R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14406 OF 2018

Ganesh Sahakari Bank Ltd, Nashik .. Petitioner

Versus

Government of India,
Ministry of Finance Department .. Respondent

....

- Mr. Ashok Tajane for the Petitioner
- Mr. Sham Walve for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 29, 2019.

P.C.:

1. The petitioner has challenged an order dated 13.9.2017 passed by the Central Board of Direct Taxes ("CBDT" for short) rejecting the petitioner's request for condonation of delay in filing the income tax return for assessment year 2008-09.

2. Brief facts are as under:-

2.1 The petitioner is a Co-operative Bank. The petitioner had filed return of income for the said assessment year 2008-09 on 18.12.2008. The last date for filing the return under Section 139(1) of the Income Tax Act, 1961 ("the Act" for short) was 31.10.2008. In such return, the petitioner had claimed a carry forward of losses to the tune of Rs. 24.65 Lakhs (rounded off). The Assessing Officer passed an order of assessment under Section 143(3) of the Act on 29.12.2011 rejecting the claim of carry forward of losses on the ground that the return was not filed within time. The assessee carried the matter in appeal. The CIT(A) allowed the appeal by order dated 10.5.2012. This order was challenged by the Revenue before the Income Tax Appellate Tribunal ("the Tribunal" for short). The Tribunal passed an order dated 21.3.2014 allowing Revenue's appeal. The Tribunal was of the opinion that since the return of income was not filed by the assessee within time, the claim for carry forward of losses was not sustainable. The Tribunal expressed an opinion that the proper course for the assessee would have been to seek condonation of delay in filing the return from the CBDT.

3. The petitioner, thereafter, approached the CBDT by filing appropriate application under Section 119(2) of the Act seeking condonation of delay in filing the return. There is some dispute about the point of time when such application was filed. We would advert to this aspect sometime later. According to the petitioner, first such application was filed on 6.10.2014. The Department does not accept this contention. The CBDT has entertained an application received on 23.10.2015. By impugned order dated 13.9.2017, the application came to be dismissed on the ground that the delay in filing the return was not satisfactorily explained and further that even the application for condonation of delay was filed beyond permissible limit. Impugned order refers to a CBDT Circular laying down limited time of maximum six years for filing an application for making a claim for relief or loss. Going by the said date of 23.10.2015, admittedly, this application of the petitioner was beyond such period.

4. Appearing for the petitioner, learned counsel Mr. Tajane submitted that the CBDT committed serious error in rejecting the application of the petitioner. The petitioner being a Co-operative Bank, had to get the accounts audited by an auditor that may be appointed by the State Government. In the present case, the auditor was appointed only in July 2010 after which the petitioner made full efforts to have audit completed within time. The auditor submitted the report only on 5.12.2008. upon which the return was filed on 18.12.2008. The CBDT without looking such grounds rejected the petitioner's contention of sufficient cause having been shown. He further submitted that the first application for condonation of delay was filed on 6.10.2014 which was ignored by the CBDT. Learned counsel relied on following decisions:-

i. **Pala Marketing Co-op. Society Ltd Vs. Union of India & Ors.**[1]
ii. **M/s. Bombay Mercantile Co-op Bank Ltd Vs. CBDT & Ors.**[2]

5. On the other hand, learned counsel Mr. Walve appearing for the Department opposed the petition contending that the CBDT has considered all aspects of the matter and given reasons for rejecting the petitioner's application. Quite apart from the delay in filing the return has not been explained, even application for condontion of delay was beyond the maximum permissible time prescribed for such purpose.

1 [2009] 311 ITR 177 (Ker)
2 Judgment dated 20.9.2010 in O.S. Writ Petition No. 1544 of 2010

6. Having thus heard learned counsel for the parties and having perused the documents on record, we may recall quite apart from delay in filing the return, the petitioner also had to demonstrate why the application for condonation of delay could not be filed for as long as six years. As noted, the petitioner first contested the claim before the Revenue Authorities. The Tribunal by its judgment dated 21.3.2014 held that such loss was not allowable in absence of filing of the return within time and in absence of condonation thereof. Even if the petitioner was bonafide pursuing the claim in the assessment proceedings, nothing prevented the petitioner from filing appropriate proceedings before the CBDT for condonation of delay once the Tribunal expressed its opinion. The petitioner has accepted such opinion and not preferred the appeal in the High Court. As per the impugned order, the first evidence of such a petition being filed before the CBDT was on 23.10.2015. Though the petitioner contended that previously one such petition was filed on 6.10.2014, the CBDT found no evidence of such proceedings being filed. The petitioner claims to have filed such an application before the Assessing Officer. Even there, the CBDT found that the evidence of any such petition being presented, inadequate. The petitioner produced the receipt of private courier of having dispatched the same. The CBDT, however, in the impugned order records that even the Authority to whom the same has been forwarded is not mentioned. Under these circumstances, the petitioner has not been prompt in pursuing the remedies on the ground of limitation and latches. We are doubtful if this period of six years for approaching CBDT is extendable in the first place. No case of interference is made out.

7. As is well known, even a declaration of loss would require assessment so that only the genuine loss is recognized and which would be available for carry forward to be set off against future income. Accepting the petitioner's request, would amount to reopening the assessment for the long past period. Under these circumstances, the petition is disposed of.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**