

**Court No. - 3**

**Case :-** WRIT TAX No. - 976 of 2022

**Petitioner :-** Sri Kailash Chand Agarwal

**Respondent :-** Principal Commissioner And Another

**Counsel for Petitioner :-** Mahima Jaiswal, Sr. Advocate

**Counsel for Respondent :-** Gaurav Mahajan

**Hon'ble Siddhartha Varma, J.**

**Hon'ble Manoj Bajaj, J.**

1. Heard Sri Shambhu Chopra, learned Senior Counsel, assisted by Ms. Mahima Jaiswal learned counsel for the petitioner and Sri Gaurav Mahajan learned counsel for the Department.
2. The petitioner filed two Income Tax returns for the assessment years of 1994-95 & 1995-96 on 30.3.1998 with a delay of 1095 days & 730 days respectively. The last dates of filing of those returns for the assessment years 1994-95 & 1995-96 were 30.6.1994 & 30.6.1995 respectively. The returns were accompanied with delay condonation applications.
3. Learned counsel for the petitioner has stated that the Board under Section 119(2)(b) of the Income Tax Act has been issuing circulars from time to time authorizing its officials to condone the delay. Learned counsel for the petitioner has submitted, relying upon a circular dated 9.6.2015, that similar circular was in existence at the time when the petitioner had filed Income Tax Returns along with the delay condonation applications.
4. It is the contention of the learned counsel for the petitioner that if the delay condonation application had been allowed in the year 1998 itself within 6 months as is provided in various circulars then the record would have been available and the case would have been decided on merits.

5. Learned counsel for the petitioner, therefore, submits that when the case was being decided after more than 20 years it did not lie in the mouth of the official who passed the order to say that the record could not be located and, therefore, the case could not be decided.

6. Learned counsel for the petitioner has submitted that no notice etc. was served upon the petitioner for presenting himself while the order was passed. Had that been done, the petitioner would have supplied the receipts of the TDS etc.

7. Learned counsel for the Department, in reply, however, has submitted that the return which was for the assessment years of 1994-95 & 1995-96 were not filed within the limitation provided i.e. till 30.6.1994 and 30.6.1995 respectively and therefore they had become nonest Returns, which could not be looked into.

8. However, learned counsel for the Department has submitted that if another opportunity is given to the Department to pass an order then every effort shall be made to reconstruct the record after including the TDS receipts etc. which could be obtained from the petitioner and he has further submitted that the petitioner shall also be afforded an opportunity of proper hearing.

9. Having heard the learned counsel for the petitioner and the learned counsel for the Department we are of the view that when the delay condonation application was filed on 30.3.1998 then the applications ought to have been decided within the time provided by the Act. The Court is definitely of the view that at that point of time all the records would have been available.

10. However, in view of the submission made by the learned counsel for the Department, we are of the view that the order

dated 24.10.2019, which has been passed after more than 20 years of the filing of the applications on the ground that the records were not available, deserves to be set aside. The order is accordingly quashed.

11. The Principal Commissioner, Income Tax Department -I, Agra shall now decide the applications of the petitioner which were filed on 30.3.1998 afresh. While deciding the application every effort shall be made to get the record re-constructed with the help of the petitioner and all available records.

12. With these observations, the writ petition is disposed of.

**Order Date :- 11.8.2023**

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(Manoj Bajaj,J.)

(Siddhartha Varma,J.)