

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 19799 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Approved for Reporting	Yes	No
	✓	

RAJGREEN INFRALINK LLP

Versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX 1 SURAT

Appearance:

MR B S SOPARKAR(6851) for the Petitioner(s) No. 1

KARAN G SANGHANI(7945) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 02/12/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **RULE** returnable forthwith. Learned Senior Standing Counsel Mr.Karan Sanghani for the respondent waives service of notice of rule on behalf of respondent.

2. By way of present petition, the petitioner has prayed for directions for setting aside the order dated 27.10.2023 rejecting the application of the petitioner for condonation of delay in filing the return of income for the Assessment Year-2021-22 under the provisions of Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for

short).

3. The petitioner is a Limited Liability Partnership (LLP) engaged in the real estate development business in Surat. Due date of filing the Return of Income for Assessment Year (AY) 2021-22 under section 139(1) of the Act was 31.10.2021. Due to COVID-19 outbreak the same was extended to 15.03.2022 vide Notifications dated 20.05.2021, 09.09.2021 and 11.01.2022. The petitioner filed the return of income of AY 2021-22 on 28.03.2022 offering income at Rs.4,56,17,090/-.

3.1 As there was a delay in filing return of income, deduction of Rs.4,35,00,000/- under Section 80IBA of the Act was not allowed in the Intimation issued under section 143(1) of the Act dated 12.12.2022.

4. While placing reliance on the decisions of this Court in case of Jay Vijay Express Carriers vs. Commissioner of Income-Tax-III, [2013] 34 Taxmann.com 61 (Gujarat), Vrushti Aulkumar Shah vs. Principal Chief Commissioner of Income-tax, [2023] 152 taxmann.com 77 (Gujarat), Shailesh Vitthalbhai Patel vs. Chief Commissioner of Income-tax, [2022] 145 taxmann.com 10 (Gujarat), learned advocate Mr.B.S. Soparkar for the petitioner has submitted that looking to the restrains of the petitioner-Company during the COVID-19 pandemic, the petitioner had filed return of income on 28.03.2022 after a mere delay of 13 days. It is submitted that the petitioner had categorically in its application mentioned various grounds, however, the same has been rejected by the impugned order by refusing the delay of 13 days. Further,

learned advocate Mr.Soparkar, while referring to the findings recorded by the respondent authority in the impugned order, has submitted that the respondent authority has incorrectly placed reliance on Circular No.09/2015 dated 09.06.2015 for holding that he does not have any power to condone the delay. Thus, it is urged that the present petition may be allowed.

5. *Per contra*, learned Senior Standing Counsel Mr.Karan Sanghani for the respondent has submitted that it is true that the petitioner filed his return of income for AY 2021-22 on 28.03.2022, which is delayed by 13 days. However, it is submitted that in view of the prevailing COVID-19 pandemic, the date for filing of the return of income for the AY 2021-22 was extended to 15.03.2022 by the CBDT. However, the petitioner filed the return of income belatedly after a period of 13 days only when he realized that deduction would not be admissible under Section 80IBA of the Act.

6. While placing reliance on the judgment of the Delhi High Court in the case of Lava International Ltd. vs. Central Board of Direct taxes, [2024] 163 taxmann.com 148 (Delhi), it is urged that the writ petition may not be entertained as the respondents have precisely passed the order rejecting the application seeking condonation of delay.

7. We have heard learned advocates for the respective parties. Since short issue is involved, we have taken the matter for final disposal today.

8. The facts and the dates, as mentioned hereinabove of

filing of return of income by the petitioner for AY 2021-22, on 28.03.2022, is not in dispute. It is also not in dispute that due to COVID-19 pandemic, the date of filing of the income tax return for AY 2021-22 under Section 139(1) of the Act was extended till 15.03.2022 from 31.10.2021.

9. Thus, the petitioner filed the return of income by delay of 13 days. Because of belatedly filing the return of income, the petitioner was denied the claim of deduction under Section 80IBA of the Act. The petitioner filed an application under Section 119(2)(b) of the Act on 17.08.2023, the same has been rejected by order dated 27.10.2023 by the respondent. It is noticed by us that while placing reliance on Circular No.09/2015 [F.NO.312/22/2015-0T] dated 09.06.2015, the application was rejected. Moreover, it is also recorded that the case of the petitioner would not in any manner can be said to covered under the expression 'genuine hardship'.

10. So far as reliance placed on Circular No.09/2015 dated 09.06.2015 is concerned, on perusal of the same, it is noticed by us that it would not be applicable to the case of the petitioner as it exclusively refers for dealing the applications filed belatedly or refund claim and claim of carry forward loss.

11. With regard to the 'genuine hardship' is concerned, the petitioner in his application has categorically mentioned as under:

“3. Assessee submits that the reason for delay in filing return of income is due to covid pandemic and reasons for same are summarized as under:

- *Due to Covid 19, Nation wide lock down from 25.03.2020 to 19.05.2020.*
- *Gradual reopening in the state of Gujarat with limited office staff.*
- *Again, rising of covid numbers during October to December, 2020.*
- *The Second wave of Covid from February to June 2021 due to new variant.*
- *Restriction of 50% of overall capacity in office clerical staff. Being infrastructure undertaking, directive of Central Government to provide food and shelter within construction site to the labourers and accordingly limited access to the bills, vouchers and other details received at the construction site due to highly infectious disease.*
- *Third wave of Covid 19 due to Omicron Variant.”*

12. Thus, the petitioner had given aforementioned reasons seeking condonation of delay, however, it appears that the respondents, while passing the order rejecting the application, has not dealt with the aforesaid issues. We find that the reasons assigned by the petitioner as mentioned above, in fact would, encompass the expression ‘genuine hardship’. The respondents did not apply its mind to the

reasons assigned as mentioned hereinabove, which also includes that there was restriction of 50% of overall capacity in official clerical staff and the petitioner being infrastructure undertaking, there was directive of Central Government to provide food and shelter within construction site to the labourers, and there was limited access to the bills, vouchers and other details received at the construction site due to the COVID-19 pandemic. These factors in fact can be said to be genuine hardship.

13. The respondent Officer has also assigned another reason that as the petitioner would be entitled for claiming the deduction under Section 80 IBA of the Act, the application seeking condonation of delay is required to be rejected. We do not subscribe to such a view in wake of the fact that the respondents while passing the order was also equally responsible for considering the reasons assigned by the petitioner in its application explaining the cause for belatedly filing the return after a period of 13 days.

14. We may, at this stage, refer to the decision of **Vrushti Aulkumar Shah (supra)**, wherein the Coordinate Bench of this Court has set aside the order refusing to condone delay of 15 days, by recording as under:

“5.4 In Sitaldas K. Motwani vs. Director, General of Income Tax and others [(2009) SCC online 2195], the Bombay High Court observed that words ‘genuine hardship’ used in section 119(2)(b) should have been construed liberally. It was observed that refusing to condone the delay could result into a meritorious matter being thrown out the very threshold defeating the cause of justice.

5.5 Section 119(2)(b) of the Act is a statutory authorisation whereby the Board may authorise an income tax authority to hear an application or claim for any exemption, deduction, refund or for any other relief under the Act after expiry of period specified for the purpose in the relevant provisions of the Act for making such application. After hearing any such application post the expiry of period specified, the authority may deal with the same on merits in accordance with the law. It is avowed purpose of the provision in section 119(2)(b) to avoid genuine hardship in the classes of cases as is expressly mentioned.

5.6 The words in the section, "if it considers it desirable or expedient to do so for avoiding genuine hardship" give wide power on the Board and obligates the authority concerned dealing with the request for acceptance of the applicant etc.. to consider the relevant facts and reasons which may have been advanced for condoning the delay. The object is to help the assessee who for good and valid reasons are prevented from moving an application for any purpose within the time stipulated under the Act. In other words, their applications may have witnessed delay for several meritorious reasons. It is true that merit of the case of the assessee could be simultaneously considered by the authority exercising powers under section 119(2)(b) of the Act, however, the dominant purpose to be achieved is to condone the delay and therefore, it is the grounds offered explaining the delay which should overweigh with the authorities."

15. Thus, looking to the prevailing situation at the relevant time wherein the entire nation was facing COVID-19 pandemic, in our opinion, the explanation tendered by the present petitioner in his application seeking condonation of delay of 13 days was required to be accepted. Hence, the

impugned order dated 27.10.2023 is hereby quashed and set aside and the application of the petitioner for condonation of delay in filing the return of income for A.Y. 2021-22 under the provisions of Section 119(2)(b) of the Act shall be restored to its original file. The respondent shall consider the application in light of the observations made by this Court and pass appropriate order within 12 weeks from the date of receipt of writ of this Court.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

SAJ GEORGE/DB/56