

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20543 of 2023**=====
M/S AMIT HOSPITAL PVT. LTD.

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX
=====

Appearance:

DARSHAN R PATEL(8486) for the Petitioner(s) No. 1

for the Respondent(s) No. 2

KARAN G SANGHANI(7945) for the Respondent(s) No. 1
=====**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**Date : 19/12/2023****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)**

1. Heard learned counsels for the parties and perused the record.
2. The present petition is directed against the order dated 04.10.2023 passed by the respondent No. 2 in rejecting the application seeking permission for condonation of delay and permit to file income tax return for the A.Y. 2020-21, the due date for which had expired on 31.05.2021.

3. The delay in filing the income tax return was 26 days as the application under Section 119(2)(b) of the Income-Tax Act, 1961 was filed on 26.06.2021. The order impugned rejecting the application under Section 119(2)(b) of the Income-Tax Act, 1961 contains two grounds of rejection. The first is pertaining to genuineness and genuine hardship claimed by the petitioner in submitting return with the delay of 26 days. One of the reasons given by the petitioner in response to the show-cause notice and as also in the application seeking for condonation of delay on grounds of genuine hardship was : -

“a. The accounts for FY 2019-20 could not be finalized in time because the accounts staff could not attend duties for a considerable time due to Covid 19 pandemic related issues and inaccessibility of Directors due to their predominant pre-occupation with treatment of Covid patients as hospital was converted into dedicated Covid care facility.”

4. The said claim was rebutted in paragraph 5(b) with the observation that the contention of the applicant that account staff was not available, was factually incorrect, inasmuch as, the said contention was not supported by any documentary evidence as well. It was stated therein that the hospital was

running throughout the year and in absence of accounting staff, it would not be possible to manage day to day operations and routine business of the hospital.

5. On other grounds pertaining to genuineness of the claim, it was opined that the responsibility of finalizing the books of accounts and get it audited was the onus of the applicant and failure to do so on the grounds of Covid pandemic or lack of clarity on legal and taxation issues, as such cannot be construed as grounds of genuine hardship. It was also stated that Covid travel restrictions were gradually eased all over the country in phases and were completely relaxed by the end of year 2020, thus, the applicant had ample time to get his accounts finalized within the extended time limit of 31.05.2020 and file the return of income which it had failed to do so.

6. On the further contention of the petitioner in the application seeking condonation of delay in submitting the return that the hospital premises was declared a dedicated Covid facility in Valsad, catering majority of population, and

due to overwhelming situation, the delay had occurred beyond the control of the petitioner, it is stated in the order impugned that the contention of the applicant that accounts for the year A.Y. 2020-21 could not be finalized in time as accounts staff and Director were pre-occupied with treatment of Covid patients, was contradictory and did not hold any ground, inasmuch as, permission to treat covid patients was granted on 20.07.2020, i.e. three and more than ½ month after the end of the financial year 2019-20, i.e. A.Y. 2020-21, during which the petitioner had failed to file its return. The explanation offered by the petitioner that the accounts staff was pre-occupied with the treatment of Covid patients as hospital was converted into dedicated Covid care facility, was, thus, rejected, as factually incorrect.

7. It was finally concluded in paragraph '9' of the order impugned that CBTD considering the pandemic had extended the time limit for filing belated income tax return under sub-section (4) and revised income tax return under sub-section (5) of Section 139 for A.Y. 2020-21 until 31.05.2021. Extended time limit was notified to mitigate the challenges

faced by the taxpayers in meeting the statutory and regulatory compliances due to the outbreak of Covid-19 and enabled taxpayers to file their return of income. In spite of this, as the applicant had failed to file its return during the extended time limit as well as without demonstrating any cogent reason.

- 8.** It was contended that the reasons provided for not filing the return were of general nature and could not be accepted as a ground for genuine hardship as per paragraph 5(I) of the circular dated 09.0.2015, the application seeking for condonation of delay under Section 119(2)(b) for filing income tax return for A.Y. 2020-21 is liable to be rejected.
- 9.** Having said so, the respondent No. 2 had proceeded to examine the correctness of the claim made by the petitioner in the application seeking for refund of TDS and concluded that the applicant has failed to establish the correctness and genuineness of income and refund claim for A.Y. 2020-21 as well. Thus, it seems to us that while rejecting the application seeking for condonation of delay, the respondent No. 2 has

also proceeded to examine the correctness of the claim made by the petitioner to state that the application can be rejected.

10. Based on the decisions of this Court in ***Shailesh Vitthalbhai Patel vs. Chief Commissioner of Income-tax, reported in [2022] 145 taxmann.com 10 (Gujarat)***, it is argued by the learned counsel for the petitioner that the reason given in the order impugned for rejection of the explanation on the ground of lack of genuine hardship that since the petitioner has failed to submit the return within the extended time upto 31.05.2021, and there was no overwhelming situation because of Covid 19, is untenable, inasmuch as, there is complete lack of consideration to the claim that the delay has occurred beyond the control of the petitioner. It is further submitted that in many of such cases the delay has been condoned, and in any case the delay of 26 days cannot be said to be an inordinate delay.

11. The reference has also been made to the decision of the Bombay High Court in the case of ***Sitaldas K. Motwani vs. Director General of Income Tax and others reported***

in (2009) SCC online 2195, wherein the Bombay High Court has considered the words “genuine hardship” used in Section 119(2)(b) to state that the said phrase has to be construed liberally. It was observed therein that refusing to condone the delay could result into a meritorious matter being thrown out at the very threshold defeating the cause of justice.

12. Further referring to the decision of this Court in ***Shailesh Vitthalbhai Patel (supra)***, it was argued that Section 119(2)(b) of the Income Tax Act, 1961 has been framed with a avowed purpose to avoid genuine hardship in classes of cases as expressly mentioned therein. The words in Section “if it considers it desirable or expedient to do so for avoiding genuine hardship” give wide power to 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, it is observed that the applications which have witnessed delay for several meritorious reasons, should be considered purposely. It was further noted that the merits of the case of the assessee could be simultaneously considered by the authority exercising powers under Section 119(2)(b) of the Income Tax Act, however, the dominant purpose to be achieved is to condone the delay and, therefore, it is the grounds offering explanation of the delay which should overweigh with the authorities.

13. Having heard learned counsels for the parties and perused the record.

14. Taking note of the above decisions of the Division Benches of this Court, the Bombay High Court as also the judgment of the Kerala High Court in ***M/s. Best Ready Mix Concrete versus the Principal Commissioner of Income Tax passed in WP(C) No. 37648 of 2023***, placed before us, we may go through Section 119(2)(b); sub-section 2(b) provides that the Board to authorise any income tax authority, not being a commissional (appeals) to admit an

application or claim for refund etc. after expiry of the period specified under the Act for making such application or claim and deal with the same on merits in accordance with law.

15. CBDT circular No. 09/2015 dated 09.06.2015 has been issued to prescribing guidelines on the condonation of delay and the procedure to be followed in dealing with the applications under Section 119(2)(b) of the Income-tax Act.

16. Clause (5) of the circular reads as under : -

“5. The powers of acceptance / rejection of the application within the monetary limits delegated to the Pr.CcsIT/CcsIT/Pr.CsIT/CsIT in case of such claims will be subject to following conditions :

i. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and /or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

ii. The Pr.CCIT/CCIT/Pr.CIT/CJT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.”

17. Clause (6) is also relevant to be noted hereinunder : -

“6. A belated application for supplementary claim of

refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance / rejection within the monetary limits delegated to the Pr.CcsIT/CcsIT/Pr.CsIT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following conditions:

i. The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

ii. No interest will be admissible on belated claim of refund.

iii. The refund has arisen as a result of excess tax deducted / collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act."

18. In the instant case, the petitioner had claimed for refund of TDS to the tune of Rs. 26,22,330/- and submitted a draft profit and loss statement for A.Y. 2020-21 along with the application seeking condonation of delay of 26 days in filing the return. While refusing to condone the delay on the ground that no genuine hardship could be said to have been caused to the petitioner, the respondent No. 2 had also held that the claim for refund was not correct and the statement made in the table extracted in the order shows very strange circumstances as the claim of the petitioner that due to

decrease in the number of patients in Cathlab Department, its revenue had negatively impacted and correspondingly in gross profit for A.Y. 2020-21 was unbelievable as also the applicant had not submitted any documents such as IPD register etc. to substantiate the same.

- 19.** Having noted the ratio of the decisions relied upon by the learned counsel by the petitioner as also the statutory scheme and the guidelines prescribed by CBDT, we are of the considered view that the first ground for rejection of the application seeking condonation of delay in submitting the return that no genuine hardship can be said to have been caused to the petitioner is a result of is an arbitrary approach of respondent No. 2. As noted above, the delay was merely 26 days and judicial notice can be taken to the fact that the country was facing overwhelming situation of second wave of Covid-19, which turned out to be fatal between the last week of March, 2021 till June, 2021, the entire set up of the whole country was paralyzed. Hospitals were flooded with patients and lot of death had occurred during the said period. The petitioner being a hospital establishment, having been

declared a dedicated Covid facility by the District Administration, demonstrably was dealing with unprecedented adverse circumstances. The claim of the applicant that the delay of 26 days had occurred because of the absence of account staff or the staff being pre-occupied with other Covid duties and also dealing with the hospital administration due to flooding of patients, the claim of the petitioner that it was a genuine hardship, is found to be correct.

20. As regards the second ground on the merits of the claim, suffice it to note that the claim of the petitioner is for refund of the TDS deducted by calculation of the advance tax paid, without going into the merit of the profit and loss account of the petitioner in detail, it was not permitted for respondent No. 2 to hold that applicant has failed to establish the correctness of the claim in a cursory manner at the stage of admission of the application.

21. As observed by the Division Bench of this Court in ***Shailesh Vitthalbhai Patel (supra)***, the dominant purpose

of Section 119(2)(b) of the Income-Tax Act, 1961 is to condone the delay and the power conferred on the statutory authorities is to be exercised with caution and proper application of mind, we are of the considered opinion that even the second ground for rejection of the application seeking condonation of delay for filing of return and claim for refund for A.Y. 2020-21, cannot be sustained.

22. For the above discussion, the order dated 04.10.2023 passed by the respondent No. 2 namely Additional / Joint Commissioner of Income Tax (HQ) (ADMN) CCIT, Aayakar Bhawan, Near Majura Gate, Opposite New Civil Hospital, Surat-395001, is hereby set aside. We further provide that the application seeking condonation of delay under Section 119(2)(b) of the Income-Tax Act, 1961 for filing income tax return for A.Y. 2020-21 is liable to be admitted by condonation of delay of 26 days in submitting the return for A.Y. 2020-21. With the admission of the application, the petitioner is permitted to file the return by waiving the time limit and the same shall have to be scrutinized in accordance with the provisions of the Income Tax Act, 1961.

23. With the above observations and directions, the present
Writ Petition stands disposed of.

(SUNITA AGARWAL, CJ)

AMAR SINGH

(ANIRUDDHA P. MAYEE, J.)