

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22763-2021

Date of Decision: 16.11.2020

The Mehlawat Co-op. Labour and Construction Society Ltd.

....Petitioner

Versus

Central Board of Direct Taxes and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sachin Bhardwaj, Advocate,
for the petitioner.

PANKAJ JAIN, J. (Oral)

By way of the present petition, the petitioner, a registered Cooperative Society, has approached this Court seeking refund of Rs.40,147/- for the assessment year 2014-15.

The petitioner claims that the Income Tax Return was filed on 12.09.2014 through PAN No.AAAAM7407N against the acknowledgement No.673120914014425 and the same was filed in Form No.5 to ACIT II (1) Gurgaon, wherein the gross profit was Rs.9,412/- which was claimed as exempt under Section 80P of the Income Tax Act (hereinafter referred as 'the Act') and this resulted into the refund of the TDS (Tax Deducted at Source) amounting to Rs.40,147/-. However, the claim of the petitioner for refund of the aforesaid amount was not accepted constraining the petitioner to approach the authorities by way of a request dated 31.03.2016.

The aforesaid request dated 31.03.2016 was again reiterated

vide communication dated 21.10.2016. It was only on 07.08.2018 that the petitioner was informed that the Income Tax Return filed by the petitioner for the assessment year 2014-15 has been treated defective under Section 139 of the Act. The remarks in the communication dated 07.08.2021 read as under:-

“The return filed by the assessee has been treated as defective u/s 139(9) as the ITR to be filled online/e-file but the assessee had not filed his ITR online/e-file. Further, the assessee was advised vide letter F.NO./DCIT/C-2/GGN/2017-18/1349-1402 dated 22.05.2017 to remove defects in ITR but the assessee has neither filed the ITR online nor filed application u/s 119(2)(b) for condonation of delay as advised vide the above mentioned letter sent by the DCIT, Circle-2(1), Gurgaon. The assessee is requested to submit the application for condonation of delay as advised earlier.”

The complaint made by the petitioner to the Central Board of Direct Taxes (Income Tax) dated 17.07.2018 was also closed on 13.08.2018 and admittedly, the case closure report was duly communicated to the petitioner. The same is reproduced as under:-

“As per PCIT report, the return filed by the assessee has been treated as defective u/s 139(9) as the ITR to be filled online/e-file but the assessee had not filed his ITR online/e-file. Further, the assessee was advised vide letter dated 22.05.2017 to remove defects in ITR but the assessee has neither filed the ITR online nor filed application u/s 119(2)(b) for condonation of delay as advised vide the above mentioned letter sent by the DCIT, Circle-2(1), Gurgaon and the assessee was also asked to remove defects in ITR but the assessee has not removed the same till date. Therefore, the refund

claimed by the assessee can not be processed. So refund cannot be issued in light of above facts and grievance stands disposed.”

Admittedly, as per Section 139 of the Act, the petitioner was required to file the ITR online, which he failed to do.

That apart, after August 2018, the petitioner has approached this Court vide present writ petition after a lapse of more than three years.

We are unable to accept the claim of the petitioner as we find that the claim of the petitioner is barred by delay. The petitioner ought to have made claim for recovery within a reasonable time after 17.07.2018. On ascertaining what is reasonable time for claiming refund, the courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing of suits for recovery of amount due to them the same being three years.

The Hon'ble Supreme Court in the case of **Municipal Corporation of Greater Bombay Vs. Bombay Tyers International Ltd. and others, AIR 1998 SC 1629** has approved of the aforesaid principle.

In view of the aforesaid facts and circumstances, we find that the writ petition filed by the petitioner deserves to be dismissed being barred by delay and laches.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

16.11.2020
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No