IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4832 OF 2021

M/s Bhatewara Associates
Manik, Silver Garden area,
Near Kamat Hospital,
Chinchwad, Pune-411 033 … Petitioner

V/s.

1. Union of India
Through the Ministry of Finance,
Department of Revenue,
Room No. 46, North Block,
New Delhi-110 001

2. Central Board of Direct Taxes (CBDT),
Through the Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001. … Respondents

Mr. Sanket S. Bora with Ms. Vidhi K. Punmiya i/b SPCM Legal, for petitioner.
Mr. N. N. Singh for respondents.

CORAM : DHIRAJ SINGH THAKUR & ABHAY AHUJA, JJ.
DATE : 23rd AUGUST, 2022

PER COURT:

1. Aggrieved by the denial by order dated 7th May, 2021 under Section 119 (2) (b) of the Income Tax Act, 1961 (“the Act”) of the respondent no.2 viz., the Central Board of Direct Taxes

(CBDT) to condone the delay in filing of the Income Tax Return (ITR) for assessment year 2011-12 the petitioner referred this petition under Article 226 of the Constitution of India.

2. It is the case of the petitioner that petitioner, being a firm engaged in the business of real estate, builders and developers since 3rd March, 2007, had entered into a joint venture agreement dated 12th May, 2008 with M/s Sanghvi Premise Pvt. Ltd. to jointly develop a housing project named "Sanghvi Nakshatra" situated at Nasik and the project having met the conditions under Section 80 IB (10) of the Act was entitled to a deduction under that Section for the AYs 2010-11 to 2013-14.

3. Mr. Sanket S. Bora, learned counsel for the petitioner would submit that the joint venture partner, viz; Sanghvi Premise Pvt. Ltd. has already successfully claimed the said deduction for the AYs 2010-11 to 2013-14. He would submit that even the petitioner has been granted the deductions under Section 80 IB(10) for the AYs 2010-11, 2012-13 and 2013-14. He would submit that, however, with respect to the AY 2011-12 the return

of income remained to be filed in time by the Chartered Accountant entrusted with the filing of returns. Learned counsel would submit that the petitioner had engaged M/s B.S. Mart and Associates as the chartered accountant firm who had recommended one Mr. Damodar Narayan Panchal as tax consultant for the task of looking after petitioner's filing of returns. However, in view of the said tax consultant's son's handicap coupled with innumerable medical emergencies in the year 2011, the said tax consultant overlooked the filing of ITR not only in petitioner's case but also of many other clients of the said chartered accountant's firm. Mr. Bora would submit that the said tax consultant's affidavit clearly setting out the circumstances which led to the omission to file the petitioner's as well as the returns of around 28 other assessees for AY 2011-12 is at exhibit 'H' (page 80) to the petition.

4. Mr. Bora submits that the present petition only pertains to the AY 2011-12, wherein the tax consultant was supposed to file the return on or before 30th September, 2011. However, due to the inadvertent delay on his account, the ITR was filed on 30th

September, 2012 after making a delay of 365 days. Learned counsel submits that the books of accounts of the petitioner were audited on 21st September, 2011 i.e., well within the due date. Learned counsel submits that therefore the petitioner firm filed an application dated 11th October, 2019 under Section 119 (2) (b) of the Act seeking condonation of delay in filing of the ITR for AY 2011-12 caused due to the said tax consultant, depriving the petitioner of a deduction of Rs. 2,42,88,917/- causing grave hardship to the said firm.

5. He submits that thereafter the respondent no. 2 vide his letter dated 3rd February, 2021 called upon the petitioner to make submissions as to why the application under Section 119(2)(b) of the Act should be maintained. It is submitted that the petitioner vide its letter dated 17th March, 2021 made it submissions in reply to the aforesaid letter by the CBDT and thereafter, on 7th May, 2021, the CBDT has rejected the application made by the petitioner.

6. Mr. Bora would submit that, alternatively the petitioner had opted for the benefit provided under the Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV), whereby the petitioner filed an application under Forms 1 and 2 and has also received Form 3 dated 25th May, 2021, whereby petitioner is required to pay a demand of Rs. 75,05,280/- (before 30th June, 2021) and Rs. 82,55,808/-(after 30th June, 2021).

7. Aggrieved by the rejection of its application under Section 119(2) (b), by the CBDT, the petitioner has filed this petition.

8. On the other hand, Mr. N. N. Singh, learned Senior Standing Counsel for the respondents refers to the affidavit in reply dated 8th November, 2021 filed on behalf of the respondents. He would submit that the return of income was due to be filed on 30th September, 2011 but was filed only on 30th September, 2012 i.e., after a delay of 365 days, although, the books of accounts of the petitioner were admittedly audited on 21st September, 2011 and the assessment was completed on 14th March, 2014 disallowing the deduction claimed by the petitioner

under Section 80 IB (10) of the Act. It is submitted that after due consideration of all the facts, circumstances and material on record, the application dated 11th October, 2019 of the petitioner has been rejected by the impugned order dated 7th May, 2021.

9. Learned standing counsel would submit that the filing of the return of income belatedly cannot be considered as *bonafide* as the income tax consultant had attended various limitation matters before 30th March, 2012 and therefore filing of the return of the petitioner for AY 2011-12 was an act of negligence and therefore the inordinate delay was not condoned and the application was rightly rejected. He would submit that the application under Section 119(2)(b) of the Act has been filed only on 11th October, 2019 after a delay of more than 5 years just to avail of the deduction under Section 80 IB (10) and the said is inane and bad in law.

10. Learned counsel would submit that no man can take advantage of his own wrong and the ground of income tax consultant's omission due to his son's physical and mental condition and ill

health cannot be used by petitioner to claim hardship. Learned counsel also submits that the petitioner has already availed of the benefits under the DTVSV Act as the petitioner has already been issued Form 3 whereby petitioner is liable to pay 100% of the tax liability without any interest and penalty, the petition deserves to be dismissed.

11. We have heard the submissions made by learned counsel for the parties and with their able assistance perused the papers and proceedings.

12. It is not in dispute that petitioner having been a joint venture partner of Sanghvi Premise Pvt. Ltd. was involved in the housing project named Sanghvi Nakshatra at Nasik. It is also not disputed by the respondents that Sanghvi Premises Pvt. Ltd. has been allowed the deductions under Section 80 IB (10) of the Act for the AYs 2010-11 to 2013-14. Admittedly, the petitioner has also been allowed deduction under Section 80 IB (10) for the said project for the AYs 2010-11, 2012-13 and 2013-14. It is only in respect of the AY 2011-12 that the return of income came to be

filed on 30th September, 2012 after a delay of 365 days. For the said assessment year, the petitioner has claimed deduction of Rs. 31,06,990/- under Section 80 IB (10) of the Act which was disallowed by the Assessing Officer under intimation issued under Section 143 (1) of the Act by application of Section 80 AC of the Act for the reason that the return of income had been filed beyond the time permitted under Section 139 (1) of the Act. The petitioner had filed rectification application before the Assessing Officer against the said disallowance which came to be rejected by order under Section 154 of the Act. The said order was confirmed by the CIT(A). Before the ITAT the claim for deduction under Section 80 IB (10) was allowed on the ground that this being a debatable issue, cannot be rejected under Section 143 (1) of the Act.

13. The petitioner has filed the application under Section 119 (2) of the Act on 11th October, 2019 praying that the delay of 365 days in filing the return of income for AY 2011-12 be condoned stating that if the same is not condoned genuine hardship would be caused to the assessee as he will lose the benefit of a

deduction of Rs. 2,42,88,917/- under Section 80 IB (10) of the Act. The respondent no. 2-CBDT has on 7th May, 2021 rejected the said application. The relevant paragraphs of the said order under Section 119 (2) (3) are quoted as under:-

> *"6. The applicant's submission is perused and found not tenable on account of following reasons:-*
>
> *i. The applicant's claim that it was not aware of the complicated and complexity of Income Tax Law and procedures is not acceptable as one cannot be permitted to plead ignorance as a defense to escape is so, it would be very easy for any person to put forward ignorance as a defence though it was aware of the law and its consequences. Further, the stature of the applicant is such that it is not supposed to be of ignorant of law.*
>
> *The applicant has itself admitted that out of the AYs 2008-09, 2009-10, 2010-11 & 2011-12, it had not filed the returns of income for AYs 2010-211 & 2011-12 on the stipulated time. This shows that it had not been regular in filing of returns of income on time.*
>
> *ii. The applicant has put forth the reason for delay in filing of the return of income mainly because of the stress faced by Mr. Damodar Narayan Panchal due to severe ill health of his son. It is claimed that Mr. Panchal was responsible for preparing the income tax returns in the office of M/s B.S. Mart. However, as stated by the applicant, Mr. Panchal had attended various other limitation matters before 30.03.2012 such as returns of income for AY 2011-12 and filing of belated returns for AY 2010-11 of other clients of B. S. Mart but he filed the return of income of the applicant for AY 2011-12 afterwards on 30.09.2012 only.*
>
> *iii. As claimed, the application for condonation of delay u/s 119(2)(b) has been filed quite late as the applicant's*

Chartered Accountants – M/s B. S. Mart have never advised about filing the petition u/s 119(2)(b) of the Act and said that the delay in filing of the return will not stand in the way of deduction u/s 80 IB(10) of the Act. In this respect, it is submitted that the applicant would have enjoyed the benefits based on the advice of its Chartered Accountants such as preparation of audit reports, filing of returns of income in time for other assessment years etc. Then, it cannot shift its responsibility cast upon by the law of land to its Chartered Accountant when their advice, as claimed, did not result in its favour.

iv. The applicant appears to be well aware of the position of law in respect of the dealing with the petitions for condonation of delay u/s 119(2)(b) as while referring to the judgments of the various Tribunals where it was held that the deduction u/s 80 IB cannot be disallowed merely for the reason that there have been a delay in filing the return of income, when otherwise on merits the assessee was eligible for the deduction, it has also enumerated the decisions/judgments of various High Courts which held that the deduction u/s 80 IB cannot be allowed if the return of income has been filed after the period permitted u/s 139(1) of the Act.

The applicant has specifically referred to the judgment of the Hon'ble Karnataka High Court in Unique Shelters (P) Ltd. where it was held that only the Central Board of Direct Taxes (CBDT) can condone the delay u/e 119 (2)(b) of the Income tax Act.

v. The applicant has also referred to the judgments of the various Courts where delay caused in filing of appeal/cross objections was condoned. It is to be noted that in these cases, delay was condoned by the Hon'ble Courts in filing of appeal/cross objections and not with respect to the petitions for condonation of delay u/s 119 (2) (b) of the Income-tax ct, 1961. Moreover, the facts of these cases are not similar to that of the present case.

vi. The deterioration of the health of the son of Mr. Damodar Narayan Panchal has been claimed to be the main reasonable cause for delay in filing of the ROI. But still a delay of 365 days cannot be said to be justified. Mr. Panchal has been one of the employees of M/s B. S. Mart. There must have been some othe employees of M/s B. S. Mart, who could have done the work left over by Mr. Panchal due the unfortunate circumstances faced by him.

The applicant's claim that if the delay is not condoned, it will lose the benefit of deduction of Rs. 2,42,88,917/- u/s 81 IB of the Income tax Act and this will certainly cause a genuine hardship to the assessee. In this respect, it is to be noted that disallowance of any claim will normally lead to hardship. The legislature has provided time limits for certain obligation under the act and these time limits have to be observed to be able to claim certain deduction, allowance and avoid interest and penalty. This may be termed as hardship but it is hardship imposed by law in the interest of proper regulation of the Act. It these time limits were to be relaxed in a particular case, mere fact that a default occurred due to some reason is not enough to establish the claim of genuine hardship.

Further, the applicant has referred to the judgments, where the condonation of delay was granted by the Hon'ble Courts considering the reasonable cause and genuine hardship. In this respect, it is submitted that :-

a. In the case of Mr. Laddulal Sharma in writ petition No. 9350/2019 order dated 14.01.2020 [Hon'ble High Court of Madhya Pradesh]-The application of the assessee for condonation of delay u/s 119(2)(b) of the Act, was allowed as the illness and hospitalization of the wife of the assessee, which lead to the delay, was considered a reasonable and genuine cause of delay in filing of return of income and a case of genuine hardship to the assessee. Here the delay caused is directly related to the assessee. But, in the present case, the poor health of the son of the representative CA is held to be the main cause of delay, which is not directly related to the applicant.

b. Surendranagar District Co-operative Bank Ltd. (2019)

311 CTR 0091 (Hon'ble High Court of Gujrat)- In this case, the assessee had made out a case of genuine hardship for admitting the claim after the expirty of the period specified under the Act. It was further held that if the circumstances leading to the delay in filing of the return were beyond the control of the assessee the delay in filing of the return is to be condoned.

This clearly shows that "genuine hardship" and "circumstances beyond the control of assessee" has to be proved before a case to be condoned for delay u/s 119 (2) (b). In the instant case under consideration, both these issues are not proved reasonably.

*c. Shitaldas K. Motwani 323 ITR 223 (Bombay) – The matter was remitted back to the Department to decide the question of correctness and genuineness of the refund claim of hardship as well as the question of **hardship**. The question of "genuine hardship" is already being considered in the instant case.*

d. Bombay Mercantile Co-op. Bank Ltd. 332 ITR 87 (Bombay) – In the view of the Hon'ble Court, the petitioner/assessee cannot be blamed to the delay in carrying out its audit, as the same was beyond its control the statutory auditors were appointed by the Central Registrar and that the said statutory auditors completed the audit lately, leading to the delay in filing of return. Clearly, the facts of this case is different from the case under consideration.

vii. The applicant has referred to a number of other court cases in support of its claim of condonation of delay. In all such cases, either the Hon'ble Courts have condoned the delay/remitted back the matter to the Department on the matter of "circumstances beyond the control of assessee" and/or "genuine hardship" or the facts of the cases are not similar to that of the present case.

viii. The condonation application was filed after seven years of filing of the return of income. Even when the assessment in the case was completed on 14.03.2014

disallowing the deduction claimed by the assessee u/s 80 IB (10) of the Act, the condonation application was filed on 14.10.2019 i.e. after more than 5 and half years later. The applicant's submission that its Chartered Accountants have never advised it about filing such petition u/s 119(2)(b) of the Act and that the delay in filing of the return will not stand in the way of deduction u/s 80 IB(10) of the Act, cannot be accepted as it seems to be an attempt to pass on its responsibility cast upon by the law of land to its Chartered Accountants when their advice as claimed, does not result in it favour. Moreover, the CIT(A) has dismissed the appeal filed by the applicant against the assessment and, at present, the matter is sub-judice before the ITAT (as intimated by the applicant).

ix. The Hon'ble High Court of Delhi vide its decision dated 12.03.2018 in case of M/s B. U. Bhandari Nandgude Patil Associates (on application for condonation of delay u/s 119 (2)(b) of the Act and order passed by the CBDT on 08.02.2017) has dwelled upon "reasonable cause". The Hon'ble Court has regarded the findings of the CBDT with respect to reasonable cause, genuine hardship & diligence as <u>lucid and cogent</u> and has affirmed the following w.r.t. reasonable cause:-

"10. In determining whether genuine hardship is caused to the assessee one has to see whether the delay in filing of return was due to a reasonable cause or not. In this case, delay is attributed ti(sic to) the Auditor. However, in such a case on has to see whether the Auditor had a reasonable for cause for delay and whether the assessee pursued the matter due to diligence to get his audit done in time.

11. On the question whether the auditor had a reasonable cause or not, the fact do not show any medical exigency of the kind which would cause so much delay when a statutory deduction of such a large amount was at stake. The auditor has not even been able to mention the nature of illness. In fact considering the hardship caused to the assessee, it would be expected that the assessee will himself have information on the illness having obtained it from the auditor at the relevant time. In this connection, it is noted

that the auditor has mentioned that it was a big audit assignment and it needed his personal attention. Yet such an assignment is the only delayed without any memory of the extraordinary medical exigency which had caused it. It is also noted that the delay in audit is of five months and not a few days and therefore, a general explanation of medical exigency without any details does not explain the justification for long delay.

12. The assessee has also not been able to show that it pursued the matter with any diligence after all the responsibility of filing the return in time is the assessee and he is expected to be even more diligent if a large claim of deduction is involved. There is nothing to show that the assessee pursued the matter with auditor to get audit done. The fact that all other audit were done timely by the auditor except for this audit also does not help the assessee's case as any medical exigency of the magnitude being claimed would have delayed at lest a few more audits."

The legal position regarding reasonable cause in the instant case of M/s Bhatewara Associates appears to be squarely covered vide above mentioned decision of the Hon'ble High Court.

7. Based on the discussions as per para 6 above, it is seen that (i) the reason for not filing return of income in time is not sufficient; in fact, it is not a valid reason. (ii) It is not a case of "genuine hardship" as the special provision of deduction u/s 80 (IB) of the Act is available only if the conditions for timely filing of ROI is fulfilled; else tax payment on the profit is required; payment of tax on income earned cannot be treated as "genuine hardship". (iii) The assessee has participated in assessment proceedings, filed appeal before CIT(A) and there is no reasonable cause for delay in filing application u/s 119 (@) (b) of the Act for :

a. more than 8 years if due date of filing ROI is taken.

b. More than 7 years from the date of ROI was filed.

8. In view of the above, the petition/application dated 11.10.2019 of M/s Bhatewara Associates, seeking condonation of delay of 365 days (12 months) u/s 119 (2) (b) in filing its Return of Income for A. Y. 2012-12 is rejected."

14. It is observed from the aforequoted decision that the CBDT has rejected the explanation with respect to the delay caused due to the health condition of the son of the income tax consultant of the petitioner. The income tax consultant has on page 80 to 81 of the petition sworn or an affidavit the reasons due to which the return of the petitioner for the year remained to be filed by 30th September, 2011 and was filed only on 30th September, 2012. The said reasons of the paragraphs 3 and 4 are quoted as under:-

"3) That for the reasons mentioned here below besides due to oversight the said Return remained to be filed and finally it is filed on 30.09.2012.
My son, Master Rushikesh, aged 15 years is unfortunately born handicapped and requires constant attention on some of the serious occasions that develop periodically. I state on oath that right from first week of October 2010 his health deteriorated and that remained great concern form me and my other family members. Since there was no satisfactory response, I and my wife had quite a bad time in concentrating on his day to day behaviour. We were laboring under severe mental tension by reason of our son's deteriorating condition. Mine is a nuclear family and therefore except myself and wife there is nobody at home.
I state on oath that the situation was grim and obviously for more than around a year or so my self and my wife had to

remain constantly watchful about the deteriorating health of my son Master Rushikesh under February 2012 and by the grace of almighty good my son could regain his normalcy of course without any improvement in his handicapped situation. During the very period my wife was pregnant and as stated above that also required due care and attention until she delivered a boy in the month of April 2011. My wife had also reasonably concerning problems during her pregnancy. Thus our entire homely affairs remained disturbed by reasons of the above incidences.

4) I swear that because of this seriousness and disturbed mindset I totally overlooked the requirement of filing the Return of income of M/s Bhatewara Associates for AY 2011-12 and which eventually was filed on 30.09.2012. For the same reason, I filed returns of around 28 other assessees of the same AY 2011-12 late. The list of those assessees is attached herewith."

15. Section 119 (2) (b) empowers the board, 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 authoriz any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under the Act for making such application or claim and to deal with the same on merits in accordance with law. The Apex Court in the case of **O. P. Kathpalia Vs. Lakhmir Singh (1984) 4 SCC 66** has observed that if the refusal to condone the delay results in gross

miscarriage of justice, it would be a ground to condone the delay. In **Sitaldas K. Motwani vs. Director General of Income Tax and Others, (2009) SCC OnLine Bom 2195,** this Court has interpreted the word “genuine hardship” used in Section 119 (2) (b) of the Act and observed that the said phrase should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12th October, 1993. Paragraph 16 of the said decision of this Court is usefully quoted as under:-

“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 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 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 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. In the case of **Subhkaran and Sons Vs. N. A. Kazi and others (1984) SCC OnLine Bom 411,** this Court has observed that the chartered accountant's mistake through oversight should not have been considered a fatal circumstance outweighing all other facts and circumstances of the assessee. Paragraph 6 of the said decision is usefully quoted as under:

"6. In these circumstances, the better order, and one more in consonance with justice, should have been to accept the firm's request and condone the delay in filing Form No. 11A. Refusal to do so resulted in technicality triumphing over justice. A party may not suffer for no fault on his part and for a sheer mistake or oversight on the part of his legal or tax advisers. All that was necessary for the firm to do was in fact by it and its partners. That the chartered accountants made a mistake through oversight should not have been considered a fatal circumstance outweighing all the other facts and circumstances in favour of the assessee. Though to be perfect is divine, this mortal world has not as yet come across one so perfect and divine as to make no mistake at all."

17. In the case of **State of Bihar and Ors. Vs. Rameshwar Prasad Singh and Anr, (2000) 9 SCC 94,** in Paragraphs 6 and 14 the Supreme Court has observed as under :-

“6. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag & Anr. vs. Mst.Katiji & Ors.[1987 (2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. 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.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

14. Looking into the facts and circumstances of the case, as noticed earlier and with the object of doing substantial justice to

all the parties concerned, we are of the opinion that sufficient cause has been made out by the petitioners which has persuaded us to condone the delay in filing the petitions. Dismissing the appeals on technical grounds of limitation would not, in any way, advance the interests of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but hundreds of other persons who are stated to be senior than the respondents. The technicalities of law cannot prevent us from doing substantial justice and undoing the illegalities perpetuated on the basis of the impugned judgments. However, while deciding the petitions, the reliefs in the case can appropriately be moulded which may not amount to unsettle the settled rights of the parties on the basis of judicial pronouncements made by the courts regarding which the State is shown to have been careless and negligent….."

18. The aforesaid decisions clearly indicate that the power under Section 119 (2)(b) of the Act while ascertaining genuine hardship is to be construed liberally for the reason that the authorities can do substantive justice by disposing the matter on merits. The authorities, as observed by the Supreme Court are expected to bear in mind that ordinarily an applicant applying for condonation of delay does not benefit by lodging its claim late and refusing to condone a delay can result in a meritorious matter being thrown out at the very threshold defeating the cause of justice. Substantial justice cannot be defeated by technical considerations of delay, where there is no deliberate

delay or delay on account of negligence or on account of *malafide*. The authorities should have taken a justice oriented approach and if a claim is legitimately due to an applicant even if a delay has occasional due to genuine hardship that should not be denied on technicalities. As hold by this Court in the case of Sitaldas K. Motwani vs. Director General of Income Tax and Others (supra), the word "genuine" has to be given a liberal meaning in view of the law laid down by the Supreme Court in the case of **B. M. Malani Vs. Commissioner of Income Tax and Another, (2008) 306 ITR 196 (SC)**. Paragraph 13 of the decision of this Court in Sitaldas K. Motwani vs. Director General of Income Tax and Others (supra) is usefully quoted as under:-

"13. The apex court, in the case of B.M. Malani Vs. CIT, (2008) 306 ITR 196 (SC); (2008) 10 SCC 617, has explained the term "genuine" in the following words (page 207):

> *"The term 'genuine' as per the New Collins Concise English Dictionary is defined mere 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 born in mind."*

19. In this case, there is no doubt that the petitioner as well as its joint venture partner were entitled to deductions under Section

80 IB (10) of the Act. In fact as mentioned above, it is undisputed that for all the years from 2010-11 to 2013-14 except the year 2011-12 the deduction as claimed under the Section have been allowed by the department. That the income tax consultant has, as quoted above, stated on oath that his son Master Rishikesh, aged about 15 years having been born handicapped required constant attention and from the first week of October, 2010 his health detoriated and remained a great concern for him and his other family members. That since there was no satisfactory response he and his wife had quite a bad time in concentrating on his day to day behavior. That they were laboring under severe mental tension by reason of their sons's detoriating condition. That being a nuclear family except he and his wife no one is at home. That during the very said period his wife was pregnant and also required due care and attention until she delivered a boy in the month of April, 2011. The consultant has also stated on oath that for more than a year he and his wife had to therefore remain watchful about the detoriating condition of their son. That it is only around February, 2012 that their son could regain normalcy.

20. It is submitted that due to the aforesaid his entire home affairs remained disturbed and therefore due to the disturbed mindset he totally overlooked the requirement of filing the ROI of petitioner for AY 2011-12, which was eventually filed on 30th September, 2012. It is also submitted by him that for the same reason the returns of around 28 other assesses for the same assessment year was also filed late. We observed that the list of the 28 assesses along with their PAN numbers is also annexed with his affidavit (Page no. 83,84), which has not been disputed by the respondents.

21. In our view, the affidavit of the income tax consultant which has neither been disputed nor controverted by the respondents is sufficient cause for condonation of delay in filing the application under Section 119 (2)(b) of the Act. Besides it is not in dispute that the return for AY 2011-12 was in fact filed by the petitioner albeit 365 days later on 30th September, 2012. That in respect of the other years from 2010-11 to 2013-14 except 2011-12, the income tax authorities have allowed the deduction under Section

80 IB (10) through the petitioner. In our view, substantial injustice would be caused to the petitioner if the order dated 7th May, 2021 is not set aside. This is clearly a case falling within the phrase "genuine hardship". As mentioned above. Technical consideration above cannot come in the way of substantial justice. It is neither an allegation of *malafide* nor an allegation that the delay has been deliberate. We do not find that the omission to file petitioner's return by the income tax consultant to be an act of negligence. Any person in his situation would have been mentally disturbed. The very fact that not only the petitioner's ITR was not filed in time, there were also 28 others whose return filing was delayed beyond the due date. The authorities should refrain from over analysis which leads to paralysis of justice. We are, therefore, of the view that the impugned order dated 7th May 2021 deserves to be set aside and is hereby set aside.

22. The income tax authority to act accordingly and consider the claim for deduction under Section 80 IB(10) for AY 2011-12 made by the petitioner in accordance with law, as if there was no

delay in filing the return. The authorities under the DTVSV Act also to act in accordance with the said findings and amend Form 3 in respect of the amounts to be paid by the petitioner.

23. We make it clear that we have not delved into the merits of petitioner's claim under Section 80 IB (10) for AY 2011-2012 and if any observation has been made in this regard, it has only been for considering the impugned order under Section 119 (2) (b) of the Act.

24. The petition is accordingly allowed in the above terms. No costs.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR J.)**