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**03.02.2021**
Ct. No.23
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
**(Via Video Conference)**

**WPA 748 of 2021**

Ming Sheng Xuan Limited Company
Vs.
Principal Chief Commissioner of Income Tax
(International Taxation) & Ors.

Mr. Abhratosh Majumdar, Sr. Advocate
Mr. Avra Mazumder
... For the petitioner

Mr. Dhiraj Trivedi
Mr. Radhamohan Ray
... For the Income Tax Authorities

The petitioner made two separate applications under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") for condoning the delay and accepting the return for the assessment years 2015-16 and 2016-17. The petitioner says that the return for the assessment year 2016-17 has been accepted by condoning the delay. However, the delay in filing the return for the assessment year 2015-16 has not been condoned and, as such, the petitioner's return has not been accepted. The petitioner further says that the authorities ought to have considered the petitioner's case in a more lenient and justice-oriented manner instead of a highly pedantic approach by refusing to condone the delay and accept the return. The petitioner also says that the basic object of Section 119(2)(b) of the said Act will be frustrated if a stringent view is taken by the authorities. The petitioner says that since the order passed under the provision of Section 119(2)(b) does not come within the ambit of the orders specified in Section 245 of the said Act, the said order is also not appealable. The petitioner, as such, has approached this Court invoking the writ jurisdiction. The petitioner says that the authorities may be directed to consider the petitioner's application for condoning the delay and accepting the return for the assessment year 2015-16 in a lenient and justice-oriented approach.

The petitioner relies upon the judgments delivered in **Bombay Mercantile Co-op. Bank Ltd. v. Central Board of Direct Taxes**, reported in **[2010] 195 Taxman 106 (Bombay)** and **Cosme Matias Menezes (P.) Ltd. v. Commissioner of Income-tax, Goa**, reported in **[2015] 60 taxmann.com 233 (Bombay)** in support of its argument.

On behalf of the respondents, it is submitted that the petitioner has pleaded ignorance of law as the main cause of delay in filing the return. This contention is the sheet-anchor for the petitioner's prayer to condone the delay. The ignorance of law, according to the respondents, cannot be a ground for condoning the delay in filing the return. The respondents pray for dismissal of the writ petition.

After considering the submissions made on behalf of the parties and the materials on record, I find that the ratio of the two judgments cited by the petitioner are applicable in the instant case.

In the facts and circumstances, I am of the view that the department ought to have taken a justice-oriented approach instead of taking a highly pedantic approach in refusing to condone the delay on the part of the petitioner in filing the return for the assessment year 2015-16. The order dated 25th August, 2020 passed by the Principal Chief Commissioner of Income Tax (International Taxation), being the respondent no.1, in respect of the assessment year 2015-16 is set aside.

The Principal Chief Commissioner of Income Tax (International Taxation), being the respondent no.1, is directed to reconsider the petitioner's application made for condoning the delay and accepting the return for the assessment year 2015-16. The petitioner should communicate this order to the Principal Chief Commissioner of Income Tax (International Taxation), immediately. The Principal Chief Commissioner of Income Tax (International Taxation), being the respondent no.1, should decide the matter within a period of two months from the date of being approached.

Needless to mention, I have not gone into the merits of the matter, save and except to the extent as recorded hereinabove which is only for the purpose of deciding the instant writ petition.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties, upon compliance of necessary formalities.

**(Arindam Mukherjee, J.)**