IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15175 of 2024
&
WMP Nos.16499 & 16502 of 2024

M/s.Svasti Microfinance Private Limited
Represented by its Whole Time Director/Authorized Signatory
Mr.B.Narayanan
6, First Floor, First Street
Tiger Varadachari Road
Kalakshetra Colony, Besent Nagar
Chennai-600 090. ... Petitioner

Versus

1. Central Board of Direct Taxes, (ITA Cell)
   Represented by Additional Commissioner of Income
   Taxes, ITA Cell,
   Ministry of Finance, Department of Revenue,
   Government of India,
   Room No.114, B-Block,
   Dr.S.P.Mukherjee Marg
   Civic Centre, New Delhi – 110 002.

2. The Additional/Joint/Deputy/Assistant Commissioner
   of Income Tax

Income Tax Officer
National E-Assessment Centre
Delhi. ...Respondents

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st Respondent in F.No.197/45/2023-ITA-1 in passing the impugned order under Section 119(2)(b) of the Income Tax Act, 1961 dated 05.12.2023 and quash the same as illegal, arbitrary and devoid of merit and consequently direct the 1st respondent to condone the delay in filing Form-10DA for the Assessment Year 2022-23 by the petitioner.

For Petitioner : Mr.R.Sivaraman
for Mr.P.Ramesh Kumar

For Respondents : Mrs.S.Premalatha
Junior Standing Counsel

ORDER

An order rejecting an application under Section 119(2)(b) of the Income Tax Act, 1961, is assailed in this writ petition.

2. The petitioner is a non-banking financial company which is assessed under PAN:AAACE2124L. The petitioner was availing of deduction under Section 80JJAA(1), which is a deduction in respect of employment of additional manpower. As regards Assessment Year 2022-23, the petitioner filed Form-10DA, which is necessary for availing deduction under Section 80JJAA, on 07.11.2022 along with the return of income for the relevant year. The due date for filing Form-10DA was 30.09.2022. In those circumstances, an application under Section 119(2)(b) of the Income Tax Act was filed. Since the said application was rejected, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the petitioner had availed of the deduction under Section 80JJAA in assessment year 2022-23 and the subsequent years. As regards the

subsequent years, he points out that the deduction was allowed. As regards assessment year 2022-23, learned counsel points out that Form-10DA was signed by the auditor on 30.06.2022, which is within the time limit. However, he points out that it was accepted by the assessee and uploaded on 07.11.2022 along with the return of income.

4. By referring to the application filed for condonation of delay, learned counsel points out that reasons were set out therein. In particular, he submits that medical grounds and the continuation of the COVID 19 pandemic were cited as reasons for delay in filing the said form. By referring to the impugned order, learned counsel points out that the application was rejected by stating that the power of condonation under Section 119(2)(b) should only be exercised in extraordinary circumstances. Learned counsel submits that this Court and other High Courts have held that the power under Section 119(2)(b) should be exercised

liberally and not only in extraordinary circumstances. He further submits that there is no indication in the impugned order that the petitioner is not entitled to the deduction. In fact, he points out that after the return of income was filed for assessment year 2022-23 on 07.11.2022, by intimation under Section 143(1), the deduction was accepted only to be rectified subsequently.

5. Mrs. S.Premalatha, learned junior standing counsel, appears on behalf of the respondents. She points out that the petitioner did not specify justifiable reasons for condoning the delay in filing Form-10DA. Therefore, she contends that no case is made out for interference.

6. The facts are largely undisputed. The petitioner has placed on record Form-10DA. On perusal, it is clear that the Chartered Accountant signed the document on 30.06.2022, which is within the time limit of 30.09.2022. The petitioner has also placed on

record the ITR acknowledgment for assessment year 2022-23 and the intimation under Section 143(1) accepting the deduction. In the application for condonation of delay, the petitioner has set out multiple reasons including the continuation of the COVID 19 pandemic, medical grounds of family member and has stated that the delay was neither willful nor wanton. As contended by learned counsel for the petitioner, the power under Section 119(2)(b) is required to be exercised whenever the refusal to condone delay would result in genuine hardship to the assessee.

7. In the impugned order, the application was rejected by recording that this power is to be exercised only in extraordinary circumstances. There is nothing in Section 119(2)(b) which indicates that the power should only be exercised in extraordinary circumstances. By taking into account the fact that Form-10DA was signed on 30.06.2022 and filed on the extended date for filing the return of income, in my considered view, it is an appropriate

case for condoning the delay. In the facts and circumstances outlined above, undoubtedly, genuine hardship would be caused to the petitioner unless the delay is condoned.

8. Consequently, the impugned order dated 05.12.2023 is set aside. As a consequence, the respondents are directed to receive Form-10DA and process the petitioner's return of income on such basis.

9. W.P.No.15175 of 2024 is allowed on the terms indicated above. Consequently, connected miscellaneous petitions are closed. No costs.

21.06.2024

Index : Yes /No

Speaking Order : Yes /No

Neutral Case Citation : Yes /No

kal

SENTHILKUMAR RAMAMOORTHY,J.

kal

To

1. Central Board of Direct Taxes, (ITA Cell)
   Represented by Additional Commissioner of Income
   Taxes, ITA Cell,
   Ministry of Finance, Department of Revenue,
   Government of India,
   Room No.114, B-Block,
   Dr.S.P.Mukherjee Marg
   Civic Centre, New Delhi – 110 002.

2. The Additional/Joint/Deputy/Assistant Commissioner
   of Income Tax
   Income Tax Officer
   National E-Assessment Centre
   Delhi.

W.P.No.15175 of 2024
&
WMP Nos.16499 & 16502 of 2024

21.06.2024