IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO.10517 OF 2021

Vithalbaba Magasvargiya Majoor
Sanstha Limited, Latur.
Through its Chairman,
Suresh Kashinath Gaikwad,
Age: Major, Occu.: Labour,
R/o. Anand Nagar,
Near Post Office, Latur. **.. PETITIONER**

VERSUS

1. The Principal Commissioner
of Income Tax-2, Aayakar
Bhavan, Near Holy Cross
English School, Cantonment,
Aurangabad, Dist. Aurangabad.

2. The Income Tax Officer,
Ward – 1, Latur,
Income Tax Office,
Swati Chambers, Ausa Road,
Latur, District Latur. **.. RESPONDENTS**

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Mr. T. M. Venjane, Advocate for the petitioner.
Mrs. Kalpalata Bharaswadkar, Advocate for Respondent Nos.1 and 2.

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

DATE : FEBRUARY 06, 2024.

ORDER :-

. Present writ petition has been filed for setting aside the impugned order dated 16.10.2018 passed by respondent No.1 thereby rejecting the application filed by the petitioner under Section 119(2)

(b) of the Income Tax Act, 1961 and to direct respondent authorities to accept the Income Tax Returns of the petitioner Sanstha for the year 2013-2014.

2. Heard learned Advocate Mr. T. M. Venjane for the petitioner and learned Advocate Mrs. Kalpalata Bharaswadkar for respondent Nos.1 and 2.

3. The petitioner is the Chairman of a Majoor Sanstha, which is stated to be established for the upliftment of the rights and interest of the labours. The Sanstha has paid tax every year, however, inadvertently failed to file Income Tax Return for the year 2013-2014 and, therefore, the application was filed under Section 119(2)(b) of the Income Tax Act, 1961 for condoning the delay in filing Income Tax Return. However, that application came to be rejected. Hence, this writ petition.

4. The petitioner Sanstha contends that the Income Tax Return for the subsequent years i.e. 2014-2015, 2015-2016 has been submitted within time. Not submitting of the Income Tax Return of the year 2013-2014 was not intentional, but it was due to inadvertence and the reasons for the same were quoted in the application, still those reasons were not accepted. Learned Advocate for the petitioner points out the statement in the order that the refund has been claimed as a

result of excess tax deducted or collected at source. Further by quoting a circular of the Board dated 09.06.2015, the assessment was done to insure that the income tax/loss declared and/or refund claimed is correct. Accordingly, report was submitted by Assessing Officer that the income tax declared and refund claimed is correct and, therefore, it is only the question of filing of Income Tax Return, which ought to have been allowed.

5. Per contra, the learned Advocate appearing for respondent Nos.1 and 2 supported the reasons given in the impugned order and submits that when the petitioner could file the Income Tax Return for the subsequent years, it was expected from the society that the Income Tax Return for the year 2013-2014 ought to have been submitted within time. There is no genuine hardship faced by the petitioner to file returns and, therefore, the application has been rightly rejected.

6. It is not in dispute that the petitioner has submitted the Income Tax Return for the Assessment Years 2012-2013, 2014-2015, 2015-2016 within time. It was the only question of not submitting the returns for the Assessment Year 2013-2014. Further, it can be gathered from the impugned order that the income declared and refund claimed has been assessed through Assessing Officer and it is correct. In the application for condonation of delay, it has been stated that an accountant has been appointed to write the accounts, to

complete the audit works and then to file the income tax returns and claim refund. Due to the said accountant the delay has been caused and the accountant has filed affidavit before the competent authority that it was his mistake. Taking into consideration the reasons stated and the conduct of the Sanstha, liberal view ought to have been taken by the respondent No.1 while condoning the delay. Therefore, case is made out for exercising the constitutional powers of this Court under Article 226 of the Constitution of India, however, for the said delay taking into consideration the fact that the petitioner is a Majoor Sanstha, we impose limited cost.

7. For the aforesaid reasons, following order is passed :-

ORDER

I) Writ Petition stands allowed.

II) The impugned order dated 16.10.2018 passed by respondent No.1 rejecting the application filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961, is hereby set aside.

III) The respondent authorities are directed to accept the Income Tax Return of the petitioner Sanstha for the year 2013-2014.

IV) The petitioner to deposit cost of Rs.10,000/- to the Library of Advocate’s Association of Bombay High Court, Bench at Aurangabad, within a period of fifteen (15) days from today.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm