

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 12501 of 2024

**M/s Anmol Feeds Pvt. Ltd.
Versus
Union of India & Ors.**

For the petitioner : Mr. S. M. Surana
Mr. Bhaskar Sengupta

For the respondents : Mr. Prithu Dudhoria

Heard on : 10.06.2024.

Judgment on : 10th June, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the order dated 31st January, 2024, whereby the petitioner's application for condonation of delay under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") in filing returns under Section 139(1) or 139(4) of the said Act for the Assessment Year 2022-23, had been rejected.

2. Mr. Surana, learned advocate representing the petitioner submits that the petitioner is an income tax payee and had been regularly filing its income tax returns for the last 23 years. It is the petitioner's case that the petitioner could not file its return of income under Section 139(1) of the said Act for the Assessment Year 2022-23 for the reasons beyond its control. It is also the petitioner's case that the petitioner's senior accountant, Mr. Arun Chatterjee, had been diagnosed with heart ailments for which he had to be hospitalized and as such the books of accounts could not be finalized which resulted in delayed finalization of accounts.

3. According to the petitioner, due to deteriorating health of Mr. Chatterjee, he had to resign from the petitioner company. Unfortunately, however, the petitioner could not find an immediate replacement. By reasons of the aforesaid, the petitioner was unable to hold its Annual General Meeting (AGM) within the time prescribed and at the instance of the petitioner, the Registrar of Companies had granted an extension, for the petitioner to hold such AGM on or before 30th September, 2022. Insofar as filing of return of income is concerned, the tax audit could not be completed as the accounts were not finalized within the time prescribed and it is for such reason the petitioner had been compelled to apply before the Central Board of Direct Taxes (hereinafter referred to as the Board) explaining the reasons for non-filing of the return within the time prescribed and had sought for condonation of delay on the ground of

genuine hardship. The Board, however, by its order dated 31st January, 2024 was, inter alia, pleased to observe that the petitioner had adopted a casual approach and took more than three months time to find a suitable replacement for its accountant. The same according to the Board constituted willful negligence on the part of the management and the same does not constitute genuine hardship and in the facts as aforesaid, refused to condone the delay.

4. Mr. Surana, learned advocate representing the petitioner by placing the order dated 30th January, 2024 submits that the Board ought not to have rejected the application for condonation of delay under Section 119 (2)(b) of the said Act, especially, when at the instance of the Board, by a letter dated 28th April, 2023, the Principal Chief Commissioner of Income Tax, West Bengal and Sikkim had recommended condonation of delay in non-filing of return of income for the Assessment Year 2022-23. He submits that the finding reached by the Board that the petitioner had adopted a casual approach and was willfully negligent was based on no evidence and is perverse. The material placed before the Board to establish genuine hardship was also not considered. The impugned order is perverse and should be set aside. He prays that necessary direction should also be issued by this Hon'ble Court thereby condoning the delay in terms of Section 119(2)(b) of the said Act. In support of his contention he has placed reliance on an unreported judgment delivered by the High Court of Judicature at Bombay in WP No. 4832

of 2021 in the case of ***M/s Bhatewara Associates v. Union of India.***

5. Mr. Dudhoria, learned advocate representing the respondents enters appearance in the matter. He submits that in the facts of this case, the Board had passed a discretionary order. The petitioner had failed to demonstrate that the petitioner had suffered any genuine hardship. As such, no interference in this case is called for.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. From the facts on record it would transpire that the petitioner did not file its return of income in time for the Assessment Year 2022-23. It is also apparent from the records that the Registrar of Companies taking into consideration the difficulties of the petitioner in finalizing its accounts had extended the period for holding AGM upto 30th September, 2022. The factum of the petitioner's accountant falling ill and his subsequent resignation is not in dispute. Although, the petitioner had applied before the Board by invoking the provisions of Section 119(2)(b) of the said Act praying for condonation of delay, the Board had rejected the same by inter alia observing as follows:-

“The Hon’ble Delhi High Court in the case of ‘BU Bhandari Nandgude Patil Associates vs. CBDT’ has held that the legislature has provided time limits for certain obligations under the Act and these time limits have to be observed to be able to claim deductions, allowances and avoid interest and penalty. This may

be termed a hardship but it is hardship imposed by law in the interest of proper regulation of the Act. Further, in determining whether genuine hardship caused to the assessee, one has to see whether delay in filing of the return was due to a reasonable cause or not.

Further, the Hon'ble Supreme Court in the case of Ranka and Others vs Rewa Coal Field Ltd. (AIR 1962 SC 361) has held that everyday of delay needs to be explained with cogent evidence.

Relevance is placed on the above judicial pronouncements as it is observed that the Management of the petitioner company adopted a casual approach and took more than 3 months to find a suitable replacement for its accountant. Wilful negligence on the part of the management does not constitute hardship and delay in filing of ROI is a pointer to lack of due diligence by the management of the petitioner company. No reasonable cause or genuine hardship has been made out by the petitioner that merits invocation of the condonation provisions.”

7. To morefully appreciate the scope and object of Section 119(2) (b) of the said Act, the same is extracted hereinbelow:-

*“The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize [any income tax authority, not being a **** Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period*

specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.”

8. As would appear from the documents on record that by Circular dated 9th June, 2015 specific guidelines have been framed by the Board for exercise of powers under Section 119(2)(b) of the said Act. As would appear from the above, the application for condonation of delay was made within the maximum permissible period provided for seeking condonation of delay. In terms of the report called for by the Board, the Principal Chief Commissioner of Income Tax, West Bengal and Sikkim had recommended condonation of delay in non-filing of return of income for the Assessment Year 2022-23. The Board apparently had brushed aside the said recommendation without identifying the reasons as to why such recommendation had been ignored. Mr. Dudhoria, learned advocate representing the respondents has also not been able to identify any reason as to why the recommendation made by the Principal Chief Commissioner of Income Tax, West Bengal and Sikkim, at the instance of the Board had been overlooked. It, however, appears that the Board by placing reliance on the judgment delivered by the Hon’ble Delhi High Court in the case of ***BU Bhandari Nandgude Patil Associates v. CBDT***, reported in **2018 SCC OnLine Del 7850** had been pleased to observe that since, the legislature has provided time limits for compliance of certain obligations, such time limits have to be observed. In this context it would be relevant to take note

of the judgment delivered by the High Court of Judicature at Bombay in WP No. 4832 of 2021 in the case of ***M/s Bhatewara Associates v. Union of India***, in paragraph 18 thereof, the Hon'ble Court had been pleased to take note of the judgment delivered by the Hon'ble Delhi High Court in the case of ***BU Bhandari Nandgude Patil Associates v. CBDT*** (supra) and the case of ***B. M. Malani v. Commissioner of Income Tax and Another***, reported in **(2008) 306 ITR 196 (SC)** was pleased to observe as follows:

“18. The aforesaid decisions clearly indicate that the power under Section 119(2)(b) of the Act while ascertaining genuine hardship is to be construed liberally for the reason that the authorities can do substantive justice by disposing the matter 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 malafide. 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. As hold by this Court in the case of Sitaldas K. Motwani vs. Director General of Income Tax and Others (supra), the word “genuine” has to be given

*a liberal meaning in view of the law laid down by the Supreme Court in the case of **B. M. Malani Vs. Commissioner of Income Tax and Another, (2008) 306 ITR 196 (SC)**. Paragraph 13 of the decision of this Court in *Sitaldas K. Motwani vs. Director General of Income Tax and Others (supra)* is usefully quoted as under:-*

“13. The apex court, in the case of B.M. Malani Vs. CIT, (2008) 306 ITR 196 (SC); (2008) 10 SCC 617, has explained the term “genuine” in the following words (page 207):

“The term ‘genuine’ as per the New Collins Concise English Dictionary is defined mere a ruse)’...

The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well known principle, namely, a person cannot take advantage of his own wrong, may also have to be born in mind.””

9. From the aforesaid it would be apparent and clear that the only question that is required to be decided is whether the assessee had made out a reasonable cause for condonation of delay and whether the petitioner was likely to suffer genuine hardship. In the said case the assessee could not show medical exigency of the kind and had merely attempted to pray for condonation of delay by attributing delay on the auditor. The present case is, however, entirely different. Admittedly, in this case initially the accountant fell ill and subsequently on account of such illness had to resign. Although, the Board had observed that the petitioner had adopted a

casual approach in finding replacement of its accountant and there was willful negligence on the part of the management, the materials on record do not substantiate the same. To the aforesaid extent, the finding reached by the Board appears to be based on no evidence and is perverse. Considering the enormity of the problem suffered by the petitioner and the subsequent resignation of the petitioner's accountant due to his health condition, the same would certainly make out a case of genuine hardship. The delay also does not appear to be on account of any negligence or malafide of the petitioner as the illness and the subsequent resignation of the accountant was an entirely unforeseen event. In the facts as noted above, I am of the view that the authorities ought to have taken a justice oriented approach.

10. Having regard to the aforesaid, the order dated 31st January, 2024 cannot be sustained and the same is accordingly set aside.

11. Since, no fruitful purpose will be served by remanding the matter back to the Board for reconsideration of the aforesaid issue, I am of the view that considering the unavoidable circumstances and the genuine hardship suffered by the petitioner, the delay in filing the return should be condoned especially when the petitioner had already in its application for condonation of delay filed on 31st March, 2023, had enclosed therewith, a copy of the audited balance-sheet for the Assessment Year 2022-23. Accordingly, the delay in filing of return is condoned in terms of Section 119(2)(b) of the said Act, with

liberty to the petitioner to file its return of income within a period of 15 days from date. If such return is filed the same shall be accepted by the jurisdictional assessing officer/faceless assessment unit, and the same shall be processed in accordance with law.

12. It is made clear that I have not gone into the merits of return of income to be filed by the petitioner. It shall be open to the assessing officer/faceless assessment unit, to consider the same in accordance with law.

13. With the above observations and directions, the writ petition is disposed of.

14. There shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

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