IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16842 of 2022

==

Patna Metro Rail Corporation Ltd., a limited company incorporated under the Companies Act, 2013, having its registered office at Vikas Bhawan, New Secretariat, Patna- 800015, through its Additional Managing Director, Md. Ashraful Haque, Male, aged about 50 years, Son of Late Noorul Haque, Resident of Phulwari Sharif, Police Station Phulwari Sharif, District- Patna.

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner of Income Tax (Bihar and Jharkhand), Patna, Bihar.
2. The Principal Commissioner of Income Tax-1, Patna, Bihar.
3. The Additional Commissioner of Income Tax (Tech.), Patna, Bihar.
4. The Income Tax Officer, Ward 2(1), Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Mr. Rohitabh Das, Advocate Mr. Parijat Saurav, Advocate
For the Income Tax	:	Ms. Archana Sinha @ Archana Shahi, Sr. Standing Counsel Mr. Alok Kumar, Advocate

==

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 27-03-2023

The petitioner is a Government Company incorporated under the Companies Act. It is said to be a joint venture between the Government of India and Government of Bihar.

2. The present writ application has been filed putting to challenge an order dated 31.05.2022 passed by the Principal Chief Commissioner of Income Tax (Bihar and Jharkhand) whereby the petitioner's application under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "Act") requesting condonation of delay and permission to file the return of income for the assessment year 2020-21 (financial year 2019-20) has been rejected.

3. We have heard Mr. Ajay Kumar Rastogi, learned senior counsel appearing on behalf of the petitioner, and Ms. Archana Sinha, learned senior standing counsel for the Income Tax Department.

4. Mr. Ajay Kumar Rastogi, learned senior counsel appearing on behalf of the petitioner, has submitted that the last date for submission of income tax return for the assessment year 2020-21 was 31.05.2021. It was because of Covid-19 pandemic situation that the Accountants and Auditors of the company were not available and the Company Secretary was not keeping well. The company was also working with lesser man-power because of the pandemic restrictions and work of submission of the income tax return was assigned, in the background, to an official of the Government of Bihar.

5. He has submitted that on 21.12.2021, an application was filed for condonation of delay in filing the return and claiming refund of a sum of Rs. 83,000/- (Eighty three thousand rupees only). The said application has been rejected by the impugned order mainly on the ground that the petitioner failed to substantiate before the Principal Chief Commissioner, Income Tax, that it was facing genuine hardship because of which the return could not be filed on time.

6. Mr. Ajay Kumar Rastogi has brought our attention to Section 119(2)(b) of the Act read with a Government Circular dated 09.06.2015. Section 119(2)(b) of the Act confers upon the Board power to condone the delay in submission of return. The said power, depending upon the amount of claims, has been conferred upon various authorities of the income tax.

7. In the present case, Principal Chief Commissioner of Income Tax Department was vested with the power of acceptance/rejection of an application for condonation of delay and accordingly the impugned order has been passed by the Principal Chief Commissioner, Income Tax.

8. Mr. Ajay Kumar Rastogi has submitted that the expression "Genuine Hardship" has been explained by the Supreme Court in case of ***B. M. Malani Vs. Commissioner of Income-Tax and Anr.*** reported in ***(2008) 306 ITR 196 (SC)*** to be genuine difficulty. He has submitted that the Principal Chief Commissioner ought to have taken note of the Covid-19 pandemic situation, which was prevailing throughout the country, because of which the petitioner was facing genuine hardship/difficulty, which was the reason why the return could not be filed on time. He has submitted that the facts and circumstances which were explained before the Principal Chief Commissioner, Income Tax, were adequate to convince him that the petitioner was facing genuine difficulties, because of which the income tax return could not be filed within time. He has also relied on a Division Bench decision of Uttarakhand High Court in case of ***Dehradun Chartered Accountants Society Vs. Union of India and Anr.*** reported in ***(2021) 433 ITR 79 (Uttarakhand)*** to submit that in similar circumstance the High Court of Uttarakhand interfered with the order rejecting an application for condonation of delay and directed to leniently consider the representation for condonation of delay.

9. After having heard learned senior counsel appearing on behalf of the petitioner and learned senior standing counsel for the Income Tax Department, we find force in submission made on behalf of the petitioner that the Principal Chief Commissioner ought to have taken a lenient view considering the difficulties, which the persons were facing during the period of Covid-19 pandemic and general lock-down imposed during the said period.

10. Mr. Ajay Kumar Rastogi, learned senior counsel, has fairly submitted that this Court, exercising power of judicial review under Article 226 of the Constitution of India, cannot substitute its own opinion in place of the opinion of the Principal Chief Commissioner, to the extent the same relates to rejection of the petitioner's prayer for condonation of delay in exercise of power under Section 119(2)(b) of the Act.

11. In the facts and circumstances of the case, we remand the matter back to the Principal Chief Commissioner of Income Tax (Bihar and Jharkhand), after setting aside the impugned order dated 31.05.2022, with a direction to him to reconsider the petitioner's case for condonation of delay under Section 119(2)(a) of the Act. It is expected that the Principal Chief Commissioner of Income Tax shall keep in mind the ratio laid down by the Supreme Court in the case of ***B.M. Malani*** (supra) and the concern shown by the Division Bench of Uttarakhand High Court in the case of ***Dehradun Chartered Accountants Society vs. Union of India*** (supra).

12. This application is allowed with the observation that the petitioner shall be at liberty to file a fresh representation in this regard within 15 days, which shall be considered and decided accordingly, in the light of the observations noted above.

13. It is further expected that that Principal Chief Commissioner, Income Tax, shall pass order in accordance with law within four weeks thereafter.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

Sumit/Shashank-

AFR/NAFR	**NAFR**
CAV DATE	**NA**
Uploading Date	29.03.2023
Transmission Date	**NA**