IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1013 of 2016

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M/s Siddharth Constructions, through the partner Sidharth Shankar Choudhary, resident of Gas Godown Gali, Benta Road, Laheriasarai, Darbhanga, District - Darbhanga, Bihar - 846001.

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner of Income Tax (Bihar & Jharkhand), Central Revenue Building, Veerchand Patel Path, Patna.
2. The Principal Commissioner of Income Tax, Muzaffarpur, Bela Kothi, Ramkrishna Ashram Road, Bela, Muzaffarpur.
3. The Joint Commissioner of Income Tax, Range - 3, Darbhanga, District - Darbhanga.
4. The Income Tax Officer, Ward - 3(2), Darbhanga, District - Darbhanga.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rajesh Kumar Jha, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-02-2018

Challenging an order dated 3rd of November, 2015, Annexure-7, passed by the Principal Commissioner of Income Tax, Muzaffarpur, rejecting an application for condonation in filing of returns of income and claim of refund for the assessment year 2009-10 to 2012-13, this writ petition has been filed under Articles 226 and 227 of the Constitution.

It is the case of the petitioner that by a Circular bearing No.9/2015, Annexure-8, the Central Board of Direct Taxes fixed time limit to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off and from para 3 onward of the aforesaid Circular, various guidelines were taken for dealing with such application for condonation of delay. According to the petitioner, they also filed an application for condonation of delay in filing the returns claiming refund and the same having been been rejected by the impugned order, Annexure P-7 dated 3rd November, 2015, this writ petition has been filed.

Having heard learned counsel for the parties, we find that it is the contention of the petitioner that without proper consideration and taking note of the requirement of the aforesaid Circular, his application has been rejected without application of mind and without discussing any reason.

On the contrary, learned counsel for the Revenue invites our attention to the reasons indicated in the impugned order, Annexure P-7 which reads as under:-

> "In this context, I am once again directed to convey that on perusal of the condonation petition for concerned assessment years i.e. A.Y. 2009-10 to 2012-13, it has been observed that although the business was continuously running during these years yet, returns of income were not filed in time. Thus, it has been observed that there is no valid reason for late filing of return as business activities have been carried out as usual. Accordingly, condonation for the same has been rejected by the Principal Commissioner of Income Tax, Muzaffarpur as per Board's instruction no.9/2015 dated 09.06.2015."

to say that the application has been rejected by recording the aforesaid reason and, therefore, there is no reason to interfere in the same.

We have considered the rival contentions and we find that the petitioner filed the return in question and in the application for condonation of delay, it was indicated that the delay in filing of the returns claiming refund was in view of the fact that the mother of the Managing Partner was seriously ill during the period, the Managing Partner was completely engaged in looking after his mother, and therefore, the returns could not be filed. Subsequently, another application Annexure-6 was filed substantiating various reasons for the delay in filing of the returns. However, the learned competent authority rejected the appeal only on the ground that the business was continuously running for all these periods and there is no valid reason for late filing of the returns. However, there is no enquiry conducted with regard to the reasons for the delay and the justification given for condonation nor is there any reference to the principles stipulated in the Circular for condonation of delay.

In our considered view, the application for condonation of delay has been rejected without proper consideration and, therefore, we allow this petition in part and quash the order, Annexure-7 dated 3rd November, 2015 and the remand the matter back to the officer concerned for reconsideration of the application for condonation of delay. On filing the certified copy of this order, the application for condonation of delay shall be reconsidered and a decision taken in accordance with law, preferably within a period of 60 days from the date of submission of the certified copy of the order.

With the aforesaid, the petition stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2018
Transmission Date	