principal CIT-1 presided this meeting and after taking stock of the issues ordered to the lower authorities to redress the issues whatever possible at their respective level and for remaining issues he assured to represent before higher authorities.

The primary responsibility of DTBA is to continuously update members' knowledge, share insights from learned colleagues, and provide a platform for discussion and exchange of views. Each year, the Union Budget introduces numerous amendments requiring deliberation and consideration. This year's Budget, presented by the Hon'ble Finance Minister on February

1, 2025, includes a significant increase in the threshold limit for individual taxation and numerous changes to TDS provisions, along with other administrative and compliance-related modifications. To address these proposed changes and alleviate members' concerns, a webinar was held on February 4, 2025. Adv. Karanjot Singh Khurana, Partner at Lakshmikumaran and Sridharan Attorneys, New Delhi, elucidated the amended provisions and responded to members' queries. Member participation was robust, with full attendance maintained throughout the webinar. The learned speaker commended the members' insightful questions.

A new opportunity has emerged with the proposed Income Tax Bill, 2025, which, upon parliamentary enactment, will replace the existing Income Tax Act, 1961, effective from April 1, 2026. Presented to Parliament on February 13, 2025, and subsequently made public, this bill replaces the concepts of "Previous Year" and "Assessment Year" with "Tax Year." While the fundamental structure of the Act including the five heads of income remains intact, sections, tables, and chapters have been renumbered which are supported by tabular representations. This necessitates members' thorough review of the bill to familiarize themselves with the new provisions. As the bill is in the public domain, members are encouraged to submit their feedback and suggestions with valid justifications. DTBA team will forward these views to the Finance Ministry. DTBA will strive to keep members informed through various channels, including the journal, study circle meetings, webinars, seminars, and other means, to ensure their continued relevance in this evolving landscape.

I urge members to share their valuable insights through the DTBA newsletter or the official DTBA website. I am of the firm belief that 'knowledge shared is knowledge squared' and that fostering an environment of knowledge sharing will allow everyone to learn and grow exponentially.

Warm regards,  
**CA I S Khurana**  
**President, District Taxation  
Bar Association (DT)**



## SECRETARY MESSAGE

Dear Professional Colleagues,

Jai Hind.

As a Secretary of District Taxation Bar Association (Direct Taxes), I am profoundly honoured and sincerely grateful to the esteemed members for entrusting me with the privilege of serving for the next term. Your trust and confidence inspire me, and I remain committed to advancing the goals and values of our prestigious association. I also extend my heartfelt congratulations to all the newly elected members of Team-2025. Together, we have the opportunity to strengthen our association, uphold our profession's integrity, and face future challenges with unity and determination.

During this month, Annual General Meeting was held, where members reviewed the organization's progress and financial standing. The activities of the past year were reviewed during the meeting, and the present members expressed their appreciation for the dedicated efforts put forth by the 2024 team, under the leadership of CA Sanjeev Gupta Ji. Smooth and transparency succession of the new executive team for 2025 showcased the association's democratic values and unity.

Flag hoisting ceremony at 76th Republic Day Celebration were attended by DTBA officials along with Senior members at Income Tax Office emphasizing a sense of unity and patriotism, democratic values, achievements, and ongoing efforts to strengthen the economic & social fabric of the nation. Further, to showcase spirit of respect and appreciation for their exemplary service, our team and senior officials visited Shri Surendra Kumar Ji, PCIT-1, and Shri Anupam Kant Garg Ji, CIT (Appeals-5)/Central Circle, to greet them on their well-deserved promotions to CCIT and PCIT respectively.

Towards the close of the month, an interactive meeting with Income Tax Administrators, under the chairmanship of Sh. Surendra Kumar, PCIT-1, Ludhiana was held to address various long-pending issues faced by members at large. Authorities listened and addressed all concerns very patiently and assured timely due resolution. The move was heartedly welcomed by all and Hon'ble PCIT Sir has also termed it an impactful event which cleared the longstanding deadlock between the Bar and the Department. The meeting ended up with the matured ideas of conducting disposal drive/s and regular (monthly or bimestrial) interactive sessions of this kind to ensure focused and consistent resolution of the members issues from time to time.

Friends, let us continue our collective efforts to build a more thriving, dynamic and resilient community. Thank you for your continued support.

उद्यमेन हि सिध्यन्ति कार्याणि न मनोरथः।  
न हि सुप्तस्य सिंहस्य प्रविशन्ति मुखे मृगाः॥

(Work gets accomplished by effort, industry, not merely by wishing. the animals don't enter a sleeping lion's mouth.)

Warm Regards,

**CA Deepak Jain**

Secretary DTBA (DT)

## FROM THE DESK OF THE EDITOR

As we usher in the new calendar year, the economic landscape of India and global tax dynamics are witnessing unprecedented shifts. The **Economic Survey of India 2024-25** presents a cautiously optimistic outlook, highlighting resilient growth despite global economic headwinds. The survey reports that India's real GDP growth of 6.4% in FY 25 remains close to the decadal average and projects real GDP growth for FY 26 to range between 6.3% and 6.8%. Overall exports grew 6% (YPY) during April-December 2024 and forex reserve stood at 640.30 Billion as at end of December 2024. Key sectors such as manufacturing, digital services, and green energy are poised to play a pivotal role in sustaining economic momentum.

The government's continued focus on **tax reforms, digitalization, and ease of compliance** under the GST framework has streamlined revenue collection, boosting tax buoyancy which is expected to enhance taxpayer confidence and ease operational challenges for businesses. The **widening tax base and improved revenue mobilization** indicate a maturing tax ecosystem.

**However, while domestic policies foster economic resilience, global taxation policies are introducing new challenges. The recent modifications in UK residency taxation rules have** significant global ramifications including Indian businesses, professionals, and high-net-worth individuals (HNWIs) sparking concerns about capital flows, offshore tax structuring, and double taxation challenges. There has been a change of guard in USA with Donald Trump assuming the office of President of USA which has thrown new challenges for the whole world. President Trump has threatened to crack the whip of tariffs on many countries including India with whom USA has trade deficit of \$45.6 billion dollars. The Indian leadership will have to navigate through this challenging and complex landscape of US-India trade imbalance without hurting its exports.

As legal professionals and tax consultants, it is imperative that we proactively assess the impact of these changes and adapt to the shifting paradigm of taxation in the global realm. It will be our constant endeavor to keep the members of the bar updated and well informed with latest developments in the realm of taxation to keep them updated with emerging tax issues.

Last but not the least, I express my deepest gratitude to the DTBA (Direct Taxes) team for reposing their trust in me by bestowing upon me the responsibility of Editor of the DTBA newsletter.

Sincerely yours

**CA Hitesh Bhakoo**

Editor



## ASSOCIATION ACTIVITIES

1. On 7<sup>th</sup> January, 2025, Old Team DTBA alongwith Senior Members met with the Hon'ble PCIT Sh. Surinder Kumar for discussion regarding various issues faced by the members at large. Hon'ble PCIT agreed to a Joint meeting between the AO's and the Bar to be scheduled around 29<sup>th</sup> January, 2025.
2. The Annual General Meeting was held on 10th January, 2025 wherein the Annual Audited Accounts were presented and were discussed and approved. All the activities undertaken during the Year 2024 were discussed at length and approved by the members in AGM. Thereafter, the new Team for the Year 2025 was elected under the esteemed leadership of CA I.S. Khurana.
3. On 26<sup>th</sup> January 2025, the new Team DTBA participated in the republic day event organized by Income Tax Department at Income Tax Office, Rishi Nagar, Ludhiana.
4. On 28<sup>th</sup> January, 2025, the new Team DTBA alongwith senior members met Sh. Surinder Kumar, the then PCIT to congratulate on his promotion as Hon'ble CCIT and Sh. Anupam Kant Garg, the then CIT(A)-5 to congratulate on his promotion as Hon'ble Principal CIT.
5. On 29<sup>th</sup> January, 2025, an interactive meeting was held with Income Tax Officials wherein long-pending issues being faced by members were impactfully appraised to the authorities alongwith sample issues as received from some of the members. Hon'ble CCIT, Sh. Surender Kumar Ji, patiently attended all the issues and have assured for timely resolution in a constructive manner.
6. A webinar on topic "Decoding the Union Budget" was held on February 4, 2025 where in eminent speaker Adv. Karanjot Singh Khurana, Partner at Lakshmikumaran and Sridharan Attorneys, New Delhi, deliberated upon the amendments proposed by the Budget 2025.

### New Management Committee of DTBA for the Year 2025



CA I.S. Khurana  
President



CA Sanjeev Bhandari  
Vice President



CA Deepak Jain  
Secretary



CA Dikshit Kapoor  
Joint Secretary



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## CIRCULARS/NOTIFICATIONS AND NEWS

1. Direct tax collections, after refunds, grew 15.9% year-on-year to Rs.16.9 lakh crore till January 12 in the current financial year. The growth in mop-up so far surpassed the direct tax collection growth pegged in the Budget, at 12.8%, mainly due to sharper net non-corporate tax (mainly personal income tax) collections.
2. The Budget Session of Parliament commenced on January 31 and subject of exigencies of Government Business, the session may conclude on 4th April 2025. In

addition to the Finance Bill, a bill proposing a new Direct Tax law modelled after the Direct Tax Code, for simplifying the compliance, has already been tabled in the parliament and referred to Select Committee.

3. CBDT vide order no. S.O.348(E)[No.8/2025/F.No.370153/01/2025-TPL] dated 20.01.2025 provides to remove the difficulty arises in giving effect to the provisions of the Vivad se Vishwas Scheme in view of the section 98 of the Finance (No.2) Act, 2024.

Compiled by: CA Megha Kalra

## KNOWLEDGE SECTION

### “DOCTRINE OF SUPERVENING IMPOSSIBILITY”

The doctrine of supervening impossibility is a legal principle that renders contractual obligations void when an unforeseeable event occurs, making performance impossible. This doctrine basically finds its roots in contract law, but its application in income tax law raises significant implications, particularly for taxpayers and revenue authorities. The doctrine of 'Lex non Cogit impossibilia' is an age-old maxim which has been used globally as a measure of defense in various legal matters. The maxim "Lex non cogit ad impossibilia" is of the Latin origin which means the law does not compel a man to do anything vain or impossible or to do something which he cannot possibly perform.

In the realm of income tax, the application of doctrine of supervening impossibility can arise in situations where taxpayers are unable to fulfill their tax obligations due to extraordinary circumstances. Such circumstances may be due to force majeure like natural disasters, pandemics, political events, or even economic collapses which may prevent compliance with tax laws. Time and again, various Courts have accepted the application of this maxim and excused the parties from performance of obligations.

#### Judicial Precedents and Legislative Considerations

The Bombay High Court in the case of Commissioner of Income Tax, Central III vs. Cello Plast (ITA No. 3731 of 2010) has followed the principle "*Lex not cogit impossibila*" (law does not compel a man to do that which he cannot possibly perform) and "*impossibilum nulla obligatio est*" (law does not expect a party to do the impossible) are well known maxims in law. The court held that since bonds of Rural Electrification Corporation Limited or National Highway Authority of India

were not available, it was impossible for the assessee to invest in them within the prescribed time.

ITAT CHENNAI BENCH 'C' in the case of K. Parthasarathy V. Income-tax Officer, Salary Ward-II(3), Chennai, has held that in the present case assessee, aged 94 years, sold his residential property, and deposited sale proceeds in REC bonds with a delay of 59 days due to his extreme old age and illness. It was held that the assessee fell ill and could not attend the work of depositing the sale consideration in the bonds within the rigidity of the time frame. Thus, it was concluded that assessee's case was governed by doctrine of supervening impossibility and, therefore, he was entitled to claim deduction under section 54EC.

In GST tax law, one of the areas where this doctrine can come in handy is the cases of expiry of E-way Bill's validity during transit. Such expiry may be due to reasons beyond the control of the assessee like breakdown, traffic blockades etc. Sometimes it may not be possible to extend validity within the time frame prescribed due to certain reasons beyond one's control like - expiry during night hours, poor internet connectivity, lack of communication means during the transit period, lack of means of communication in transit, public holiday and so on. Under such circumstances, it may be possible to invoke this doctrine to escape the rigours of law.

The doctrine of supervening impossibility, while primarily rooted in contract law, is of great relevance in income tax matters. Tax authorities must recognize genuine cases where compliance is impossible and offer relief measures to affected taxpayers.

CA HITESH BHAKOO

## JUDGMENTS SECTION

**[2025] 170 taxmann.com 121 (Ahmedabad - Trib.) Deputy Commissioner of Income-tax v. Minal Urmil Shah**

Provision of section 50C is applicable only on transfer of a capital asset being land or building or both and does not apply to transfer of development rights in land

**[2025] 170 taxmann.com 669 (SC) Deputy Commissioner of Income-tax v. Gokul Agro Resources Ltd.**

SLP dismissed against order of High Court that where on basis of survey conducted in case of Jammu & Kashmir Bank ,wherein assessee transacted, Assessing Officer observed that there was difference between remittance-sheet and account statement and Assessing Officer reopened assessment on ground that assessee's case was not selected for scrutiny, since on same material reopening notices for previous assessment years were set aside, impugned reopening notice could not be issued merely on ground that scope of reassessment was enlarged by amended provisions for reopening after 1-4-2021

**[2025] 170 taxmann.com 118 (Pune - Trib.) Dr. Murugesh Shantveerya Hiremath v. Deputy Commissioner Income-tax, Central**

Where assessee failed to get his accounts audited on or before due date as prescribed under section 139(1) due to impounded documents during survey and lapse on part of chartered accountant, assessee was prevented by reasonable cause for not getting accounts audited in time, and, therefore, impugned penalty under section 271B levied upon assessee was to be deleted.

**[2025] 170 taxmann.com 509 (SC) Assistant Commissioner of Income-tax v. Yes Bank Ltd.**

SLP dismissed against order of High Court that where Assessing Officer issued reopening notice on ground that deduction claimed under section 36(1)(viiia) with respect to provision for bad and doubtful debts on non-rural advances was not in accordance with law, since during original assessment proceedings Assessing Officer raised a specific query in respect of rural branches and Assessing Officer was satisfied with assessee's explanation that it had claimed deduction under section 36(1)(viiia) only for 7.5 per cent of total income and had not claimed any deduction for rural advances, reopening of assessment was merely based on change of opinion and was to be quashed.

**[2025] 170 taxmann.com 590 (Ahmedabad - Trib.) Soudharma Brihad Tapogachchiya Tristutik Jain Sangha Samarpanam v. CIT(Exemption)**

Where assessee-trust was created for purpose of following and propagating Jainism, since objects of assessee were confined to benefit of particular religious community or caste ie. Jains which was a specific violation under clauses (c) and (d) to Explanation to section 12AB(4), read with section 13(1)(b), assessee-trust was not entitled for registration under section 12AB

**[2025] 170 taxmann.com 593 (SC) Assistant Commissioner of Income-tax Cirlce v. Vikram Kapahi**

SLP disposed of in terms of judgment in Union of India v. Rajeev Bansal [2024] 167 taxmann.com 70/301 Taxman 238 (SC) against order of High Court that where revenue issued a notice under section 148A(b) to assessee after lapse of more than three years from end of relevant assessment year after obtaining prior approval from Principal Commissioner, since approval was sought from authorities specified in clause (i), as against clause (ii) of section 151, impugned notice and orders were to be quashed on ground that there was no approval of specified authority as indicated in section 151(ii), however, liberty was to be given to revenue to commence reassessment proceedings afresh, if deemed necessary, albeit as per law.

**[2025] 170 taxmann.com 243 (Bombay) Sanjay Ratna v. Assistant Commissioner of Income-tax**

Where Assessing Officer issued reopening notice on ground that assessee had received undisclosed cash receipt and there was credit card transaction which were not examined during course of regular assessment proceedings, since both these issues were not examined during course of regular assessment proceedings as information from Assessing Officer was received after conclusion of original assessment proceedings, impugned reopening notice was justified.

**[2025] 170 taxmann.com 754 (TELANGANA) Smt. Shantha Vidyasagar Annam v. Income-tax Officer**

Where assessee, a Non-Resident Indian, entered into a development agreement with a builder for constructing flats on a sharing basis, since possession was handed over solely for development, and no consideration was paid apart from a refundable performance guarantee, arrangement did not constitute "transfer" under Section

2(47).

**[2025] 170 taxmann.com 822 (Orissa) Binod Pattanayak v. Union of India**

Where assessee had deducted tax at source (TDS) in respect of various payments made to employees towards salary but did not deposit TDS amount into Central Government account by stipulated due dates and opposite party instituted a complaint against assessee for prosecution under section 276B, in view of Circular dated 17-10-2024 issued by CBDT, assessee could resort to procedural remedy under section 320 of Cr.P.C. and seek for compounding of offence

**[2025] 170 taxmann.com 638 (Bombay) Pico Capital (P.) Ltd. v. Deputy Commissioner of Income-tax Circle 8(2)(1)**

Where assessee, in reply to show cause notice, explicitly sought for a personal hearing, however, no personal hearing was granted to assessee, and such denial was not for valid reasons, case of complete failure of natural justice was made out and therefore, impugned assessment order was to be set aside and matter was to be remanded back to concerned Assessing Officer to dispose of show cause notice issued to assessee following law and after granting assessee a personal hearing.

**[2025] 171 taxmann.com 220 (Gujarat) Ashishbhai Jashwantbhai Desai HUF v. Income-tax Officer**

Where Assessing Officer issued reopening notice against assessee on ground that assessee had claimed bogus LTCG on sale of shares, however, failed to give requisite details in reasons recorded so as to form a requisite *prima facie* belief that income had escaped assessment,

impugned reopening notice was to be set aside.

**[2025] 170 taxmann.com 825 (Delhi) Lal Chand Verma Through His Legal Heir v. Union of India**

Where Assessing Officer issued notice under section 148A(b) against deceased-assessee and pursuant to same, son/legal heir of deceased-assessee submitted a copy of death certificate as conclusive evidence of assessee's demise, since no notice was issued to legal heir under section 159(2)(b), despite being informed of assessee's death, impugned notice issued under section 148A(b), and all consequential orders and proceedings arising therefrom, were to be quashed.

**[2025] 170 taxmann.com 614 (Ahmedabad - Trib.) Amartbhai Mandanbhai Desai v. Principal Commissioner of Income-tax**

Where assessee sold agricultural land and claimed deduction under section 54B, however, was not able to demonstrate that land sold was used for agricultural purposes for two years immediately preceding date of transfer, section 54B would not be applicable

**[2025] 170 taxmann.com 718 (SAFEMA - New Delhi) Rachakonda Srinivas Rao v. Initiating Officer, BPU, Hyderabad**

Where property was provisionally attached on ground that it was benami property, however, property was neither transferred nor was held by alleged benamidar, applicability of section 2(9)(A) was doubtful and therefore, neither property was benami nor transaction which had occurred with respect to property was benami.

Compiled by CA Megha Kalra

## ARTICLE SECTION

### Condonation of Delay u/s 119(2)(b) to File ITR-Lessor Used Tool

Recognizing the possibility of unforeseen circumstances and legitimate difficulties in the way to timely tax compliance, section 119(2)(b) of the Income Tax Act, 1961 (The Act), was placed in tax statute which provides essential support by allowing filing of ITR after due dates to such assessee, who face challenges in meeting crucial tax-related deadlines for valid reasons.

The provision and related guidelines on the one hand reflects the flexibility and fairness of the Indian tax system

ensuring that assessee is not unfairly penalized for circumstances beyond their control, on the other hand it adhere to specific deadlines to ensure finality to the issues.



On comprehensive analysis of the provision regarding condonation of delay in filing ITRs, in the light of applicable **Circular No. 11/2024 dt. 01.10.2024 (Earlier Circular No. 09/2015 dt. 09.06.2015)**, following moot points emerge:-

<b>Circular</b>	<b>Circular No. 11/2024 dt. 01.10.2024</b>
<b>What is Claim u/s 119(2)(b)</b>	Amount of Refund/Amount of Carry Forward of Loss
<b>Competent Authority</b>	<p>According to amount of claim involved in the application for one year (Revised Limit)</p> <p><b>PCIT/CIT</b> :- Not more than INR 1 Crores (Earlier it was INR 10 Lacs)</p> <p><b>CCIT</b>:- More than INR 1 Crore but not more than 3 crore (Earlier it was INR 50 Lacs)</p> <p><b>PCCIT</b>:- Above INR 3 Crores (Earlier it was INR 50 Lacs)</p> <p><b>Board</b> :- NA<sup>a</sup> (Earlier it was above INR 50 Lacs)</p>
<b>Time Limit for making application</b>	Five Years <sup>b</sup> from the end of the assessment year for which application is to be made.
<b>Time Limit for disposing application</b>	Within Six Months (As far as possible) from the end of month when it was received by authority.
<b>Review/Consideration of any Grievance as arising out of application filed.</b>	The circular specifically provides for entertainment of grievance of the assessee (if any) by the Board. However it does not specifically bar review applications to Board as done in the earlier circular. <sup>c</sup>
<b>Conditions to meet with</b>	<ul style="list-style-type: none"> <li>- <b>Reasonable Cause</b><sup>d</sup>: The delay should be resulted from circumstances which can constitute reasonable cause.</li> <li>- <b>Genuine Hardship on merits.</b></li> <li>- <b>The income of the assessee</b> is not assessable in the hand of any other person under any of the provisions of the act.</li> <li>- <b>No interest is admissible</b> on the belated claim of refunds.</li> <li>- The refund <b>has arisen due to</b> excess tax deducted/collected at source and/or excess advance tax or self-assessment tax as per provisions of the Act.</li> </ul>
<b>Condonation for delay in verifying ITR-V</b>	Commissioner of Income-tax, Central Processing Centre (CPC), Bengaluru. (By sending the ITR-V to CPC, Bengaluru and filling of application for condonation of delay in this regard).
<b>Powers of the Competent Authority</b>	<i>Discretionary</i> <sup>e</sup>

<sup>a</sup>One can approach Board for other relief/s in accordance with provisions of Section 119.

<sup>b</sup>W.e.f. 01.10.2024 and earlier, it was six years. Further in case of refund claim arisen consequent to a Court Order, the period of pendency of proceedings before Court is be excluded.

<sup>c</sup>Reasonable Cause is not defined under the Act, it will be read as per the established law as interpreted by the competent courts.

#### **Steps in Application u/s 119(2)(b):-**

1. File an application (manually) to the competent authority as applicable. The application should contain all the material facts alongwith evidence particularly as regards to : a) Circumstances due to which the delay was caused and b) Reasoning of the genuine hardship to be caused to the taxpayer if such a claim is not

allowed. (*The application for condonation of delay in EVC of ITR only may be filed online on the income tax portal in the 'Condonation request' section under the 'services' tab.*)

2. Any Enquiries may be undertaken by office of JAO on the instance of competent authority and/or by the office of Competent Authority itself.
3. Assessee replies to notice issued by the AO/Competent authority from time to time seeking relevant information regarding the claim.
4. JAO finalizes his enquiry report and send to competent authority through proper channel.
5. The Competent Authority will decide upon the merits of the case and pass an order under section 119(2)(b).
6. ITR u/s 119(2)(b) is to be filed mentioning the Document Identification Number (DIN) of the order at

## Part A-General Information-A19.

### Some Judicial & Other Takeaways

- ***Bhavesh Ghanshyam Advani Vs CIT (ITAT Mumbai) in Appeal Number : ITA No. 5808/Mum/2017, ITAT Mumbai held that order of Commissioner passed under section 119(2)(b) of the Income Tax Act is not appealable before the ITAT and is appealable directly to the Secretary, CBDT or can be challenged before High Court.***
- ***Honourable Supreme Court in B.M. Malani Vs. Commissioner of Income Tax, 174 Taxman 363 (SC) (2008) held that the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised. Any compulsion to pay unjust dues as per se would cause hardship. Hon'ble Apex Court further held that 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). 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.***
- ***K.S. Bilawala v. Pr. CIT [2024] 158 taxmann.com 658/297 Taxman 464 (Bom.)*** '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'.'
- ***Honourable Bombay High Court in Sitaldas K. Motwani Vs. Director General of Income Tax (International Taxation), New Delhi, reported in 187 Taxman 44(Bom) (2010) held the term genuine hardship has to be construed liberally and that authority cannot examine refund closely to see, if the claim succeeds. The authority is not expected to go deep into the niceties of law.***
- **Ignorance of law is not excuse but at the same time no legal maxim which says that everybody knows full law.**
- ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [1979] 118 ITR 326 (SC).***
- ***Hon'ble ITAT AMRITSAR in [2003] 125 Taxman 268 (Amritsar) (Mag.)/[2003]*** 'Ordinarily a plea as to the ignorance of law cannot support the breach of a statutory provision, but the fact of such an innocent mistake due to ignorance of the relevant provisions of law coupled with the fact that the transactions, in question, were genuine and will constitute a reasonable cause.'
- ***Hon'ble High Court of Bombay in CG Power and Industrial Solutions Ltd. v. Assistant Commissioner of Income-tax[2024] 162 Taxman 315 (Bombay)*** '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.' ***SLP of the Department dismissed by Hon'ble Supreme Court of India in [2025] 170 taxmann.com 542 (SC).***
- ***M. Rajan v. Principal Commissioner of Income-tax, Calicut (164 Kerala 2016) Kerala High Court*** 'It was contended that the petitioners health condition was so poor that he could not make necessary arrangements for initiating the return filing process. The court held that it would only be appropriate to condone the delay.'
- ***Artist Tree (P.) Ltd vs The CBDT (2014)(52 Taxman 152), Bombay High Court*** 'One of the grounds for delay in filing was misplacement of TDS certificates due to change in the office, and considerable time was spent to reextract these certificates resulting in delay. The court considered it a case of genuine hardship.'
- ***Optra Health Pvt. Ltd. v Addl. CIT (HQ) [Writ Petition No. 15544 of 2023 dated 19-12-2023], Bombay High Court*** '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. .... A litigant does-not stand to benefit by resorting to delay. In fact, he runs a serious risk.'

- Hon'ble High Court of Punjab and Haryana in **Shyam Sunder Nirankari v. Commissioner of Income-tax, Karnal [2016] 65 taxmann.com 104 (Punjab & Haryana)** Wherein assessee pleaded reasonable cause as his family life had remained disturbed on account of his field duty, being a distributor of 'Cable Master' in State of Haryana; and that *his TDS certificates had got misplaced - On the facts of the case Hon'ble Court held that since assessee had miserably failed to convince that he had any 'genuine hardship' in filing his income-tax return late by 30 months, no benefit under section 119(2) could be given to him.*
- **Benefit of Circular:-** No. 14(XL-35), dated 11-4-1955 one may also plead the circular in such proceedings as the circular contains some beneficial rules such as Para No. 3(a) of the Circular which makes it duty of the officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. The purpose of the circular itself was emphasized that department should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him.

Prepared By: **CA Deepak Jain**

**NOTE :** The views and opinions expressed or implied in this newsletter are that of the contributors and do not reflect those of the District Taxation Bar Association (Direct Taxes), Ludhiana.



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