IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5332/2016
(Shri Radheshyam Agrawal **vs.** Union of India and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

CORAM : **B.P. DHARMADHIKARI & MRS.SWAPNA JOSHI,JJ.**
DATED : **7th February, 2017.**

Heard Adv.Patil for petitioner, Adv. Bhattad for respondent nos. 2 and 3 and Adv. Wakode for respondent no.1.

2. In the light of arguments, we have perused the judgment of Division Bench of this Court, reported at ***(2010) 187 Taxmann 44: (Sitaldas Motwani vs.Director General of Income tax New Delhi),*** and provisions of Section 119(2)(b) as also provisions of Section 237 of the Income Tax Act, 1961.

3. The return has been filed belatedly and there is delay of roughly six months and fifteen days. The return for Assessment Year 1999-2000 along with TCS certificates was filed on 15,.10.2001. In response to notice under Section 158 BC, return for block assessment including this year, was filed a day thereafter, on 16.10.2001.

4. The Chief Commissioner of Income Tax has refused to condone delay after holding that facts brought on record were not sufficient to exercise discretion.

5. The application for condonation of delay u/s. 119(2)(b) and for refund u/s 237 appears to be a joint application.

6. If the certificates produced by petitioner to substantiate his claim for refund were genuine, the refund could have been ordered even after completing assessment in default of return after levying interest, penalty etc. The TCS claim is not found unsustainable on merits.

7. *Prima facie*, we therefore find that the aspect of condoning delay in filing return and in claiming refund, needed separate evaluation. The authority could have, in peculiar facts, also pointed out *mala fides* on part of assessee in seeking condonation jointly or refund belatedly.

8. The impugned order dated 7.1.2012 (13.12.2011) does not show this application of mind. A justice-oriented approach at least in matter of refund needed to be adopted. Normally amount not due as tax or received in excess, should have been refunded, if there was no other obstacle.

9. Hence,without observing anything more on merits of the controversy, we set it aside and direct respondent no.2 to pass fresh orders as per law, within next three months. Our findings above shall not be biding and the Chief Commissioner is free to reach own findings independently and uninfluenced by it.

10. We direct petitioner to appear before respondent no.2 on 23.02.2017. The period of three months shall commence from that date.

11. Writ Petition is, thus, partly allowed and disposed of. No costs.

JUDGE **JUDGE**

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