IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1244 OF 2021

Kirandipsingh Kuldipsingh Swani
Legal heir of Kuldipsingh Lacchmansingh Swani ...Petitioner

vs.

1. The Principal CIT-17
& 3 Ors. ...Respondents

Shri Devendra H. Jain a/w. Mr.Radha Halbe for petitioner.

Shri Sham Walve for respondents.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.

DATE : 10th JANUARY, 2022
(THROUGH VIDEO CONFERENCE)

P.C.:

1. Petitioner is impugning an order dated 23rd March 2021 passed under section 264 of the Income Tax Act, 1961 ('the said Act') by which petitioner's revision application under section 264 came to be rejected. Rejection has been on the ground that there was a delay of more than 1 ½ years, after the order under section 143 (1) of the Act was passed.

2. We have considered the petition. Petitioner is a legal heir of the deceased assessee and filed the return of income on behalf of the deceased assessee. According to petitioner, he became aware of the return

being assessed under section 143(1) of the Act only when some staff from Income Tax Department visited petitioner's residence in January 2020 for recovery of the dues pending. Immediately, petitioner has moved the revision petition. According to petitioner, there has been a delay of only seven months and not 1½ years but at the same time, since petitioner is only a legal heir of the deceased assessee, some leniency should be shown.

3. We would agree with petitioner because when an assessee dies, it takes time for the legal heir to lay their hands on all the papers and to decide the course of action to be adopted. The Principal Commissioner, before whom, the application under section 264 of the Act has been filed, can dispose the application on merits, on which are not making any observation or comment. But certainly having considered the petition, in our view, this is a matter where, in the peculiar facts and circumstances of the case, some leniency has to be shown. Delay has to be condoned. Accordingly delay condoned.

4. Respondent No.1 is directed to consider the application filed by petitioner under section 264 of the Act and pass such order as he deems fit in accordance with law. Should petitioner seek a personal hearing, respondent No.1 shall give a personal hearing to petitioner and the date

of personal hearing shall be communicated to petitioner at least one week in advance.

5. The application under section 264 be disposed within twelve weeks from the date, this order is uploaded.

6. Petition disposed.

(N. J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**