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

+ **W.P.(C) 13112/2018**

RAMESH KUMAR SHOKEEN Petitioner

Through: Mr. Deepanshu Jain, Mr.
Shaantanu Jain & Mr. Manish
Yadav, Advs.

versus

PR. COMMISSIONER OF INCOME

TAX-22 & ORS. Respondents

Through: Mr. Ruchir Bhatia, SSC with
Ms. Deeksha Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

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03.04.2024

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. The present petition, at the instance of the assessee seeks to assail the order dated 28 March 2018, whereby, the assessee's application made under Section 119(2)(b) of Income Tax Act, 1961 [**"Act"**] for the condonation of delay in filing income tax return [**"ITR"**] has been rejected by the Revenue.
2. The brief facts that are relevant to decide the present controversy would reveal that the assessee is a retired Indian Air Force personnel and is now practicing as an Advocate, enrolled with the Bar Council of Delhi.
3. The record would reflect that on 21 July 2016 for the Assessment Year [**"AY"**] 2013-14, the assessee filed his ITR



declaring total income amounting to INR 3,24,600/-, which also reflects the tax deducted at source ["TDS"] amounting to INR 59,170/-.

4. Thereafter, *vide* letter dated 04 July 2017, the assessee filed an application before the Revenue for refund of the aforementioned TDS amount. While acknowledging the request of the assessee, the Revenue *vide* letter dated 11 July 2017 intimated that the ITR filed by the assessee for AY 2013-14 could not be processed since it was filed beyond the prescribed limitation and also advised the assessee to file an application regarding condonation of delay in filing the ITR before the Principal Commissioner of Income Tax ["PCIT"]-Delhi under Section 119(2)(b) of the Act.

5. Acceding to the same, on 18 July 2017, the assessee filed an application under Section 119(2)(b) of the Act for condonation of delay in filing the ITR in the office of the PCIT highlighting the reasons attributable for delay in filing the ITR. The assessee in the said application, *inter alia*, accorded the reasons for the delay, namely, no information regarding deduction of the TDS and non-issuance of TDS certificate by the deductor. Alongwith the said application, the assessee had also enclosed his ITR and total computation of income.

6. Consequently, on 28 March 2018, while acting on the application filed by the assessee, the PCIT passed an order, thereby rejecting the condonation of delay application in filing the ITR on the score that the case of the assessee does not fall under the ambit of genuine hardship as per the Central Board of Direct Taxes ["CBDT"] Circular No. 9/2015 dated 09 June 2015.

7. Aggrieved by the same, the assessee has preferred the instant petition under Article 226 of the Constitution of India.



8. Mr. Manish Yadav, learned counsel appearing on behalf of the assessee, submitted that the impugned order was passed in a mechanical manner and without due application of mind. He submitted that the impugned order nowhere reflects the reasoning of the PCIT for rejecting the application. He further argued that the PCIT never raised any objection with respect to the correctness and genuineness of the claim of TDS. Furthermore, he submitted that impugned order is contrary to the legislative mandate of Section 119(2)(b) of the Act.

9. Mr. Ruchir Bhatia, learned counsel appearing on behalf of the Revenue, vehemently opposed the submissions advanced by the assessee. He argued that the case of the assessee does not fall under the ambit of the genuine hardship and therefore, the PCIT while relying on the CBDT Circular No. 9/2015 dated 09 June 2015, correctly rejected the condonation of delay application filed under Section 119(2)(b) of the Act. He further argued that the counter affidavit filed by the Revenue clearly reflects that the PCIT, while deciding the condonation of delay application, duly considered the reasons of delay asserted by the assessee and then passed the impugned order.

10. We have heard the learned counsel appearing on behalf of the parties and perused the record.

11. We are of the opinion that the short controversy before us is whether the PCIT, while passing the impugned order and consequently rejecting the condonation of delay application filed by the assessee, has accorded any reasons or justification for rejecting the delay condonation application.

12. At this juncture, for the sake of clarity, the impugned order



dated 28 March 2018 is reproduced herein below:-

“To

Sh. Ramesh Kumar Shokeen,
C-53, Roshan Mandi, Najafgarh,
Delhi-110043.

Sir,

Subject: Condonation of delay in filing revised return for
A.Y.2013 -14 u/s 119(2)(b) of the I.T. Act in your case.

Please refer to your application dated 18-07-2017 filed with the
office of Pr. CIT, Delhi-22 on the above mentioned subject.

**In this regard, I am directed to convey that your request for
condonation of delay for filing revised return for A.Y. 2014-15
u/s 119(2)(b) of IT Act has not been acceded to by the
competent authority as yours is not a case of genuine hardship
on merits as per CBDT, Circular 9/2015 dated 9-6-2015. ”**

[Emphasis added]

13. A bare perusal of the impugned order would reflect that while rejecting the condonation of delay application in filing the ITR, the PCIT noted that the case of the assessee was not a case of genuine hardship on merits as per CBDT Circular No. 9/2015 dated 09 June 2015. However, against that backdrop, the impugned order nowhere reflects any discussion, analysis or rationale in arriving at the aforementioned conclusion.

14. On that score, it is pertinent to allude to Section 119(2)(b) of the Act and the legislative mandate behind such beneficial provision. Section 119 of the Act reads as under:-

“119. Instructions to subordinate authorities.—(1) The Board may, from time to time, issue such orders, instructions and directions to other Income Tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued—



- (a) so as to require any Income Tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) so as to interfere with the discretion of [the Joint Commissioner (Appeals) or the Commissioner (Appeals)] in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power,—

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of Sections [115-P, 115-S,] [, 115-WD, 115-WE, 115-WF, 115-WG, 115-WH, 115-WJ, 115-WK] [139,] 143, 144, 147, 148, 154, 155 [, 158-BFA], [sub-section (1-A) of Section 201, Sections 210, 211, 234-A, 234-B, 234-C, [234-E], [234-F,] [270-A,]] 271 [, 271-C, 271-CA] and 273 or otherwise), general or special orders in respect of any class of incomes [or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assessee) as to the guidelines, principles or procedures to be followed by other Income Tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) 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, authorise any Income Tax authority, not being [a Joint Commissioner (Appeals) or 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;

(c) 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 for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:—

- (i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and



(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed:

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.”

[Emphasis added]

15. As is evident from a *ex-facie* reading of the aforementioned Section that such a provision is beneficial in its character as it enables the CBDT to frame and issue any orders, directions and instructions that aim to facilitate the overarching administration of the Act and consequently, marches on the path of achieving *bona fide* objectives of the Act.

16. Furthermore, Section 119(2)(b) of the Act gives power to the CBDT to admit an application or claim for any exemption, deduction, or refund, in cases of genuine hardship, beyond the statutory limitation prescribed under the Act and consequently deal with such an application on merits and in accordance with the law.

17. The aforementioned legislative intent behind Section 119(2)(b) of the Act is also reflected in Clause 5 of the CBDT Circular No. 9/2015 dated 09 June 2015, on which the impugned order before us is loosely hinged. The relevant extract of the CBDT Circular No. 9/2015 dated 09 June 2015 is reproduced herein below:-

“5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to following conditions:

- i. **At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and /or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.**



- ii. The Pr.CCIT/CCIT/Pr.CIT/CIIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with provisions of the Act to ascertain the correctness of the claim.”

[Emphasis added]

18. As is apparent from the plain reading of the aforesaid CBDT Circular No. 9/2015 the power of accepting or rejecting the application for condonation of delay in filing a refund claimed under Section 119(2)(b) of the Act rests with the PCIT and while deciding such application, the pre-requisites, namely, correctness and genuineness of the claim and whether the case was of genuine hardship on merits shall have to be met.

19. It is evident from a bare reading of the order impugned before us that the PCIT while dealing with condonation of delay application has not followed the legislative mandate enshrined in Section 119(2)(b) of the Act and summarily rejected the application without ascribing any reasons or rationale.

20. It is interesting to point out that the counter affidavit filed by Revenue attempts to inject the following reasoning into the impugned order. The relevant extracts of the counter affidavit are culled out herein below:-

“11. The petitioner has further alleged that the Pr.CIT has not afforded any opportunity of hearing to him and the order was passed in Improper manner without considering his submissions on merit. Such contention is based only on conjecture and surmise and petitioner's misconception and misinterpretation of the principle of natural justice. It is submitted that the petitioner filed his return of income after a delay of almost 3 years without proper justification or reason for such delay. It was very much within his knowledge, that the actual amount received by him from his client was net of taxes and even if, they did not issue any formal TDS certificate for such long period, he should have pursued the matter with them regularly so that he could discharge his statutory



liability of filing the return in time. Under the circumstances, the Pr.CIT was not convinced with his submissions and was absolutely justified in turning down his request. It is clearly mentioned in the order dated 28.03.2018 that his request for condonation of delay could not be acceded to as it was not a case of 'genuine hardship on merits' as per CBDT Circular 9/2015. Thus, the petitioner's contention that his submission was not considered on merit and Pr. CIT has not passed a speaking order, thereby violating the principle of natural justice is devoid of all merit and is not maintainable in law.

12. That it is respectfully submitted that prior to taking decision on the matter a report was called from the field formations. It is only after examining the report and the submissions of the Petitioner that a decision was arrived at that the Petitioner has not been able to make a case of genuine hardship calling for condonation of delay. Copy of report of the Additional Commissioner is annexed as annexure-R1

13. That it is further respectfully submitted that the powers vested on Authorities under section 119(2)(b) of the Act has been exercised in fair and reasonable manner after duly considering the facts of the case and the submissions advanced by the assessee. It is submitted that condonation of delay is to be explained and justified by the aggrieved party by cogent and valid reasons and the same cannot be claimed as a matter of right. In the present case, the Petitioner has failed to give valid and cogent reasons and substantiate the case of genuine hardship on his part.”

21. However, a bare reading of the impugned order would reflect that there is no element of any reasoning, rationale or discussion by the PCIT before arriving at the conclusion that the case of assessee does not fall under the ambit of genuine hardship.

22. At this juncture, it is fundamental to refer to the observations made by the Constitution Bench of Hon’ble Supreme Court in the decision of **Mohinder Singh Gill v. Chief Election Commr.** [(1978) 1 SCC 405], which are reproduced herein below:-

“8. The second equally relevant matter is that when a **statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the**



beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16]* :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

[Emphasis added]

23. Therefore, the reasons ascribed in the counter affidavit merit no consideration as the impugned order before us does not allude to any rationale before deciding the condonation of delay application filed under Section 119(2)(b) of the Act.

24. It is quintessential to understand that the PCIT while exercising the powers under Section 119(2)(b) of the Act acts like a quasi-judicial body and is bestowed with the cardinal responsibility to pass a reasoned order. Thus, an order passed under Section 119(2)(b) of the Act which is devoid of any reasoning or rationale would be *de hors* the legislative mandate prescribed under the beneficial scheme of Section 119 of the Act.

25. It is strikingly clear that the impugned order is passed in a pedantic manner without any application of mind as the order records no reasons before summarily rejecting the condonation of delay application.

26. Therefore, in light of the aforementioned discussion and judicial



precedents analysed, we set aside the impugned order dated 28 March 2018 and remand the matter back to the desk of the concerned PCIT with a direction to consider the condonation of delay application filed by the assessee afresh, in accordance with the law and as per extant regulations.

27. In view of the aforesaid, the writ petition is allowed and disposed of accordingly, alongwith pending applications, if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 03, 2024/p