IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2805 OF 2024

Penang Enterprises Private Limited .. Petitioner

Versus

Central Board of Direct Taxes & Ors. .. Respondents

Adv. Ranit Basu, Adv. Maitri Malde, Adv. Dua shaikh for the Petitioner.

Adv. P. A. Narayanan for Respondent.

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

RESERVED ON : 22 OCTOBER, 2024
PRONOUNCED ON : 12th FEBRUARY, 2025.

ORDER

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. This Petition is filed seeking the following substantive reliefs

> "a. That this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ,order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, quash the order dated 21st September, 2023 (Exhibit KK) passed by the Respondent no. 1.

> b. That this Hon'ble Court may be pleased to condone the delay of 496 days (from 7th November, 2017 to 18th March, 2019) in filing *Form no. 10CCB."*

3. The Petitioner filed an Application dated 11th November 2019, before Respondent No. 1 seeking condonation of delay in filing form 10 CCB for the A. Y. 2017- 2018 under Section 119 of the Income Tax Act (for short "I.T. Act"). The Petitioner *inter alia* pointed out that over the previous years the Petitioner was regularly filing Income Tax Returns, along with all statutory reports, including form No. 10 CCB within the specified due dates.

4. For the A. Y. 2017-18, the Petitioner filed the original Income Tax Return on 7th November 2017, and the revised Income Tax Return on 18th March 2019, alongwith statutory forms/report in Form 10 CCB, Form No. 29B and Form 3 CA- 3 CD. The Petitioner also prayed for condonation of delay from 7th November 2017 to 18 March 2019, for revised Income Tax Return to be accepted, as a return filed under Section 139 (5) of the Act alongwith Form No. 10 CCB. The relevant extract of the Petitioner's Application reads thus:-.

> *" To begin with it is humbly submitted that over the years, the financial operations of the Company were looked after by the CFO of the Company, Mr. Sunil Soni. During FY 2016-17 (AY*

2017-18), Mr. Sunil Soni, CFO was not regular in coming to office which was hampering the Company's financial operations. The management of the Company was trying to understand the reason behind the absenteeism of the CFO from work. After repeated inquiries, it was learnt that the CFO was facing various family issues that ultimately resulted in his total lack of interest, focus and concentration towards his duties and responsibilities towards the Company. Little did the Management of the Company knew about his personal problems until a 'socially unacceptable conduct' came to light when his wife barged into the registered office of the Company along with her children. While the entire scene at the office does not deserve precise mention on account of interference into the personal life of the CFO, it is unfortunate that the Company alone is made to bear the brunt of the delay, default and the unprofessional act of filling figures in the return of income uploaded on 07.11.2017 without taking any cognizance of the audited accounts already available to him for proper filing of returns along with other statutory reports if any. It is extremely unfortunate that it is only after receipt of Notice under section 142(1) of the Act dated 21.02.2019 calling for information and details pursuant to Notice issued under section 143(2) of the Act, we realised that original tax filings on 07.11.2017 were based on figures best known to the CFO who has actually been either careless or with ulterior motives to harass the Comnanv, In the midst of all this rigmarole, the Director of the Company, Mr. Rajiv Shah, was also irregular in attending the office due to his mother's deteriorating ill health during the period from June 2017 to March 2018. During such period, his mother was operated for 3 major spine problems at Hinduja Hospital. His mother was completely bedridden after the surgeries and hence, the Director could not attend the office on a regular basis. The Company was facing tremendous crisis in its day to day running since it had reason to believe that the accounts of the Company has intentionally been modified and altered. Further, since the business of the Company had expanded and there was need for an ERP system for the Company to manage its operations, the Company, during FY 2016-17, implemented a new ERP accounting program system in its office. During this phase we experienced high attrition rate impacting accounting work on day to day basis leading to delayed preparation of financial information for the next year as well. Further, as soon as the Management commenced drafting replies in response to the Notice u/s 142(1) of the Act, it was shocked, surprised, amazed and flabbergasted to learn that all the figures mentioned in the *original return of income did not correlate / reconcile with the actual audited accounts of the Company. It immediately then filed the revised return of income along with Form 10CCB and Form 3CA-3CD on 18.03.2019 to keep the records straight. It is humbly submitted that, ever since incorporation, the Company has been regular in complying as per the applicable provisions of the Income-tax Act, 1961 or any other law as applicable to Company from time to time. The Company has neither defaulted nor has delayed in paying taxes as per law and has never ever caused loss to the Revenue Department. It is also pertinent to note that the current assessment year i.e. AY 2017-18 is the only isolated year whereby the Company faced such an abnormal situation despite an undisputed fact that the question of causing any loss to the Revenue Department just does not arise. In fact, even the thought of filing inaccurate particulars of income in the return of income or any other related thought just does not come to the mind of the Management by any stretch of imagination. Hence, the mistake on the part of the Company for filing a defective original return of income may please be condoned and further filing a revised return of income on 18.03.2019 which delayed by more than 15 months may kindly be condoned by accepting the said revised return as a return filed under section 139(5) of the Act."*

5. Thereafter, the Petitioner addressed a letter dated 3rd March 2021 to Respondent No. 1. The Petitioner urged that in light of the circumstances and in consideration of the Petitioner's Application dated 11th November 2019, the delay in filing form no. 10 CCB be condoned and the revised Income Tax Returns dated 18th March 2019 be considered as a valid return.

6. Respondent No. 1 addressed a letter dated 31st August 2023, through the Additional Commissioner of Income Tax, ITA Cell, CBDT, New Delhi,

in response to the Petitioner's Application dated 11th November 2019, offering an opportunity of hearing to explain why the Petitioner's Application dated 11th November 2019, be not rejected. The Petitioner received the said letter dated 31st August 2023, only on 14th September, 2023.

7. In response to the said letter dated 31st August 2023 of the Respondent No.1 received by the Petitioner on 14th September 2023, the Petitioner addressed an email dated 22nd September 2023, to the Additional Commissioner of Income Tax, ITA cell, CBDT, New Delhi in which the Petitioner submitted that the Petitioner's company was occupied with tax audit compliance deadline i.e. 30th September 2023, and, therefore, requested 15 days time to prepare and submit the written submissions and an opportunity of a personal hearing be granted to the Petitioner.

8. On 30st September 2023, the Petitioner received an order dated 21st September 2023, passed by Respondent No. 1, wherein the Petitioner's Application for condonation of delay was rejected. The Petitioner became aware of such order on 30th September 2023, when it was received by post. The relevant part of the said Order reads as under :-

"4.1. As per section 119(2)(b) of the Act, the issue of genuine hardship to the applicant must be considered and it should be dealt with on merits in accordance with law. In dealing with the case on merit its facts need to be considered.

4.2. In its application/petition, assessee has stated that "CFO of the company Mr. Sunil Soni was not regular in coming to office which was hampering the company's financial aperations and so on". As stated by assessee, assessee has attributed the reason for non-filing of form due to non-attendance of CFO. This is not convincing and acceptable due to fact that for such companies, there is an entire accounting team and tax related department with specific people tasked to meet all the statutory deadlines. There are internal auditors and accounts taxation team who handle filing of tax return and forms. Therefore, it cannot be presumed that management was not communicated about the time barring matter.

4.3. Further, it was found that Form No. 3CA is dated 7th Nov,2017 and is to be prepared at the time of original return filing. However, Form 10CCB which also needs to be filed at the time of filing of original return was not filed.Moreover, assesse has filed belated return on 08.11.2017. All the case laws as has been relied by assesse assumes that original return filing is within time, which is not true in assessee's case. In the instant case, assessee has filed original return belatedly and the figures as mentioned in form 10CCB is completely different from the details as mentioned in original return filed belatedly on 08.11.2017. Even after filing return belatedly, assessee did not file form 10 CCB for about 1 year and 3months. It was only after assessment proceedings were carried out and it was noticed that figures as mentioned in annual report dated 05.09.2017 did not match with figures as mentioned in ITR filed belatedly by assessee, assessee filed revised return along with other related forms. Therefore, reasons and rationale as given by assessee is not acceptable. Thus, the reason as stated by assessee are very general in nature, it may not be construed as reasonable cause for not filing Form by due date. Therefore, no reasonable cause was shown to have been established in assessee's petition to justify the claim of genuine hardship under section 119(2)(b) of the Act. Considering the above facts, a show cause dated 31.08.2023 was sent to applicant at the email id info@samarthlife.com {communication ernail ID *mentioned in its petition form). The showcause letter was delivered on email ID, however, no reply was received on mail. Hence, applicant has remained non-responsive despite all the efforts.*

5. As per section 119(2) (b) of the Act, the issue of genuine hardship to the applicant must be considered. In determining whether genuine hardship is caused to the applicant, one has to see whether the delay in filing of return and forms was due to a reasonable cause or not. The delay is attributed to host of reasons such as socially unacceptable conduct of CFO, deteriorating health condition of mother of the director, and impiementation of new ERP accounting software program system. As has been discussed above, these reasons cannot be construed to be a reasonable cause for delay in filing its return on time as contended by the applicant.

6. It should be noted first that disallowance of any claim will normally lead to hardship. The Legislature has provided time limits for certain obligations under the Act and these time limits have to be observed to be able to claim certain deductions, allowances and avoid interest and penalty. This may be termed a hardship but it is hardship imposed by law in the interest of proper regulation of the Act. The negligence on the part of the applicant cannot be construed to be a reasonable cause for delay in filing its return and forms on time as contended by the applicant. Further, the forms-filed at later stage, i.e, during assessement proceedings had gross difference in ;figures as was reported in ITR filed originally on 08.11.2017 belatedly. Further, no reasonable cause has been shown or established by the applicant to justify its claim of genuine hardship under section 119(2)(b) of the Act.

7. As discussed above, in view of report.of PCIT, applicant has failed to explain reasonable cause for delay in filing revised return of income alongwith Tax Audit Report in Form 3CA-CD & Form 10CCB for A.Y. 2017-18. Therefore, the application of the applicant for condonation of delay u/s 119(2)(b) of the Income-tax Act, 1961 for AY 2017-18 is hereby rejected."

9. It is the submission of the Petitioner that subsequent to demerger of business and change of name of the Petitioner from Samarth Life

Sciences Pvt. Ltd to Penang Enterprises Pvt. Ltd, the finance team of the Petitioner did not have access to the email address info@samarthlife.com and info@samarthpharma.com due to certain internal restructuring. Therefore, communications addressed by Respondent No. 1 could not have been accessed by the finance team, which was in charge of monitoring the status of the Application for condonation of delay and related matters. It is the case of the Petitioner that, in these circumstances, the Petitioner became aware of the letter dated 31st August 2023, on 14th September 2023, and of the Order dated 21st September 2023, on 30th September 2023, when they received both of them through Indian Post. As stated above, the Order dated 21st September 2023 is impugned in the present Petition.

10. We have heard the learned counsel for the parties. We have also perused the documents on record.

11. We may observe that this Court in **Jyotsna M. Mehta v.s, Principal Commissioner of Income-tax & Others [2024 SCC Online Bom. 2946]** to which one of us (G.S. Kulkarni,J.) was a member, has observed that the approach of the Additional Commissioner cannot be mechanical, who ought to have been more sensitive to the cause which was brought before

him when the Petitioner prayed for condonation of delay of 89 days, observed that it can never be that technicalities and rigidity of the rules would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations that the legislature has made a provision conferring a power to condone the delay. These are issues which may prevent an assessee, who is otherwise diligent, in filing returns within a prescribed period. It was also observed that it would have been quite different if there were reasons available on the record of the Additional Commissioner that the case of delay in filing returns, as urged by the Petitioner, was false/ totally unacceptable.

12. In the present case, the Petitioner has submitted that over the years the financial operations of the company were looked after by the CFO of the company, Mr. Sunil Soni. During A.Y. 2017-18, Mr. Sunil Soni, CFO, was not regular in coming to office, which was hampering the company's financial operations. The management of the company was trying to understand the reason behind the absenteeism of the CFO from work. After repeated enquiries, it was learned that the CFO was facing various family issues that ultimately resulted in his total lack of interest, focus and concentration towards his duties and responsibilities to the

company. The management of the company did not know about his personal problems until socially unacceptable conduct came to light when his wife barged into the Registered Office of the company along with her children. The Petitioner further stated that, it was only after the receipt of notice under Section 142 (1) of the Act dated 21st February 2019, calling for information and details pursuant to notice issued under Section 143 (2) of the Act, that the company realised that the original tax filings on 7th November 2017, were based on incorrect figures. Further, the Petitioner has also submitted that, in the midst of all this, the director of the company, Mr. Rajiv Shah, was also irregular in attending the office due to his mother's deteriorating ill health during the period from June 2017 to March 2018. The Petitioner has submitted that, during this period, his mother was operated for 3 major spine problems at Hinduja Hospital. His mother was completely bedridden after the surgeries and, hence, the director could not attend the office on a regular basis. Further, the Petitioner also submitted that since the business of the company had expanded, and there was need for an ERP system for the company to manage its operations, the company, during F.Y. 2016-17, implemented a new ERP accounting programme system in its office. During this phase, the company experienced a high attrition rate impacting accounting work on day to day basis, leading to delayed preparation of financial information. In these circumstances, the Petitioner has sought for condonation of delay.

13. In our view, such factors which are purely fortuitous and purely human attributes necessarily required due consideration, when it comes to compliances of time limits prescribed under the IT Act. As observed by this Court in Jyotsna M. Mehta (supra), the situation in hand would be akin to how a Court would consider in the legal proceedings before it, in condoning delay in filing of proceedings. The Court observed thus:- *"In dealing with such situations, the Courts would not discard an emphatic/ humane view of the matter in condoning the delay in filing legal proceedings when the law confers powers on the authority to condone the delay in the litigant pursuing Court proceedings. This is of course on testing the bonafides of such plea as may be urged. In our opinion , such principles, which are quite paramount and jurisprudentially accepted, are certainly applicable when the assessee seeks condonation of delay in filing Income Tax Returns, so as to remove the prejudice being caused to the assessee, so as to regularize its returns. In fact, in this situation, to not permit the assessee to file its returns, is quite counter productive to the very object and purpose the tax laws intend to achieve. In this view of the* *matter, we have no manner of doubt that the delay, which is sufficiently explained in the present case, would be required to be condoned."*

14. Resultantly, the impugned Order dated 21st September 2023 is quashed and set aside. The Respondents are directed to permit the Petitioner to file returns with penalty, fees and interest, if any, within a period of two weeks from the date a copy of this Order is available. All contentions of the parties on the merits of the returns are expressely kept open.

15. Rule is made absolute in the above terms. There will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.] **[G. S. KULKARNI, J.]**