Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 485 OF 2025

Skystar Clearing & Forwarding Pvt Ltd
L-41 & 370, Dreams The Mall,
Lower Ground Floor,
L.B.S. Marg, Bhandup (West),
Mumbai – 400 078
PAN: AAGCS7409E …Petitioner

Versus

1. Pr. Commissioner of Income Tax,
Mumbai-6,
Room No. 507, 5th Floor,
Aayakar Bhavan, M. Road,
Mumbai 400021.

2. Union of India,
through the Secretary, Department of
Revenue, Ministry of Finance, North
Block, New Delhi – 1100001. …Respondents

Mr Jose Pulikkoden, *with Mr Aniket Sawant, Ms Noor Jehan Sheikh & Ms Nidhi N Jain, for the Petitioner.*

Mr Akhileshwar Sharma, *with Ms Shraddha Worlikar, for the Respondents.*

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.

DATED: **03 March 2025**

ORAL JUDGMENT *PER M S Sonak, J*

1. Heard learned Counsel for the parties.

2. Rule: The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. This Petition challenges the order dated 28 February 2023 under Section 119(2)(b) of the Income Tax Act, 1961, refusing to condone the delay in filing income tax returns for the assessment years 2017-18 and 2018-19.

4. Mr Jose Pulikkoden, the learned Counsel for the Petitioner submits that this was a case of genuine hardships as explained in the application for the condonation of delay filed on 23 November 2022. He pointed out that the financial position of the Petitioner company is not quite strong, and the business activities suffered considerably due to the Covid pandemic. He submitted that the Petitioner had candidly disclosed that a part-time accountant received the intimation of the notice of defective return, but the same was not brought to the notice of the directors for a considerable time. He pointed out that this part-time accountant left the Petitioner company's services, which further contributed to the delay. He pointed out that earlier, there used to be delays in granting refunds. Therefore, the Petitioner had a bona fide impression that the matter for refund was pending with the department. However, Upon enquiries, it was realised that the return filed within the prescribed period was not considered due to some unintentional defects therein. Mr Jose Pulikkoden submitted that these were bona fide difficulties experienced by the Petitioner assessee, and no mala fides were involved.

He, therefore, submitted that the delay aspect should have been liberally construed in the peculiar facts and circumstances of the present case.

5. Mr Sharma defended the impugned order based on the reasoning reflected therein. He submitted that the reasons cited were unverifiable, that the Petitioner should have pursued the matter with greater diligence, and that no sufficient cause was shown for condoning the delay. He submitted that since the delay is now condoned, the Petitioner might claim interest should any refunds be found to be due, and this would be quite unfair to the department. For all these reasons, Mr Sharma submitted that this Petition may be dismissed.

6. The rival contentions now fall for our determination.

7. Mr Jose Pulikkoden, on instructions submitted that if the delay is condoned and the Petitioner is allowed to file the return or instead, if the Petitioner is permitted to clear the defects in the original return already filed, then the Petitioner will not claim any interest on the refunds if such refunds are ultimately found due on the assessment or intimation. He submitted that this will address the department's concern about the Petitioner claiming interest on refunds.

8. The records show that this is a case where the Petitioner had filed the returns within the prescribed period. However, the returns were found to be defective, and the Petitioner was informed of the defective return. However, for reasons the Petitioner attributes to the part-time account, such intimation was not addressed, resulting in the delay. The explanation offered does not smack of any mala fides. Mr Jose Pulikkoden pointed out that earlier there used to be delays in granting refunds. Therefore, the Petitioner bona fide believed that the refund issue was pending with the department. Only at the later stage, when enquiries were made, it was realised that the matter was pending due to non-clearance of the defects in the returns as may have been pointed out to the Petitioner.

9. Considering the explanation and the statement that no interest would be claimed if a refund is allowed, the delay deserves to be condoned. Mr Jose Pulikoden pointed out that, according to the Petitioner, the refunds would be in the range of Rs.5,65,000/-. He submitted that this refund means much to the Petitioner company, which is presently in reduced financial circumstances.

10. Accordingly, we are inclined to allow condonation. Mr Jose Pulikkoden submits that the Petitioners do not have a copy of the defect notice. Accordingly, we direct the Respondents to furnish a copy of the defect notice to the Petitioner within two weeks of uploading this order. Upon receipt, the Petitioner will file a return pointing out the defects. This should be done within four weeks of receiving the defect notice without seeking any further extension of time.

11. The return so filed after clearing the defects pointed out should be scrutinised by issuing notice under Section 143(2) and making an assessment under Section 143 of the Income Tax. If any amounts are found payable by the Petitioner, the Petitioner, subject to its right of appeal, will have to pay the same to the Respondents. However, suppose any refund is found due to the Petitioner. In that case, the same will have to be granted to the Petitioner, though, without interest considering the statement now made by and on behalf of the Petitioner. Such assessment should be completed within one year from the Petitioner filling the cured returns.

12. If the Petitioner has any difficulties filling out the cured returns due to software issues, etc., the Jurisdictional Assessing Officer is directed to ensure that the portal is open to facilitate the filing and processing of such returns. In any event, if the difficulties persist, the Petitioner must be allowed to file the returns in physical format as a special case. We clarify that the above directions regarding filing in physical format are issued in this case's peculiar facts and circumstances and are not intended to constitute any precedent.

13. The impugned order dated 28 February 2023 is set aside, and the delay is condoned subject to the above observations and directions.

14. The rule is made absolute in the above terms without any cost order. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**