IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3055 OF 2023
AND
INTERIM APPLICATION NO. 1744 OF 2024

Pr. Commissioner of Income Tax, Central - IV ...Applicant

Versus

Nirav Sunil Gandhi ...Respondent

Mr. Suresh Kumar for Applicant.

Mr. Morvi Chaturvedi i/b Nishit Desai Associates for Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATED: 21 OCTOBER 2024

P.C.

1. We may, at the outset, note that the present application was served on the respondent / assessee and his affidavit of service to that effect dated 3 August 2023 is placed on record. Thereafter, there was a second service as effected by the department on the assessee on 11 March 2024 and second affidavit of service to this effect is placed on record. Despite the period of more than one year, there is no reply affidavit opposing the application placed on record. However, learned counsel for the assessee submits that he intends to make oral submissions. Accordingly, we have heard learned counsel for the assessee.

2. Learned counsel for the assessee has opposed this application, contending that the contentions as raised on behalf of the revenue praying for condonation of delay are administrative and vague in nature. It is submitted that such reasons ought not to be accepted. In supporting such contentions, reliance is placed on order passed by a Division Bench of this Court in the case of *Commissioner of Income Tax Vs. Sanjay K. Sarawagi*[1], and a decision of the Delhi High Court in *Principal Commissioner of Income-tax Vs. National Fertilzers Ltd*[2].

3. At the outset, we may note that the orders passed by this Court Court in Sanjay K. Sarawagi (supra) in our respectful opinion, is a mere order passed in the facts of the case disposing of the delay condonation application before the Court and cannot be read as an order laying down any principle of law. In any event, in such case, the Court was confronted with the delay of more than two years and there were several orders which were passed by the Court which were not complied by the revenue. Certainly such are not the facts in the present case.

4. Insofar as, the decision of Delhi High Court is concerned, in the facts and circumstances of the case in hand and considering the period of delay, the decision is not applicable. Thus, looked from any angle, in the present facts

1 *(2008) 301 ITR 232 (Bom).*
2 *(2023) 458 ITR 20*

of the case, the said decision, in our opinion, is not applicable. We are, accordingly, satisfied with the reasons as set out in the application.

5. We also cannot be oblivious of the circumstances which were required to be taken into consideration by the Court, not only arising out of the post-Covid – 19 period but also in which there were specific orders passed by the Supreme Court in ***Re: Cognizance for Extension of Limitation***[3] as also the situations with which department was confronted when there was a period of transition insofar as the E-filing of the cases were concerned.

6. In this view of the matter, the applications are allowed in terms of prayer clause (a).

7. Office objections, if any, be removed within a period of eight weeks from today.

8. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**

3 Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Petition (C) No. 3 of 2020