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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 831/2024

INCOME TAX OFFICER,
WARD 62(1), DELHI .....Petitioner

Through: Mr. Sanjay Kumar & Ms. Easha, Standing Counsel for Income Tax Department.

versus

SUKHPREET SINGH CHOPRA .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **05.07.2024**

CRL.M.A. 19245/2024 *(exemption)*

1. Exemptions allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.REV.P. 831/2024 & CRL.M.A. 19246/2024

3. The present application, being CRL.M.A. 19246/2024, is filed under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 (‘**CrPC**’), seeking condonation of delay of 108 days in filing the present revision petition.

4. The present revision petition is filed impugning an order dated 31.07.2023 (hereafter ‘**the impugned order**’), passed by the learned Additional Chief Metropolitan Magistrate, in Complaint Case No. 3630/2019 titled as *Income Tax Officer v. Sukhpreet Singh Chopra*.

5. The learned Trial Court by the impugned order has discharged the respondent of the offence punishable under Section 276C(2) of the Income Tax Act, 1961(hereafter the '**IT Act**').

6. It is the case of the petitioner/ complainant that the respondent herein filed his return for the assessment year 2018-2019, admitting a tax liability of ₹3,36,545/-, on the basis of self-assessment. It is alleged that out of the admitted liability, the respondent did not deposit the tax amounting to ₹2,10,700/- within the stipulated time frame, despite the availability of adequate liquidity and assets.

7. The learned Trial Court recorded the submission made on behalf of the respondent that even if the allegations of the complainant / department are taken at the highest, no offence is made out against the accused/ respondent since the tax liability was already admitted on the basis of self-assessment and the respondent had already paid the tax amount before the filing of the complaint. It was agreed that, therefore, there was no attempt to evade any tax liability on the part of the respondent.

8. The learned Trial Court discharged the respondent on the ground that the offence under Section 276C(2) of the IT Act is not made out since apart from the non-payment of tax on time, there is no wilful attempt by the respondent to hide his income or do anything to evade his tax liability.

9. The impugned order was passed on 31.07.2023 and was allegedly received in the CIT (Judicial) on 14.12.2023. However, no reason is given as to why almost five months were taken to produce the order before CIT (Judicial). Even if the period of filing the petition is calculated from 14.12.2023, the limitation to file expired on 13.03.2024 and the petition is filed on 03.07.2024

with a delay of more than three months.

10. It is stated that the authorisation to file the present petition was received at the office of Senior Standing Counsel on 21.05.2024.

11. The learned Counsel for the petitioner submits that the present petition is filed, based upon the records maintained in the office of the concerned Assessing Officer. He submits that the petition thereafter had to be processed through an official channel and the necessary approvals had to be obtained from officials at various hierarchy upto the level of Chief Commissioner Income Tax.

12. He submits that the delay in filing the revision petition is caused on account of obtaining various approvals from various officials, which were required to file the present petition.

13. It is submitted that after the authorization was received at the office of the Senior Standing Counsel, because of the heavy workload at the office of the Counsel, further delay was caused.

14. The impugned order was passed on 31.07.2023 and the petition challenging the same is only filed on 03.07.2024.

15. There is no plausible explanation for the further delay on the part of the petitioner. Clearly, there is an inordinate delay in filing the present petition. To add to this, there is not even a whiff of any circumstance which could be analysed by this court in order to arrive at the conclusion that it was beyond the control of the petitioner / Income Tax Department, and thereby, a sufficient cause which led to delay in filing of the present petition.

16. The grounds taken by the petitioner in the application seeking condonation of delay is on three counts– firstly, that the delay has arisen on the part of the department for giving

necessary approvals, for filing the present petition, since the impugned order had to be processed through official channel/hierarchy which caused delay; Secondly in the drafting of the present petition, by the office of the learned Senior Standing Counsel, and thirdly again in getting the petition approved and signed by the concerned officials of the petitioner department, which caused further delay.

17. The Hon'ble Apex Court has frowned upon following of such practices by the Government departments. The Hon'ble Apex Court, in the case of ***Postmaster General v. Living Media India Ltd.*** **: (2012) 3 SCC 563**, had held that the Government cannot claim to have a separate period of limitation when the Department is possessed with competent persons familiar with court proceedings. The delay cannot be condoned mechanically merely because the Government or a wing of the Government is a party before the Court. The Hon'ble Apex Court had rejected the claim on account of impersonal machinery and bureaucratic methodology of making several notes in view of the modern technologies being used and available.

18. The Hon'ble Supreme Court in the case of ***State of M.P. v. Bherulal*** **: (2020) 10 SCC 654**, while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

> *"6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly*

deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible."

19. Therefore, unless a reasonable and acceptable explanation for the delay is provided, the same cannot be accepted. The Hon'ble Apex Court has held that, the Government departments are under such obligation to ensure that they perform their duties with diligence and commitment.

20. To condone the delay of 108 days in filing the revision petition, it is essential to consider sufficient cause, nature of delay and whether under the present circumstance, such delay can be condoned based upon the arguments made by the petitioner.

21. The application is bereft of any details in order to accept that the petitioner was prevented from filing the revision petition within the stipulated time. In view of the same, this court finds no credible ground to accede to the petitioner's request to condone the delay.

22. Even otherwise, this Court is also unable find any

infirmity with the impugned order since the learned Trial Court, after perusing all the material on record, has rightly dealt with all the allegations made by the complainant and found no concealment or any attempt to evade any tax liability.

23. The learned Trial Court has further rightly held that at the time of service of Notice under Section 251 of the Cr.P.C, the Court is required to peruse all the material on record since there is high possibility that the material available at the time of issuance of process under Section 204 Cr.P.C. is not same as the material available at the stage of Section 251 of Cr.P.C.

24. In the peculiar facts of this Case, in the opinion of this Court, the learned Trial Court has rightly discharged the respondent since the respondent has already paid the tax before the filing of the complaint and there is no impediment or any loss caused to the department. Department acting strictly with regard to compliance by the tax payer for discharging their tax liabilities within the stipulated time period is also required act in a prompt manner and initiate action within the statutory time frame. In the absence of any worthy reason, no special treatment can be given to the government department / officers.

25. In view of the above the present petition is dismissed on delay as well as on merits.

AMIT MAHAJAN, J

JULY 5, 2024