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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 2845/2017 & CM Nos. 12387-89/2017**

ANJALIKA KRIPLANI THROUGH: RASHNA KRIPLANI

..... Petitioner

Through: Mr. Sachit Jolly, Mr. A. Pant and Mr. Siddhartha Singh, Advocates.

Versus

CENTRAL BOARD OF DIRECT TAXES & ANR. ..... Respondents

Through: Mr. Zoheb Hossain, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 29.03.2017

CM No. 12389/2017 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed off.

W.P.(C) 2845/2017 & CM Nos. 12387-88/2017

3. Issue notice. Mr. Zoheb Hossain, learned counsel accepts notice on behalf of the respondents.

4. With the consent of the parties, the matter is taken up for hearing.

5. The petitioner's grievance is that the application preferred pursuant to this Court's order dated 04.05.2016, under Section 119(1)(a) of the Income Tax Act, 1961 (for short 'the Act') for condoning the delay in filing a revised return, has been turned down not on the merits but on the interpretation of proviso to Section 119(1) (a) i.e. that the relief sought would amount to interference with the powers and jurisdiction of a quasi-judicial authority.

6. The petitioner had disclosed certain amounts claiming them to be agricultural income and other income. This led to an *ex parte* assessment resulting in additions. The petitioner had then approached this Court by filing W.P.(C) No.3543/2016 claiming that on account of the bipolar disorder and mental condition of the petitioner, the returns had not been filed properly disclosing the relevant particulars. This Court realising the CBDT's power under Section 119 (2) (b) of the Act, relegated the matter to the AO to consider the matter afresh. Subsequently, the petitioner approached the CBDT seeking condonation of delay in the filing of the revised return which according to her would have clarified the irregularities pointed out in the *ex parte* assessment that resulted in the additions. The CBDT by the impugned order *inter alia* observed as follows:-

> *"3. On consideration of facts of the case, it will not be feasible to consider this matter under section 119 for the following reasons:*
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> *(i) The case is presently pending with the Assessing Officer to frame assessment as per directions of Hon'ble High Court Under proviso to section 119(1)(a) of the Act, Board is precluded from issuing any directions which may interfere with quasi-judicial powers of an Assessing Officer in a particular case. Therefore, condoning the delay and permitting the petitioner at this juncture, when assessment proceedings are pending, under section 119 of the Act will not be feasible.*
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> *(ii) It may also be mentioned that legalizing petitioner's revised return at this juncture by the Board would lead to alteration in income returned by the petitioner's and may, thus, amount to interference in giving effect to order of Hon'ble Delhi Court by the Assessing Officer.*

> *4. Therefore, as petition under section 119 of the Act is not maintainable in this case, the above petition of Ms. Anjlika Kriplani is hereby being filed."*

7. This Court has considered the submissions of the parties. What the Court required the CBDT to consider whilst making its order of 04.05.2016 was that the AO was to make a fresh assessment order. The assessee approached the CBDT seeking condonation realising that the revised return could not be filed on account of the lapse of time. The relevant part of Section 119(1)(a) reads as follows:-

> ***"119. Instructions to subordinate authorities.-** (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :*
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> *Provided that no such orders, instructions or directions shall be issued—*
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> *(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or"*

8. In this case, the petitioner's request was limited, and if one may say so, uncontroversial and that the CBDT was merely asked to condone the delay in the filing of the revised return having regard to her mental health. The CBDT, in the opinion of the Court, misunderstood the scope of the proviso (a) to Section 119(1) of the Act when it said that granting the relief

would amount to directing the AO to a particular course of action. The discretion, if exercised, would merely result in enabling the assessee to file a revised return, no more, no less. As to the merits of the returns, the AO would have the sole authority to rule on the claims made by the assessee. In denying the power to admit the revised return – through the process of condonation, a direction to act on and accept the contents of the revised return, the CBDT, in our opinion, fell into error of law.

9. Accordingly, the impugned order is hereby set aside. The CBDT shall decide the matter afresh i.e. as to whether to condone the delay in the filing of the revised return having regard to the circumstances. The matter shall thereafter – in the event it grants the relief – be considered on the merits by the AO.

10. The writ petition is allowed in the above terms. All the pending applications stand disposed off.

11. A copy of this order be given *dasti* to the parties under the signatures of the Court Master.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

MARCH 29, 2017
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