

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.5137 of 2015

and

MP.No.1 of 2015

M/s.Regen Infrastructure & Services
Pvt. Ltd., (formerly)

M/s.Renewable Energy Generation Pvt. Ltd.,
rep. by its Joint Managing Director

Mr.R.Sundaresh,

Samson Towers, Floor 4A, No.403 L,

Pantheon Road, Egmore,

Chennai-600 008.

... Petitioner

Vs.

1. The Central Board of Direct Taxes
rep. by its Deputy Secretary (OT),
Department of Revenue-Ministry of Finance,
Government of India,
New Delhi.

2. The Commissioner of Income Tax, Chennai-V,
Aaykar Bhavan,
Wanarpathy Block, V Floor,
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

3. The Income Tax Officer,
Company Ward-V(1),
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

... Respondents

Prayer:Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent in F.No.312/19/2014-OT dated 05.05.2014 and to quash the same and consequently, direct the first respondent to accept the return of income filed by the petitioner Company for the assessment year 2010-11 under Section 139(1) of the Act after affording a reasonable opportunity and personal hearing.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.Arun Kurien Joseph
for Mr.T.Ravi Kumar
Standing counsel

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of Certiorarified Mandamus, to call for the records of the first respondent in F.No.312/19/2014-OT dated 05.05.2014 and to quash the same and consequently, direct the first respondent to accept the return of income filed by the Petitioner Company for the assessment year 2010-11 under Section 139(1) of the Act after affording a reasonable opportunity of personal hearing.

2. According to the petitioner, it is a Private Limited Company incorporated under the provisions of the Companies Act and engaged in the business of execution and commissioning of Wind Turbine Generators. As per Section 139 of the Income Tax Act, 2006, the due date for filing of returns is on 30th September of the relevant Assessment year. For the impugned assessment year, the Ministry of Finance-Government of India vide notification in No.402/92/2006-MC (42 of 2010) dated 29.09.2010 has extended the last date for filing of income tax returns from 30.09.2010 to 15.10.2010 on account of disturbance caused by floods. The plea taken by the petitioner is that they kept the required documents ready for filing/uploading the return of income for the assessment year 2010-11 and that they were awaiting certain details with reference to Tax Deducted at Source (TDS) by their bankers and customers etc., and hence, decided to file their returns on 15.10.2010 i.e., on the last date for filing of returns. Further, the petitioner has stated that on 15.10.2010, they had been trying to upload their returns on the online website of the Income Tax Department since 7.00 P.M. However, due to the last hour rush and due to technical snags in the website of the Income Tax Department, the said return could not be uploaded on 15.10.2010 but only in the midnight of 15.10.2010 and hence, the date of filing has been reckoned by the Income Tax Department as 16.10.2010. It is further stated by the petitioner that the third respondent took the date of filing of the return as 16.10.2010 and completed the assessment under Section 143(3) of the Act on 13.03.2013, allowing the carry forward loss of Rs.1,17,38,726/-. The third respondent did not treat the original return to be filed belatedly under Section 139(1) of the Act. The second respondent vide show cause notice dated 03.10.2013 in C.No.2(3)/263/CIT-V/AY 2010-11, in the case of the Petitioner Company, proposed to revise

the aforesaid assessment order under Section 263 of the Act for the impugned assessment year 2010-11. In the show cause notice, the second respondent has stated that the benefit of carry forward losses allowed to the Petitioner Company under Section 143(3) is erroneous and prejudicial to the interest of revenue inasmuch as the Petitioner Company has filed their return beyond the last date of filing i.e., 15.10.2010. According to the second respondent, the benefit of carry forward will only be given to a person who had filed the return under Section 139(1) of the Act on or before 15.10.2010 and since the Petitioner Company had filed the return on 16.10.2010, such carry forward loss ought not have been granted by the third respondent in the original assessment under Section 143(3) of the Act and hence, sought to revise the order of assessment under Section 263 of the Act. Thereafter, the petitioner filed an application dated 12.11.2013, before the first respondent requesting them to consider the hardships faced by them in filing the original return on 15.10.2010 which was wrongly reckoned as filed on 16.10.2010 and therefore, to condone the delay of 2 hours in filing their returns and thereby, treat the return filed by them as return under Section 139(1) of the Act to enable the Petitioner Company to claim the carry forward loss under Section 139(3) of the Act. However, the first respondent rejected the prayer made by the petitioner stating that there was no justifiable reason to condone the delay in filing the return of their income by the Petitioner Company.

3. Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.Arun Kurien Joseph, learned counsel appearing on behalf of the respondent.

4. The learned counsel for the petitioner submitted that in similar circumstances, the High Court of Bombay and High Court of Delhi had condoned the delay and held that the assessee is entitled to carry forward loss under Section 139 (3) of the Act. Further, in support of his contentions, he relied upon the following judgments:

i) The Hon'ble Division Bench of High Court of Bombay in Cosme Matias Menezes (P) Ltd., V. Commissioner of Income Tax, Goa reported in 2015 (379) ITR 31 (Bombay) has held that the first respondent/CBDT has got jurisdiction to condone the delay in filing the returns of income and also held that if sufficient reason is given by the petitioner/assessee for filing the return belatedly, the same can be condoned.

ii) In Artist Tree (P) Ltd., V. Central Board of Direct Taxes reported in 2014 (3690 ITR 691 (Bombay)), wherein, the Hon'ble Division Bench of High Court of Bombay has condoned the delay of 22 months in filing return of income, finding that the assessee has given sufficient cause for the condonation of delay. Further, the High Court of Bombay held that there is no presumption that the delay has occurred

deliberately or on account of culpable negligence or on account of mala-fides. Further, it has held that a litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. That apart, the Bombay High Court also held that the approach of the authorities should be justice oriented so as to advance the cause of justice. If refund is legitimately due to the litigant, mere delay should not defeat the claim for refund.

iii) In *Lodhi Property Company Ltd., Vs. Under Secretary, Department of Revenue* reported in 2010 (323) ITR 441, wherein, the Hon'ble Division Bench of High Court of Delhi, has held that while rejecting the petition for condonation of delay, the CBDT should give sufficient reason for rejecting the same.

5. Countering the submissions made by the learned counsel for the petitioner, Mr. Arun Kurien Joseph, learned counsel appearing for the respondent submitted that the petitioner has not given sufficient cause for the condonation of delay and therefore, the first respondent has rightly rejected the petition for condonation of delay. In support of his contention, the learned counsel relied upon the judgment of High Court of Gujarat in *Vahid K. Ravji V. Central Board of Direct Taxes and others* reported in 2009 (24) DTR 0268, wherein the Hon'ble Division Bench of the High Court of Gujarat has held that in the absence of genuine hardship caused to the petitioner, the delay in filing the return cannot be condoned.

6. In the judgment of the High Court of Gujarat, it could be seen that the assessee submitted his return for the assessment years viz., 1983-84, 1984-85 and 1985-86 belatedly and since the assessee had submitted the returns for the above said assessment years belatedly, the High Court of Gujarat has taken a view that the petitioner therein has been submitting the returns belatedly and therefore, no indulgence can be shown to the petitioner.

7. In the case on hand, the petitioner has satisfactorily explained the delay in filing the return on 16.10.2010 instead of 15.10.2010. Further, it is not the case of the respondents that the petitioner is not entitled to claim the carry forward loss under Section 139(3) of the Act. When the petitioner is entitled to claim the carry forward loss under Section 139(3) of the Income Tax Act, it cannot be stated that the delay in filing the return had occurred deliberately or on account of culpable negligence or on account of mala-fides. Further, the petitioner do not stand to benefit by resorting to delay as held by the High Court of Bombay. In fact, they runs a serious risk. Moreover, when the petitioner had satisfactorily explained the delay in filing the said return, the approach of the first respondent should be justice oriented so as to advance the cause of justice. In this case, when the

petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner. The judgments relied on by the learned counsel for the petitioner squarely applies to the facts and circumstances of the present case. In these circumstances, I am of the view that the first respondent should have condoned the delay of one day in filing the return by the petitioner.

8. For the reasons stated above, the impugned order passed by the first respondent dated 05.05.2014 is liable to be set-aside, accordingly, the same is set-aside. Resultantly, the Writ Petition stands allowed. The first respondent is directed to accept the return filed by the Petitioner Company for the assessment year 2010-11 under Section 139(1) of the Act after affording due opportunity of personal hearing to the petitioner. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Central Board of Direct Taxes
rep. by its Deputy Secretary (OT),
Department of Revenue-Ministry of Finance,
Government of India,
New Delhi.
2. The Commissioner of Income Tax, Chennai-V,
Aaykar Bhavan,
Wanarpathy Block, V Floor,
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.
3. The Income Tax Officer,
Company Ward-V(1),
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.16288

+1cc to Mr.R.Sivaraman, Advocate, S.R.No.16066

W.P.No.5137 of 2015
and M.P.No.1 of 2015

VGI (CO)

CA/28/03/2016)

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