IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.21279 of 2021
and
W.M.P. Nos.22518, 22520, 22521, 29814 of 2022

M/s.Envission Communication Private Limited,
No.5, First Main Road, CIT Colony,
Flat 4A, 4th Floor, Shakthi Krishna,
Mylapore, Chennai-600 004. ... Petitioner

Vs.

1.Principal Commissioner of Income Tax-2,
Room No.401, IV Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai, Tamil Nadu-600 034.

2.Income Tax Officer,
Corporation Ward 2(1), Room No.515,
5th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the impugned order passed by the 1st respondent dated 22.05.2020 in DIN and letter No.ITBA/COM/F/17/2020-21/1027137620(1) passed under Section 119(2)(b) of the Income Tax Act, 1961 and quash the same and direct the 2nd Respondent to accept the Income Tax returns of the petitioner for assessment years 2012-13 and 2013-14.

For Petitioner : Ms.Durga V.Bhatt

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

The writ petition is filed challenging the order under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on the limited ground of violation of principles of natural justice in view of the fact that opportunity of personal hearing was not granted nor has materials relied upon been furnished apart from the fact that the impugned order under Section 119(2)(b) of the Act is non-speaking.

2. It is submitted by Ms.Durga V.Bhatt, learned counsel for the petitioner that Courts have consistently held that the power under Section 119(2)(b) of the Act is quasi-judicial in nature and orders ought to be passed in compliance with principles of natural justice.

3. To the contrary, it is submitted by Mr.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel for the Respondents by placing reliance on ground (b) of the counter that the plea of violation of principles of natural justice may not hold true in the facts of the case.

4. Before proceeding, it may be relevant to extract the relevant portions of the impugned order which reads as under:

> *"2. The assessee's petition assessing officer's report and Additional Commissioner of Income Tax's endorsement has been carefully considered. The reasons putforth by the assessee for the delay in filing the return for the assessment year 2012-13 and 2013-14 are not acceptable. Hence, the condonation petition filed by the assessee is rejected. "*

4.1. A reading of the above portions of the impugned order would reveal that it only contains the conclusion without assigning any reasons in support thereof. In other words, the impugned proceeding is non-speaking.

5. The nature of the power/ function discharged by the Respondents in exercise of its power under Section 119(2)(b) of the Act is quasi-judicial in nature and thus ought to be made in compliance with principles of natural justice which *inter-alia* requires the authority to grant a reasonable opportunity apart from assingning reasons. In other words, an order under Section 119(2)(b) of the Act ought to be a speaking order. In this regard, it may be useful to refer to the decision of this Court in the case of *H.S.Anantharamaiah vs. Central Board of Direct Taxes and Others* reported in *(1993) 201 ITR 526 (KAR)*, wherein it was held as

under:

"9. ......Clause (b) of sub-section (2) of section 119 of the Act enables or empowers the Boards to admit an applications or a claim or return filed after the expiry of the period specified for avoiding genuine hardship caused in any case or class of cases. Thus, the statute makes it incumbent upon the Board to consider the case pleaded under clause (b) of sub-section (2) of section 119 of the Act by an assessee who files his return beyond time. This power has to be exercised by the Board and the Board alone and not by any other authority. It is not possible to hold that this power is administrative when it relates to condonation of delay in a case where the return is filed beyond the period prescribed. The Board is required to exercise its discretion by taking into consideration all the relevant facts and circumstances and determine whether the delay in filing the return should or should not be condoned. The order must be informed by reasons. It is not an arbitrary exercise of power. This power has all the traits of judicial power. Therefore, we are of the view that the power exercisable by the Board under clause (b) of sub-section (2) of section 119 of the Act is quasi-judicial in nature.

10. In John Shalex Paints (P.) Ltd. MANU/KA/0145/1990 the question as to the nature of the power exercisable under clause (b) of sub-section (2) of section 119 of the Act is not considered. It is also not possible to hold that the said decision holds that the power exercisable by the Board is administrative in nature. When an authority discharges its quasi-judicial function, it goes without saying that it has to conform to the principles of natural justice. It has to affords an opportunity to the party who is going to be affected by the decision of the Board. Therefore, the Board is required to afford an opportunity of hearing to the assessee, either oral hearing or through submission of written arguments with reference to the points made against the assessee for not granting the relief sought for by him........"

(emphasis supplied)

5.1. The above judgment of the Karnataka High Court was quoted with approval by the Division Bench of this Court in the case of *Precot Mills Ltd., vs. Central Board of Direct Taxes and others* reported in *(2010) 321 ITR 293 (Mad),*while considering Section 119(2)(a) of the Act wherein it was held as under:

> *"8. ......We are entirely in agreement with the finding rendered in the said judgment. It is not in dispute that such applications from individual assessees are also entertained by the Board and disposed of. <u>In our opinion, no difference could be seen from either of the Clauses (a), (b) and (c) of Section 119(2)(a) of the Act for the reason that even though Section 119(2)(a) only relates to the power of the Board to issue certain guidelines and principles on specific matters, while it entertains the application and disposes of the same, it acts as a quasi-judicial authority and if that be so, a quasi-judicial authority is expected in law to give reasons on consideration of the materials available before it.</u>......"*
>
> *9. As we have held that the Board while disposing of an application under Section 119(2)(a) is acting as quasi-judicial authority, it should certainly give reasons even though the provision does not explicitly refer to the provision of such reasoning in the order."*
>
> *(emphasis supplied)*

6. Having considered the arguments of both sides and following the above decisions, this Court finds that the power under Section 119(2)(b) of the Act being quasi-judicial in nature and which could result in adverse civil consequence, it must be exercised in compliance with principles of natural justice. However, this Court finds that the impugned order is made in violation thereof, in view of the fact that

the impugned order does not assign reason but only contains the conclusion, in other words non-speaking and thus unsustainable.

7. The impugned order is thus set-aside and the Respondents are directed to consider the petitioner's application under Section 119(2)(b) of the Act after granting a reasonable opportunity of hearing within a period of 8 weeks from the date of receipt of a copy of this order and pass a speaking order. The writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

06.10.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:
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MOHAMMED SHAFFIQ, J.

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