IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2874 OF 2015

Al Barr Finance House Ltd.,
Mumbai 400 036 ... Petitioner
v/s
Income Tax Officer, Range 5(1)(1),
Mumbai 400 020 and others ... Respondents

Mr B.V. Jhaveri for Petitioner.

Mrs S.V. Bharucha for Respondents.

CORAM : M.S. SANKLECHA AND B.P. COLABAWALLA JJ.

DATE : 27th JANUARY, 2016

P.C.:-

Rule, Respondents waive service, returnable forthwith. By consent, finally heard.

1. This Petition under Article 226 of the Constitution of India, challenges the order dated 13th October 2015 passed by the Principal Commissioner of Income Tax rejecting the Petitioner's Application for condonation of delay under section 119(2)(b) of the Income Tax Act 1961 (the Act). The Application was filed by the Petitioner for condoning the delay

in filing revised return of income for the AY 2010-11 and claiming refund of the tax deducted at source (TDS) which was not claimed in the regular return of income filed on 28th September 2010.

2. The Petitioner had filed its regular return of income claiming a loss on 28th September 2010 in the belief that the last date for filing its return of income was 30th September 2010. The Petitioner states that at that time, it was not aware that the last date for filing a return of income had been extended only a day earlier on 27th September 2010 from 30th September 2010 to 15th October 2015. Thus, at the time of filing its return of income, it is the Petitioner's case that in its anxiety to not loose the benefit of carry forward loss only on account of late filing of the return, the Petitioner in a hurry by mistake / oversight did not claim refund of TDS aggregating to Rs.7,60,000/-. The regular return so filed on 28th September 2010 was accepted by intimation under section 143(1) of the Act.

3. Thereafter, the Petitioner, realized its mistake and filed rectification application under section 154 of the Act seeking rectification of intimation under section 143(1) of the Act for the subject AY and the same is still pending. However,

the Petitioner now does not desire to pursue the rectification application.

4. In the meantime i.e. pending the disposal of its rectification application, the Petitioner filed a revised return of income on 2nd August 2014 with the Assessing Officer and also an application under section 119(2)(b) of the Act seeking an order from the Central Board of Direct Taxes condoning the delay and admitting its revised return of income for consequent consideration of the reliefs claimed. The Petitioner in its application to the Central Board of Direct Taxes had pleaded genuine hardship if the delay is not condoned. This was in view of the fact that the Petitioner – Company is in financial losses and absence of refund otherwise due, would cause hardship to the Petitioner.

5. By an order dated 13th October 2015, the Petitioner's Application under section 119(2)(b) of the Act was rejected. The impugned order does not deal with the Petitioner's case of genuine hardship and rejects the same merely on the ground that the Petitioner was unable to substantiate its claim for genuine hardship in spite of the fact that the Petitioner had pointed out that it is the Company which is suffering losses and

denial of refund would cause them genuine hardship. Besides, it is the Petitioner's case that the impugned order has proceeded on the basis that the Petitioner had filed factually incorrect details without giving the Petitioner an opportunity to answer what according to the Commissioner was factually incorrect details. Mr Jhaveri, learned counsel for the Petitioner has invited our attention to the order issued by the Central Board of Direct Taxes under section 119 of the Act on 27th September 2010 extending the date for filing the return of income from 30th September 2010 to 15th October 2010. This order of the Central Board of Direct Taxes was issued just one day prior to the date when the Petitioner files its return of income. The Petitioner was not called upon to explain the aforesaid aspect resulting in the passing of the impugned order on the basis that the Petitioner has submitted factually incorrect details.

6. We find that as the impugned order is an order not dealing with the Petitioner's submissions proceeded on the basis that the facts are incorrect, when the Petitioner may possibly have a complete explanation for what appears to be incorrect facts if the same were put to the Petitioner. The impugned order dated 13th October 2015 is set aside and is restored to the

Commissioner of Income Tax for fresh disposal after dealing with the Petitioner's contention seeking condonation of delay under section 119(2)(b) of the Act.

7. The Petitioner is at liberty to file an additional representation in support of its claim for condonation of delay within one week from today. Needless to state the Commissioner of Income Tax will dispose of the Petitioner's Application dated 2nd August 2014 and the further representation, if any filed, after following the principles of natural justice as expeditiously as possible and preferably within six weeks from today.

8. Petition is allowed in the above terms. No order as to costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**