

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6680 OF 2022

Petitioner

M/s ADCC Infocom Private Limited,
 Through Director
 : Rahul s/o Sudhakar Joharapurkar,
 having Office at 10/5, Opposite VNIT,
 Hingna Road, IT Park, Nagpur – 440022.
 – Versus –

Respondents

- : 1. The Principal Chief Commissioner of Income Tax,
 Nagpur Office at 1st Floor, Aykar Bhavan,
 Telangkhedi Road, Civil Lines, Nagpur – 440 001.
2. The Principal Commissioner of Income Tax,
 Range-1, Nagpur.
3. The Joint Commissioner of Income Tax, Nagpur.
4. The Assistant Commissioner of Income Tax,
 (Circle 1) Nagpur.

 Mr. Atharva S. Manohar, Advocate for the Petitioner.

Mr. Anand Parchure with Mr. B.N. Mohata, Advocates for the Respondents.

CORAM : **A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.**

DATE : **17th MARCH, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally with the
 consent of the learned Counsel for the parties.

02] The petition challenges the order dated 24/03/2022 passed by the Principal Chief Commissioner of Income Tax, Nagpur rejecting the application of the petitioner for condonation of delay in filing income tax return for the Assessment Year 2020-2021.

03] The petitioner is a company registered under the Companies Act and engaged in the business of Geospatial and Engineering Services. During the Financial Year 2019-2020, the petitioner suffered a loss in its business. In case of a loss, an assessee is required to file his return within due date as specified under Section 139(1) of the Income Tax Act, 1961 (hereinafter referred to as “Act” for short). If the return is filed beyond the due date, the loss suffered in the business cannot be carried forward for set off in the next succeeding year. Since the petitioner is a company and liable for audit under the Act, the due date for filing the return of income tax for the Assessment Year 2020-2021 (Financial Year 2019-2020) was 31/10/2020. Due to COVID-19 pandemic, the due date for filing of income tax return for the Assessment Year 2020-2021 was extended up to 15/02/2021. The return came to be filed on 23/03/2021 after the delay of 36 days. On 21/05/2021, the petitioner filed an application for condonation of delay of 36 days before respondent No.1 by email. Respondent No.1, by its order dated 24/03/2022, rejected the

application for condonation of delay. Feeling aggrieved with the order of rejection dated 24/03/2022, the present petition came to be filed.

04] It is case of the petitioner that during the said period, COVID-19 pandemic was at its peak and a large number of people were testing positive for COVID-19. Due to heavy workload it's Chartered Accountant was engaged and due to wedding of his sister, which was scheduled on 16/02/2021, she was busy in arranging and attending the relatives, therefore, she could not file the return of loss of the petitioner by 15/02/2021. According to the petitioner, there was genuine hardship for not filing the return within due date.

05] The respondents filed affidavit-in-reply opposing the writ petition that the return of income tax for the Assessment Year 2020-2021 has been filed on 23/03/2021 beyond the due date of 15/02/2021. No sufficient reason has been disclosed by the petitioner. The petitioner had sufficient time to file the return of income tax within due date. It is contended that no satisfactory, convincing or cogent reason for delay or any hardship was demonstrated.

06] We have heard the learned Counsel Mr. Atharva Manohar for the petitioner and learned Counsel Mr. Anand Parchure for the respondents. The

rival contentions, which now called for our consideration, have to be examined in the context of Section 119(2)(b) of the Act, which is provided for condonation of delay, reads thus :

“ Section 119(2)(b)- The Central Board of Direct Taxes may, if it considers it desirable or expedient to do so for avoiding genuine hardship, authorize any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after expiry of the period specified by or under the Act.”

07] The Central Board of Direct Taxes (for short the “Board”) is vested with the power under Section 119(2)(b) of the Act to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after expiry of the period specified by or under the Act for making such application or claim and to deal with the same on merits in accordance with law, where the Board considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases. The Board in terms of Section 119(2)(b) of the Act, time to time issued various instructions in the form of circulars and latest by Circular No.9/15 dated 09/06/2015. Thus, while considering the application for condonation of delay, the authority has to consider the genuine hardship.

08] The expression 'genuine hardship' came up for consideration of the Supreme Court in case of *B.M. Malani vs. Commissioner of Income Tax and another – (2008) 306 ITR 196 (SC)*, wherein the Supreme Court accepted the position that 'genuine' means not fake or counterfeit, real not pretending (not bogus or merely a ruse). Further, a genuine hardship would, *inter alia*, mean a genuine difficulty.

09] In case of *Sitaldas K Motwani vs. Director General of Income Tax and others – (2009) SCC OnLine Bom 2195*, this Court has held that the expression "genuine hardship" used in Section 119(2)(b) of the Act should be construed liberally, particularly, in matters of entertaining of applications seeking condonation of delay and this Court was pleased to observe as under:

"15. The phrase "genuine hardship" used in Section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12th October, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to here in above and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When

substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.”

10] In the aforesaid decision, it clearly indicates that the power under Section 119(2)(b) of the Act while ascertaining the ‘genuine hardship’ is to be construed liberally for the reason that the authorities can do substantive justice of disposing the matters on merits. The authorities, as observed by the Supreme Court are expected to bear in mind that ordinarily an applicant applying for condonation of delay does not benefit by lodging its claim late and refusing to condone a delay can result in a meritorious matter being thrown out at the very threshold defeating the cause of justice. Substantial justice cannot be defeated by technical considerations of delay, where there is no deliberate delay or delay on account of negligence or on account of *mala fide*, the authorities should have taken a justice oriented approach and if a claim is legitimately due to an applicant even if a delay has occasional due to genuine hardship that should not be denied on technicalities.

11] This takes us to the order dated 24/03/2022 passed by respondent No.1. Perusal of the order reveals that respondent No.1 has not dealt with the reasons contained in the application for condonation of delay and the application was rejected without considering the affidavit of the Chartered Accountant on the premise that since the account has been audited on 25/06/2020, there is no reason for delay in filing the return. Another reason, which has given that though the petitioner had incurred losses, it had distributed dividend of Rs.302.93 lakhs. Holding that there is no financial hardship, respondent No.1 rejected the application for condonation of delay. It appears that respondent No.1 has lost sight of the provisions of Section 119(2)(b) of the Act, which speaks about genuine hardship and not the financial hardship. More so, the petitioner has filed affidavit of the Chartered Accountant describing difficulty during the relevant period and engagement, but that has not been considered at all.

12] We are mindful of the fact that during the relevant period, COVID-19 pandemic was in second phase. Though, the date has been extended till 15/02/2021, the fact remains that during this period, new variant of virus of COVID-19 was emerged. That apart, there is a statement on oath of the Chartered Accountant of the petitioner contending that there was marriage of

her elder sister on 16/02/2021 and she was discharging her family obligations. Rather, she has taken the responsibility mentioning that there was failure on her part to file return of income tax of the petitioner before the due date.

13] It is settled principle that for the mistake on the part of the professionals, the litigant should not suffer. This Court in the case of **Subhkaran & Sons vs. N.A. Kazi, 5th ITO and others – 1984 SCC OnLine Bom 411** has held in paragraph 6 as under :

“6. In these circumstances, the better order, and one more in consonance with justice, should have been to accept the firm’s request and condone the delay in filing Form No.11A. Refusal to do so resulted in technicality triumphing over justice. A party may not suffer for no fault on this part and for a sheer mistake or oversight on the part of his legal or tax advisers. All that was necessary for the firm to do was in fact done by it and its partners. That the chartered accountants made a mistake through oversight should not have been considered a fatal circumstance outweighing all the other facts and circumstances in favour of the assessee. Though to be perfect is divine, this mortal world has not as yet come across one so perfect and divine as to make no mistake at all.”

14] To summarize, firstly, the affidavit of the Chartered Accountant, which has neither been disputed nor controverted by the respondents. Secondly, due to fault on the part of professional, the party should not suffer. Thirdly, that the delay is only of 36 days. Considering the phrase “genuine

hardship” used in Section 119(2)(b) of the Act, to be construed liberally, as held in various decisions of the Apex Court and various High Courts, we find that the case of the petitioner comes within the sweep of phrase ‘genuine hardship’, particularly, when there is no allegation of *mala fide* or deliberate delay on the part of the petitioner.

15] We are, therefore, of the view that the impugned order dated 24/03/2022 deserves to be set aside and hereby set aside. The delay of 36 days in filing the loss return for the Assessment Year 2020-2021 is hereby condoned. The Income Tax Authorities to act accordingly.

16] Rule is made absolute in the aforesaid terms with no order as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)