

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 14395 OF 2018

Sadhana R. Jain .. Petitioner.
v/s.
The Central Board of Direct Taxes
& Another .. Respondents.

Mr. Mihir Naniwadekar with Mr. Rohan Deshpande and Ms. Alisha Pinto,
for the Petitioner.
Mr. Sham Walve, for the Respondents.

**CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.
DATE : 29th JANUARY, 2019.**

P.C:-

The Petitioner has challenged the orders dated 28th March, 2017 and 16th October, 2017 as at annexure 'D' and 'K' respectively to the Petition.

2 This challenge arises in following back-ground.

- (i) Petitioner is an individual. The Petitioner had applied to the competent authority on 28th September, 2016 by making necessary declaration under the Income Declaration Scheme of 2016 (for short, "IDS"). In terms of such declaration, as per the provisions contained in the Scheme, the Petitioner had to deposit a minimum 25% of the total sums payable pursuant to such declaration, latest by 30th November, 2016. The total tax payable by the Petitioner on such declaration was Rs.17,40,855/- along with surcharge and penalty of

Rs.4,35,213/-. The Petitioner had to pay a minimum $\frac{1}{4}$ th of the total of these two sums latest by 30th November, 2016. The Petitioner could not make the payments.

- (ii) The Petitioner, therefore, on 12th December, 2016 wrote the the Central Board of Direct Taxes (for short "CBDT"), conveying that her daughter was admitted in hospital on 20th November, 2016 for a delivery. Due to medical complications, she had to be kept in the hospital till 1st December, 2016. On account of said unavoidable circumstances, the Petitioner could not deposit the first installment within the time permitted. She, therefore, requested that the delay may be condoned. She contended that in absence of condonation of delay, her declaration would be treated as invalid/ void resulting into genuine hardship to her. She also stated that she was in a position to make the payment within first week of December, 2016 itself. However, she was advised that, in case the delay is not condoned, such payment would be non-refundable.
- (iii) Since there was no response to this application of the Petitioner by the CBDT, Petitioner approached this Court by filing Writ Petition No. 8066 of 2017 which was disposed of by an order dated 29th August, 2017. The Court directed that the application of the Petitioner be considered in accordance with law and in particular, in light of the Circular of the CBDT dated 28th March, 2017. Pursuant to said directions of the Court, the CBDT passed the order on 16th October, 2017. By the said order, the application of the Petitioner for condonation of delay, was rejected. Petitioner's contention that her case is covered under the Circular dated 28th March, 2017, was rejected. It was observed that IDS was the

opportunity provided by the Government to non-compliant tax payers to come clean after paying tax at the higher rate. Granting any further relaxation under the IDS, would de-motivate the honest tax payers who are paying taxes promptly. Under the circumstances, the board was of the opinion that no relaxation in the payment schedule provided under the IDS can be granted. It was also stated that this would be in consonance with the Circular dated 28th March, 2017 in which, delay on account of personal reasons would not be considered the fit case for condonation of delay.

3 Petitioner has, therefore, in the present Petition challenged the said order dated 17th October, 2017 passed by the Board. The Petitioner has also challenged the validity of the CBDT Circular dated 28th March, 2017.

4 Appearing for the Petitioner, learned Counsel Shri Naniwadekar, raised following contentions:-

- (i) The Petitioner had made out grounds for not being able to pay the installment in time. The reasons were genuine and beyond the control of the Petitioner. The delay, therefore, ought to have been condoned by the board in exercise of its power under Section 119(2) of the Income Tax Act, 1961 (for short, "the Act").
- (ii) Counsel placed reliance on the earlier order passed by this Court on 29th August, 2017 in Writ Petition filed by the present Petitioner and contended that, the board failed to take into account observations made by the Court in the said order.

- (iii) Counsel contended that the case of the Petitioner was covered under CBDT Circular dated 28th March, 2017. If the CBDT Circular is seen as restricting the power of board to condone delay even in cases of genuine hardship, based on exceptionally circumstances, the same would be rendered ultra virus.
- (iv) By issuing a Circular, board cannot restrict the scope and ambit of the provisions of Section 119(2) of the Act.

5 The IDS was framed by the legislature by incorporating Chapter IX in Finance Act, 2016. The provisions of this Chapter enabled the Assessee who had undisclosed income, to make a declaration. Broadly stated, the Scheme provided that upon such a declaration being accepted, the declearant would pay tax with surcharge and penalty at prescribed rates in three installments. Upon payment of such sums, the Assessee would receive certain immunities. In short, Scheme invited Assessee who may have not disclosed their income previously, to come clean, pay tax along with surcharge and penalty (which was restricted at lower rate) and upon which the Assessee would be spared the long drawn procedure of assessment, penalties and prosecution.

6 It is true that unlike the earlier Schemes, making similar provisions, Section 195 of the Finance Act, 2016 contained a provision, clarifying that, besides others, Section 119 of the Act would be applicable in relation to the proceedings under the said Scheme. The applicability of Section 119 of the Act, thus, was specifically retained in relation to the provisions of the Scheme.

7 It was in this context that the CBDT had issued its Circular

dated 28th March, 2017. Such Circular aimed to obviate certain difficulties faced by the Assessors in depositing first installment. Circular provided for accepting late payment of the first installment in cases where the remittance was made through cheque, RTGS and electronic transfer etc. before 30th November, 2016 but the same was credited by the Bank after the said date but before 5th December, 2016. Thus, the CBDT recognized the limited area where though the payment was made within time, but the bank had not credited the same in the Government revenue. Under such circumstances, the time would be relaxed in favour of the declarant. While doing so, the CBDT also considered the cases of individual hardship for reasons such as personal reasons or emergency reasons, lack of liquidity etc. The board, however, took a conscious decision not to grant any extension in said situations. Relevant portion of the board Circular, reads as under:-

“3. As far as remaining declarants are concerned, the reasons for not making timely payments are stated as under:-

- (a) Personal/emergency reasons*
- (b) Lack of liquidity*
- (c) Confusion about the due date*
- (d) Rush as banks*
- (e) Any other reasons which are attributable to declarants.*

3.1 The Board after considering the matter, is of the view that either condoning the delay in making payment of first installment by the defaulters who have not paid any amount will now or further extending the date beyond the due date for regularising/ facilitating the payment of liabilities under IDS merely to accommodate a few, especially when most of the declarants had abided by the prescribed schedule date, does not merit consideration. It is noted that IDS does not provide for levy of interest on delayed payments, and hence, granting such a condonation to the defaulters may be discriminatory against the declarants who made it a point to adhere to the prescribed time

schedule. It is also observed that all the declarants while filing declarations under the IDS were well aware of the payment schedule which they were required to follow. The final liability also became crystallised once a certificate in Form No.2 [r.w. Rule 4(3) of the IDS Scheme] was issued by the Pr. CIT/CIT to that effect by mid-October, 2016. Thus, the defaulting declarants who want condonation of delay on the grounds mentioned above had sufficient time at their disposal to suitably organize their affairs so as to ensure timely payment of first installment without the need to wait till the last minute. It is also relevant to point out here that provisions of the Scheme were well publicised by the Government through various steps such as media campaigns in visual, print and social media, organized meetings, awareness programmes etc. whereby the declarants were also suitably informed of the legal consequences arising from non-compliance of payment schedule. Hence, any delay by the declarants on grounds mentioned above is solely attributable to lack of initiative or timely action on the part of the concerned declarants and hence does not justify condonation.

3.2 In view of the above, Board while exercising its powers under Section 119 of the Act, has decided that granting condonation of delay in payment of installment under IDS 2016 beyond the prescribed due date or relaxation/ extension of due date shall not be feasible in cases of delays due to circumstances mentioned in Para 3 above.

4 However, some instances have been brought to the notice where the declarant effected the full payment within the due date and same was also acknowledged by the bank, but it was intimated later by the bank that fund transfer did not materialize within the prescribed time frame and the money was either returned back to the declarant or credited to Govt. A/c after 5th December, 2016. Such instances clearly refer to the circumstances over which the declarant had absolutely no control. Only, in such cases, the concerned Pr.CIT/CIT is hereby authorized to deal with the applications on a case to case basis after verifying the claim of the declarant through the relevant bank statements/ certificates etc. and consider on merits the condonation in appropriate cases provided the amount payable

as per the first installment as well as second installment is paid by 31st March, 2017 by the concerned declarant.”

8 Reading of the board Circular, it would clearly emerge that while providing for a limited window, in cases where payments were made through banking channels but the deposit was made by the bank in the Government revenue few days after 30th November, 2016 to condone the delay in such circumstances, no relaxation was granted in other cases, particularly involving individual reasons. The board in Circular cited reasons such as personal or emergency reasons, lack of liquidity, rush at banks or any other reasons, which can be attributable to the declarants. In all such cases, it was decided not to extend the time limit.

9 The impugned decision of the board, is well within the four corners of the Circular dated 28th March, 2017. The IDS itself did not make any provisions for relaxation. The Scheme did retain the power of the board under Section 119(2) of the Act. In exercise of such powers, the board laid down the areas where relaxation would be granted and consciously decided not to grant extension or condone delay in cases where reasons were attributable to the declarants. Under Section 119(2) of the Act, the board can exercise power either in individual case or in case of the Assessors as a class. Once the board decided the entire issue by taking into account declaratory as a class, while applying such decision to individual cases, no further flexibility was left open.

10 The CBDT Circular dated 28th March, 2017, therefore, cannot be treated as the decision of the board abdicating its power under Section 119(2) of the Act. It is, in fact, in exercise of such powers that the board took certain conscious decisions. It was not argued before us that the

decision of the board was arbitrary or unreasonable so as to be struck down in as opposed to Article 14 of the Constitution of India. In any case, when the legislature frames a special Scheme such as the present one, giving certain concession to the Assesses who had till then not declared their incomes truly and fully, legislature can always lay down its limits of the concession to be granted.

11 As correctly considered by the CBDT in its impugned order dated 16th October, 2017, such concession and excess indulgence in such cases, could have demotivating effect on honest tax payers making regular and prompt tax deposit.

12 We did not find that this Court in its judgment dated 29th August, 2017 has given any directions to the board to decide the matter in a particular fashion. The Court merely required the board to decide the Petitioner's application for condonation of delay, particularly, bearing in mind the Circular dated 28th March, 2017. The observations of the Court in this respect, were not meant to be final or conclusive. This has been so specifically stated in the concluding portion of order itself. We, therefore, find that the board was correct in holding that the application of the Petitioner for condonation of delay was not supported by CBDT Circular dated 27th March, 2018. In the result, we do find any reason to interfere in the Petition.

13 **Petition dismissed.**

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)