IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6223 of 2015

Date of Decision : 20.08.2015

Shyam Sunder Nirankari

..... Petitioner

Versus

Commissioner of Income Tax, Karnal and another

.... Respondents

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rohit Gupta, Advocate for the petitioner.

Mr. Yogesh Putney, Advocate for the respondents.

RAMENDRA JAIN, J.

The petitioner by way of present civil writ petition seeks quashing of the order dated 29.10.2014 (Annexure P-8) passed by respondent No.1 under Section 119 (2) (b) of the Income Tax Act, 1961 (in short 'the Act') rejecting the application for condonation of delay in filing the return of income for the assessment year 2009-10, resulting into rejection of his claim for refund of ₹ 1,29,126/-. Further, a writ of mandamus has been sought directing respondent No.2 to refund the amount along with interest.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein are that the petitioner filed his income-tax return for the assessment year 2009-10 on 18.01.2012

(Annexure P-1 Colly) declaring the income of ₹ 2,30,667/- and claimed refund of ₹ 1,29,126/- on account of tax deducted at source after setting off the tax liability. Since there was delay in filing the return, an application dated 12.6.2013 (Annexure P-5) for condonation of delay was filed under Section 119(2)(b) of the Act before respondent No.1 pleading that there was reasonable cause as he was disturbed by the family members and secondly, the TDS certificates were misplaced and when found, the return in question was filed. As per Central Board of Direct Taxes (CBDT) Instruction No.13 of 2006 (Annexure P-3), at the time of considering an application for condonation of delay in filing a claim for refund under Section 119(2)(b) of the Act, it is necessary to consider that the income declared and refund claimed are correct and genuine and that the case is of a genuine hardship on the merits and correctness of the refund claim. Accordingly, the petitioner moved an application, Annexure P-4, to respondent No.2 for refund of ₹ 1,29,126/-. The aforesaid application for condonation of delay was rejected by respondent No.1 vide order dated 16.07.2013 (Annexure P-6) on the following grounds:-

i) The return was filed late by 30 months from the due date i.e. 31.07.2009, without giving any specific reasons.

ii) His request for condonation of delay being unlawful was not maintainable.

iii) TDS was deducted in the name of firm M/s S.M. Communication, 42/10, Model Town, Samalkha and not in the individual name of the petitioner and thus, he was not entitled to the same.

iv) No accounts books were being maintained by the petitioner, nor the accounts were got audited.

3. Being aggrieved by the said order, Annexure P-6, the petitioner made another application, Annexure P-7, for rectification of the aforesaid order. However, respondent No.1 rejected the said application vide order dated 29.10.2014 (Annexure P-8). Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that the delay in filing the income-tax return beyond the specified period, was on account of "genuine hardship". During the relevant period, he was a distributor of 'Cable Master' for the entire State of Haryana and thus, due to his field duty his family life remained disturbed. More so, the TDS certificates were also misplaced. Thus, for the above reasons, he could not file his return within the stipulated period. According to the learned counsel, the refund of the income tax can be allowed, if the claim is filed within one year from the last date of the assessment year. However, the respondents have wrongly and illegally rejected the claim of the petitioner, despite various circulars and instructions issued by the CBDT under Section 119(2)(b) of the Act which provides that an Income Tax Authority, by general or special order, not being a Deputy Commissioner (Appeals) or Commissioner (Appeals) may 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 deal with the same on merits in accordance with law. In support of his arguments, he has placed reliance upon ***B.M. Malani Vs. Commissioner of Income Tax and another (2008) 10 SCC 617,*** **Sitaldas K. Motwani Vs. Director**

General of Income Tax and others (2010) 323 ITR 223 (Bombay), and **Artist Tree Private Limited Vs. Central Board of Direct Taxes and others (2014) 369 ITR 691 (Bombay)**.

5. On the other hand, learned counsel for the respondent has submitted that the present writ petition deserves dismissal being devoid of any merit, because, the petitioner could not prove any "genuine hardship" in submitting his income-tax return for the assessment year 2009-10 late by 30 months.

6. We have heard learned counsel for the parties.

7. The petitioner has sought condonation of delay in filing his income-tax return late by 30 months on two counts, namely:

i) His family life had remained disturbed on account of his field duty, being a distributor of 'Cable Master' in the State of Haryana; and

ii) His TDS certificates had got misplaced.

8. After giving our thoughtful consideration to the above reasons, we find the same completely devoid of any merit, because, the petitioner has not been able to refute the stand of the respondent that he never remained distributor of 'Cable Master' after 31.03.2009, as per his own certificate dated 16.04.2008 (Annexure P-2) issued by M/s In-network Entertainment Limited and thus, it is evident that the petitioner had no field duty after 31.03.2009. Resultantly, the question of disturbance of his family life does not arise at all. Accordingly he cannot be permitted to allege that he could not file his income-tax return in the prescribed time on account of above reason.

9. So far as the second grouse raised by the petitioner regarding misplacement of his TDS certificates is concerned, the same

has also no legs to stand, because he has not produced copy of any FIR or DDR in support of his above assertion. In the absence of any such corroborative evidence, his above plea is not liable to be accepted.

10. Adverting to the judgment in **B.M. Malani's case (supra),** relied upon by the learned counsel for the petitioner, it may be noticed that the Apex Court therein considered the definition of "genuine hardship" and held that it means not fake or counterfeit, real which should not be pretending, bogus or merely a ruse. Further, it was noticed that ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. In **Sitaldas K. Motwani's case (supra)**, Bombay High Court was considering Instruction No.13 of 2006 dated 22.12.2006 issued by the CBDT which prescribes that at the time of considering an application for condonation of delay in filing a claim for refund under Section 119(2)(b) of the Act, it is necessary for the authorities to consider that the income declared and refund claimed are correct and genuine and that the case is of "genuine hardship" on the merits and correctness of the refund claim. It was observed that 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 the merits. The expression "genuine" has received a liberal meaning in view of the law laid down by the Supreme Court. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant did not stand to benefit by resorting to delay. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether

a 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. Similar view was expressed by Bombay High Court in **Artist Tree Private Ltd's case (supra)**.

11. The proposition of law laid down in these pronouncements is well recognized but whether there existed genuine hardship or sufficient cause for condonation of delay or not, it depends upon evaluation of totality of facts and circumstances in a given case. As noticed above, the petitioner has miserably failed to convince that he had any "genuine hardship" in filing his income-tax return late by 30 months, therefore, no benefit whatsoever of the aforesaid authorities can be given to him.

12. In view of the above, the writ petition being meritless is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

20.08.2015 **(AJAY KUMAR MITTAL)**
'yogesh'/gbs **JUDGE**