IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.36 OF 2016

Goa Tourism Development
Corporation Ltd., 3rd Floor,
Paryatan Bhavan, Patto,
Panaji-Goa. ...Petitioner

V/s

1. Union of India,
   through the Revenue Secretary,
   Department of Revenue,
   Having office at North Block,
   New Delhi.

2. The Central Board of
   Direct Taxes, Through its
   Chairman, Having office at
   North Block, New Delhi.

3. The Chief Commissioner
   Income Tax, Panaji,
   Having office at Aayakar Bhavan,
   Plot No.5, EDC Complex,
   Patto-Plaza, Panaji-Goa. ...Respondents

Shri Nikhil Pai, Advocate for the Petitioner.
Ms. Asha Desai, Senior Standing Counsel for Respondent No.3.

CORAM : C.V. BHADANG, J.

DATE : 21st SEPTEMBER, 2016

ORAL JUDGMENT :

Rule made returnable forthwith. The learned Counsel for the respondents waives service. Heard finally by consent of parties.

2. The petitioner is challenging the order dated 25/03/2015 passed by the respondent no.2, by which a delay of about 9 months in filing income tax return for Assessment Year 2012-13 has been disallowed.

3. I have heard the learned Counsel for the parties and perused the impugned order.

4. It is contended on behalf of the petitioner that the provisional accounts of the petitioner for the Accounting Year 2011-12 were submitted to the Statutory Auditor M/s. K.V. Vernekar and Associates somewhere in July, 2012. The audited accounts were placed before the Board of Directors on 5/09/2012, which were approved. On 11/06/2013, the Statutory Auditors submitted the audit report. It is contended that being a company which is wholy owned by the Government of Goa, the petitioner submitted the accounts to the office of the Comptroller and Auditor

General of India (CAG) for further audit and certification. On 21/06/2013, the petitioner addressed a letter to the Audit Officer, Office of the Accountant General, Goa. On 28/06/2013, the CAG issued the requisite audit certification whereupon the accounts were submitted to the appointed Tax Auditors i.e. Borkar & Mazumdar in order to obtain a report in compliance with Section 44(A)(B) of the Income Tax Act. On 7/08/2013, the petitioner received a report from the Tax Auditors. The income tax report disclosing a loss of Rs.2,55,35,486/- was electronically filed on 8/08/2013. It is contended that the last date of filing of the return was 31/10/2012. Thus, the delay is for the period from 31/10/2012 to 7/08/2013.

5. By the impugned order, the respondent no.2 found that the petitioner, took considerable time in getting its accounts audited and the delay in submission of the audited accounts is not entirely attributable to the auditors. What

has been found is that the responsibility and the onus was on the applicant to get the report audited from the Statutory Auditors well in time. The respondent no.2 has further noted that in the earlier two assessment years also there was substantial delay in obtaining audit reports and the filing of the report. Lastly, it has been found that the petitioner has not been able to make out a case of genuine hardship as there is gross and persistent negligence and consequent failure to comply with statutory time lines. In that view of the matter, the application for condonation of delay was rejected.

6. The learned Counsel for the petitioner has submitted that the delay was attributable to the Statutory Auditors and for want of receipt of the audited accounts and the report of the Statutory Auditors. He submits that the petitioner is a wholly owned government company and if the report claiming substantial loss is

not allowed to be filed the same would cause genuine hardship. It is submitted that thus the observation by the respondent no.2 that no case of genuine hardship is made out is not correct. Reliance is placed on behalf of the petitioner on the decision of this Court in the case of ***M/s. Bombay Mercantile Co-op. Bank Ltd. V/s. The Central Board of Direct Taxes & Ors. in Writ Petition No.1544 of 2010***, in order to submit that in similar circumstances this Court had condoned the delay. The learned Counsel also points out that since the year 20/11/2012 the Statutory Auditors are now changed and the tax returns of the subsequent years are filed within the statutory time limit.

7. The learned Counsel for the respondent has submitted that there is persistent delay and default by the petitioner in submitting the tax returns within time and the petitioner cannot get out of the delay on the spacious ground that Statutory Auditors failed to furnish the audited

accounts.

8. I have carefully considered the rival circumstances and the submissions made. It is now well settled that in the matter of condonation of delay, a pedantic approach should be avoided. The Division Bench of this Court in the case of ***M/s. Bombay Mercantile Co-op. Bank Ltd.*** (supra) has observed in para 8 of the judgment that in such a case a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities. In the case of ***Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649***, the Hon'ble Supreme Court, after taking a survey of various decisions holding the field, has culled out the principles to be kept in mind while considering the prayer for condonation of delay. In so far as the Government Department is concerned the Hon'ble Apex Court has held that having regard to the set up in which they

work a reasonable allowance can be given in favour of such a party. The delay in the present case is approximately about nine months. The petitioners have explained the same as set out above on the basis of various dates and on the overall facts and circumstances, I find that the petitioners have established sufficient cause for not filing the income tax returns within time. The circumstances do not indicate any negligence or deliberate inaction. In that view of the matter, the petition is allowed. The impugned order is set aside. The delay in filing the income tax returns is hereby condoned. Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

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