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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.556 OF 2024

CEC Rani Joint Venture,
Thr. The Managing Partner,
Mr Galla Gundaiah, 78 years,
Plot No.49, Kadapa Band
Ponda, Goa 403 401. ... PETITIONER

Versus

1. Central Board of Direct Taxes
J684+324, North Block,
Central Secretariat,
New Delhi, Delhi 110001

2. Assistant Commissioner of
Income Tax, Circle 1(1),
Aayakar Bhavan,
EDC Complex, Patto Plaza,
Panaji-Goa.

3. Principal Commissioner of
Income Tax, Aayakar Bhavan
Panaji-Goa. … RESPONDENTS

Mr K. Gopal with Mr Pramod Vaidya, Advocates for the Petitioner.
Ms Susan Linhares, Standing Counsel for the Respondents.

CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.

DATE : 9th DECEMBER 2024

JUDGMENT : (*Per M.S. Karnik, J.*)

1. Heard Mr Gopal, learned counsel for the petitioner and Ms Susan Linhares, learned Standing Counsel for the respondents.

2. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 19.01.2024 passed by the Additional Commissioner of Income Tax and for direction to respondent no.1 – Central Board of Direct Taxes (CBDT) to consider the application under Section 119(2)(b) of the Income Tax Act 1961 ('the Act' for short) on merits, especially in the light of the decision of the Hon'ble Supreme Court dated 10.01.2022 and grant refund of Rs.2,69,45,400/- along with interest.

3. The CBDT, vide impugned order dated 19.01.2024 while rejecting the application, relied upon a Circular no.09/2015 dated 09.06.2015 with regard to condonation of delay. In paras 3 and 4, the CBDT observed that the petitioner for the reasons mentioned has filed the petition beyond six years from the end of the relevant assessment year for which

condonation of delay in filing the ROI has been sought. The petitioner has filed an application seeking condonation of delay on 28.02.2022 for Assessment Year 2014-15. As per para 3 of the Circular dated 09.06.2015, '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'. The CBDT noted that the petitioner had sufficient time to file its application till 31.03.2021 (in accordance with Circular No.9/2015) but failed to file its application. Even on merits, the CBDT held that filing a ROI within the prescribed time limit is the rule and condonation of delay is an exception. The CBDT observed that the reasons furnished for condonation of delay must be compelling circumstances that prevent the filing of an application seeking condonation of delay in filing the ROI within the due date by the petitioner. It is held that the petitioner failed to furnish any compelling reasons for the delay in filing the application seeking condonation of delay. The petitioner failed to establish that it pursued the matter with due diligence and the responsibility of filing the application seeking condonation of delay or filing the ROI in time vested with the petitioner.

4. The facts of the case in brief are as under:

The petitioner is a joint venture constituted on 28.11.1988 between Coromandel Engineering Co. Ltd. (CEC) and Rani Constructions Pvt. Ltd. (RCPL). In 1998, the petitioner had undertaken a civil contract from the Government of Uttar Pradesh (UP) for the execution of the Parallel Upper Ganga Canal Project. The project got completed only in the year 1997.

5. Due to certain disagreements between the petitioner and the Government of UP, the payments for executing civil work were halted. Therefore, the dispute was referred to the Arbitration. The Arbitral Tribunal pronounced an award in favour of the petitioner and directed the Government of UP to pay a sum of Rs.27,58,71,006/- to the petitioner. The said award was challenged by the Government of UP before the Allahabad High Court without any success. Thereafter on further appeal before the Hon'ble Supreme Court, the Government of UP vide order dated 02.01.2014 was directed to pay the awarded amount with simple interest of 18%. As per the directions of the Supreme Court, the Government of UP paid the amount of Rs.27,23,13,909/- in several tranches

on various dates in the financial year 2014-15 relevant to the Assessment Year 2015-16 after deducting TDS of Rs.4,07,03,990/-.

6. The return of income for the Assessment Year 2015-16 was filed on 31.10.2015 under Section 139(1) of the Act claiming total refund of Rs.4,07,03,990/- on account of TDS on the entire amount of award of Rs.27,23,13,909/-. The above return was treated as defective return under Section 139(9) of the Act and no refund was granted as claimed. On verification of Form 26AS for the Assessment Year 2014-15 and 2015-16, it was found that the Government of UP had deducted and deposited the TDS of Rs.2,69,45,400/- in Assessment Year 2014-15 and Rs.1,37,58,591/- in the Assessment Year 2015-16. Therefore, the return for the Assessment Year 2015-16 was revised on 27.05.2016 claiming a refund of Rs.1,37,58,591/-.

7. On 01.10.2016, the petitioner filed the return of income for the Assessment Year 2014-15 under Section 139 of the Act and claimed a refund of excess TDS of Rs.2,69,45,400/- on the basis of the date of transactions as mentioned by the Government of UP and deduction and payment of TDS for

the Assessment Year 2014-15 as reflected in the Forms 26AS. The revised return for the Assessment Year 2015-16 was processed and accepted vide intimation dated 21.03.2018 under Section 143(1) without giving credit of excess TDS. The mistake of not releasing the refund was pointed out by the petitioner in an application under Section 154 of the Act filed against the intimation under Section 143(1) for the Assessment Year 2015-16. The petitioner filed several communications dated 28.04.2017, 14.07.2017 and 16.04.2018 requesting the respondent no.2 to release the refund for the Assessment Year 2014-15. However, no cognizance was taken.

8. Petitioner, thereafter, filed an application before the respondent No.3 on 30.05.2018 seeking condonation of delay in filing the return for the Assessment Year 2014-15. The application was well within the time as prescribed in the CBDT Circular 9/2015, dated 09.06.2015. However, since, the claim of refund was more than 10 lakhs, the Respondent No.3 did not have jurisdiction over the said case. The Petitioner was under the bonafide belief that his application

will be taken into consideration and the delay in filing the return will be condoned by the Respondent No.3.

9. In response to the above, the petitioner received communication from the Department of Administrative Reforms and public grievance stating that the case is "closed" and the claim of refund for the above years cannot be entertained. The Assessing Officer on 20.01.2021 prepared the report and sent the same to PCIT making adverse comment on the claim of refund made by the petitioner.

10. The petitioner filed an application before the respondent no.1 on 28.02.2022 under Section 119(2)(b) of the Act seeking condonation of delay in filing the return for the Assessment Year 2014-15 and grant of refund of TDS credit. The petitioner explained that there is no tax liability and that the entire TDS amount deducted on the arbitration award is refundable. There is a reasonable cause of delay in filing the return of income for the Assessment Year 2014-15 and the petitioner would suffer grave hardship if the refund amount withheld for the Assessment Year 2014-15 is not released by the Department. Further, the petitioner, vide its letter dated 31.05.2023 reiterated the reasons for delay in filing the return

for Assessment Year 2014-15 and AY 2015-16 and requested respondent no.1 to consider the application filed under Section 119(2)(b) of the Act on merits and direct the respondent no.2 to process the refund accordingly.

11. After being satisfied with the petitioner's claim of refund for Assessment Year 2015-16, the application under Section 154 was disposed of on 26.06.2023 specifying the amount of refund of Rs.1,37,58,591/-. The Assessing Officer after considering all the submissions of the petitioner released the refund for the Assessment Year 2015-16. Thereafter, vide letter dated 29.12.2023, the respondent no.1 mentioned that the application seeking condonation filed under Section 119(2)(b) of the Act is beyond the period of six years from the end of the assessment year as stipulated in the CBDT Circular No.09/2015, hence the same is not maintainable. Further, the petitioner was given a final opportunity to file submissions specifying the genuine hardship that prevented the filing of the ROI within the stipulated time.

12. In response to the above letter dated 29.12.2023, the petitioner filed its submissions on 02.01.2024 and submitted that the application filed on 28.02.2022 is not time-barred in

view of the decision of the Hon'ble Supreme Court date 10.01.2022. The return of income for the Assessment Year 2014-15 was filed beyond the time period prescribed under Section 139 of the Act due to unavoidable circumstances. The respondent no.1 vide impugned order dated 19.01.2024 passed under Section 119(2)(b) of the Act rejected the application on the ground that the application filed under Section 119(2) of the Act is beyond the period of six years from the end of the relevant Assessment Year as per the CBDT Circular 9/2015, dated 09.06.2015 without deciding on the merits.

13. Ms Susan Linhares, learned standing counsel for the Revenue argued in support of the impugned order. She invited our attention to the detailed affidavit in reply filed on behalf of the Revenue. Moreover, she lays much emphasis on the following facts and settled position of law in support of her submissions:

> *"1. 31.03.2015 - The last date for filing Return of Income (ROI) for A.Y. 2014-15 was 31.03.2015. However, the petitioner did not file ROI for A.Y. 2014-15.*

2. 28.02.2022 - Almost 7 years later, the Petitioner files application u/sec. 119(2)(b) of the IT Act before the respondent no.1 (CBDT) seeking condonation of delay in filing original Return of Income (ROI) for the A.Y. 2014-15. The application u/sec. 119(b) is beyond six years from the end of the relevant assessment year, the CBDT is bound by the guiding Circular no.9 of 2015.

3. Para no. 3 of the Circular no. 9 of 2015 reads as under:-

> *"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 power to condone the delay as per the above prescribed monetary limits, including the Board."*

4. The Respondent no.1 (CBDT) granted an opportunity to the petitioner to explain as to how its application for condonation of delay was maintainable in view of the aforesaid para no. 3 of Circular no.9 of 2015. The petitioner filed reply dated 02.01.2024 admitting that the ROI was filed beyond the time limit and that the claim of refund made in the original ROI A.Y. 2015-16 was merely bifurcated to be in conformity with the deduction of TDS made in two years. However, the petitioner did not give any explanation as to why there was

delay of more than six years in filing the application for condonation of delay.

5. The petitioner was granted opportunity to file written submissions in view of the adverse field report received during the course of the proceedings. The Respondent no.1 vide Order dated 19.01.2024 rejected the application for condonation of delay on the ground that the petitioner had failed to make out a compelling reason for the delay in filing the application under section 119(2)(b) of the IT Act, i.e; within six years from the end of the relevant Assessment Year as per the CBDT Circular no. 9 of 2015 dated 09.06.2015.

6. The petitioner had sufficient time to file the application for condonation of delay within the prescribed period but failed to do so. Filing of Return of Income within the prescribed time limit is the rule and condonation of delay is an exception. The petitioner failed to furnish any compelling or satisfactory reasons for condonation of delay. The petitioner failed to exercise due diligence to ensure that the application seeking condonation of delay was filed within the prescribed limit of six years from the end of the relevant assessment year.

7. The Central Board of Direct Taxes (CBDT) vide notification dated 24-06-2020, in exercise of the power conferred by subsection (1) of section 3 of the Taxation and Other Laws (Relaxation of

Certain Provisions) Ordinance, 2020 (2 of 2020), had duly extended the due dates and the said notification was applicable from 30-06-2020. In the said notification, there is no mention of the extension of date of filing of application u/s 119(2)(b) of the Act. The income tax authorities are bound by the CBDT notification, circular and instruction issued from time to time.

8. In the case of Lava International Limited Vs CBDT, W.P.(C)8293/2024, the High Court of Delhi vide Judgement dated May 30, 2024, held that there was no justification to interfere with the ultimate view which has been taken and which stands succinctly encapsulated in para 9 of the impugned order and where the authority has spoken of the imperatives and necessity of ensuring statutory compliance with the timeframes which otherwise stand constructed under the Act, as follows:-

> *"9. It should be noted that the legislature has provided time limits for certain obligations under the Act and these time limits have to be observed to be able to claim those deductions, allowance and avoid interest and penalty. This cannot be termed as hardship but it is compliance requirements imposed by the law in interest of proper regulation of the Act. If these time limits were to be relaxed in a particular case on mere fact that a default occurred due to some inadvertence then*

> *there will be no sanctity of limitation prescribed by the legislature. Therefore, power of condonation u/s 119(2) can be exercised to deal with the extraordinary circumstances only which would have led to delay in statutory compliance and the same cannot be exercised routinely."*
>
> *In view of the above settled position of law, the petitioner is not entitled to any relief and the petition be dismissed."*

14. Before we consider the rival submissions, it would be pertinent to extract Section 119(2)(b) of the Income Tax Act, 1961, which reads thus:

> *"(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"*

15. Relevant in the context is the CBDT Circular No.09/105 dated 09.06.2015. Para 3 of the Circular says that

'*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 power to condone the delay as per the above prescribed monetary limits, including the Board'.*

16. The petitioner is deprived of a refund merely because the application filed under Section 119(2)(b) of the Act was beyond a period of six years as mentioned in the CBDT Circular 09.2015. It is significant to note that on several occasions, i.e. on 28.04.2017, 14.07.2017 and 16.04.2018, the petitioner requested respondent no.2 to release the refund for the Assessment Year 2014-15. As no cognizance was taken, the petitioner filed an application before respondent no.3 – Principal Commissioner of Income Tax on 30.05.2018 seeking condonation of delay in filing returns for the Assessment Year 2014-15. This application was well within time as prescribed in CBDT Circular No.09/2015. However, since the claim of refund was more than 10 lakhs, respondent no.3 did not have jurisdiction over the said case.

17. Learned counsel for the petitioner stated that the petitioner was under bonafide belief that his application would be taken for consideration and the delay in filing the return would be condoned by respondent no.3. The petitioner on 30.09.2020 filed a grievance petition through CPGRAM requesting the AO to release the refund for the Assessment Year 2014-15 and 2015-16. On 28.02.2022, which was beyond the period of six years, the petitioner filed an application before respondent no.1 under Section 119(2)(b) of the Act seeking condonation of delay in filing the return for the Assessment Year 2014-15 and grant of refund of TDS credit. It is pertinent to note that the department has already accepted the claim of refund made by the petitioner for the Assessment Year 2015-16 and has also granted the same after considering the details filed by the petitioner.

18. We have gone through the application under Section 119(2)(b) preferred by the petitioner before the CBDT which is at page 85 of the paperbook. Apart from the reasons mentioned in the application referred to above, it may not be out of place to mention that the petitioner filed an application on 30.05.2018 before respondent no.3 seeking condonation in

filing the return of income for the Assessment Year 2014-15. This application is well within the time limit of six years from the end of Assessment Year as provided in the CBDT Circular No.09/2015 dated 09.06.2015. In this Circular, respondent no.3 has been considered one of the Authorities who was vested with the powers to accept or reject the application under Section 119(2)(b) of the Act. However, respondent no.3 did not take cognizance of the application as he had no jurisdiction to process the application as the claim was more than Rs.10,00,000/-.

19. It appears that respondent no.3 did not pass any order disposing of the application of the petitioner. The Government of India in the meantime declared a nationwide lockdown in the wake of COVID-19, pandemic on 24.03.2020 which was extended from time to time. The petitioner filed an application to respondent no.1 on 28.02.2022 under Section 119(2)(b) of the Act seeking condonation of delay in filing the return for Assessment Year 2014-15 and a grant of refund of TDS credit. The petitioner gave a reasonable cause of such delay in filing the return. By application dated 31.05.2023, the petitioner reiterated the

reasons for the delay in filing the return for Assessment Year 2014-25 and requested the respondent no.1 to consider the application filed under Section 119(2)(2) on merits and directed respondent no.2 to process the refund accordingly.

20. As indicated earlier, respondent no.1 rejected the application seeking condonation of delay filed under Section 119(2)(b) as it was beyond the period of six years from the end of the Assessment Year as stipulated in the CBDT Circular No.09/2015 thereby holding that the same is not maintainable. Further, the petitioner was given a final opportunity to file submissions specifying the genuine hardship that prevented the filing of the ROI within the stipulated time. On 02.01.2024, the petitioner filed its submissions in response to the letter dated 29.12.2023 explaining the circumstances which resulted in the delay in filing the application. By the impugned order dated 19.01.2024, respondent rejected the application on the ground that the petitioner had failed to make out a compelling reason for the delay in filing the application under Section 119(2)(b).

21. The question is whether the explanation offered by the petitioner for the delay in filing the application deserves to be

accepted for deciding the claim for refund on merits. A reference is necessary to some of the decisions of the Hon'ble Supreme Court and the High Court in this context. This Court in ***Sitaldas K. Motwani V/s. Director General of Income Tax (International Taxation), New Delhi*** [1] observed in paras 15 and 16 thus:

> *"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*

[1] (2010) 187 Taxman 44 (Bombay)

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."

22. In ***Central Board of Direct Taxes V/s. Vasudev Adigas Fast Food (P.) Ltd.***[2], the High Court of Karnataka in paras 15, 18 and 19 observed thus:

> *"15. In the considered opinion of this court, in cases where an respondent/assessee faces an hardship, Section 119(2)(b) of the Act empowers the CBDT to issue any general or special order authorizing any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act, if the time period for taking the benefit of the same has expired under the Act. Thereafter, the said income tax authority has to examine the return so filed on merits in accordance with law.*
>
> *18. In respect of Circular No. 9/2015 dated 9-6-2015 it can be safely gathered that it does not apply to the power of CBDT to condone the delay in filing the return of income under section 119(2)(b) of the Act. Section 119(1) of the Act empowers the CBDT to issue orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of the Act and the power available to the CBDT under section 119(2)(b) is a specific power provided to the CBDT to pass such orders in cases of genuine hardship.*

[2] (2021) 128 Taxman.com 287 (Karnataka)

> *19. The Circular issued by CBDT is binding on the authorities subordinate to it and cannot be binding on itself. Further, the authorities to whom Circular No. 9/2015 dated 9-6-2015 is issued and binding is specified in the said circular itself. A bare reading of Section 119(1) clearly shows that the circulars/orders/instructions binding on other income tax authorities and that the same are not binding on the CBDT itself. However, despite the above settled position of law, the CBDT has relied on Circular No. 9/2015 dated 9-6-2015 and rejected the application of the respondent/assessee."*

23. The decision in *Vasudev Adigas Fast Food (P.) Ltd.* (supra) was challenged by the Revenue before the Supreme Court. The Supreme Court in ***Central Board of Direct Taxes V/s. Vasudeva Adigas Fast Food (P.) Ltd.***[3] while observing that the decision of the Karnataka High Court may not be treated as a precedent in para 3 observed thus:

> *"3. Having heard Shri N. Venkatraman, learned ASG and having considered the facts and circumstances due to which the respondent-assessee, at the relevant time, could not file the return of income within the time prescribed, the order passed by the High Court directing the Revenue to condone the delay and accept the belated return of income and to consider the return of income in accordance with law on merits does not warrant any interference. The facts which led to the*

[3] (2022) 142 taxmann.com 481 (SC)

> *assessee in late filing of the return of income are glaring. Therefore, no interference of this Court is called for, in exercise of powers under Article 136 of the Constitution of India. However, at the same time, the question of law, "whether the CBDT, while exercising the powers under section 119(2)(b) of the Income-tax Act, can direct to condone the delay in filing the return of income" is kept open to be considered in an appropriate case. It is further observed that the impugned judgment and order passed by the High Court be not treated as a precedent."*

24. In the facts of the present case, we find the petitioner has been diligent enough in pursuing the claim for a refund. In fact, it is material to note that the payments made to the petitioner by the Government of UP were delayed on account of the dispute which had to be referred to arbitration. Pursuant to the arbitral award payments were made to the petitioner in different tranches. The petitioner had filed a claim for refund with respondent no.3 within the stipulated period. However, respondent no.3 did not have jurisdiction to process the claim as the same was for more than Rs.10,00,000/-. Moreover, the claim of the petitioner for the Assessment Year 2015-16 in respect of the very same contract was processed and refund was granted. In the meantime, there

was outbreak of COVID pandemic. We are satisfied that a case making out compelling circumstances for filing the return belatedly is made out in the application filed by the petitioner.

25. In the present facts, the petitioner has made out a case for condoning the delay in filing the application under Section 119(2)(b) before the CBDT. There are adequate circumstances on record justifying the delay in filing application and hence, looking at the compelling reasons for the delay in filing the application the claim of the applicant ought to have been considered by the respondents on merits.

26. The petition is accordingly allowed. The impugned order dated 19.01.2024 is quashed and set aside. The respondent no.1 is directed to consider the application of the petitioner under Section 119(2)(b) of the Act on merits, expeditiously. No order as to costs.

NIVEDITA P. MEHTA, J. **M. S. KARNIK, J.**