IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8728 OF 2018

Shri Purshottam S/o Hazarilal Agrawal
-- VERSUS --
The Principal Commissioner of Income Tax, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. S.C. Thakar, Advocate for the Petitioner.
Mr. Anand Parchure with Mr. B.N. Mohata, Advocate for the respondent/State.

CORAM : ANIL L. PANSARE, AND
M.M. NERLIKAR, JJ.

DATE : AUGUST 22, 2025.

After having heard for sometime, the counsel for the respondent submits that the Department is willing to consider the position of law as laid down in the case of ***Sitaldas K. Motwani VS. Director General of Income Tax (International Taxation) & Ors. (2010) 323 ITR 223 (Bom)***, wherein, the Court while dealing with the request to condone delay in filing claim of refund (in other words 'in filing belated returns claiming refund') held thus:-

> *"16. Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is*

> *bound to succeed. This would amount to prejudging the case on the merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether a refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."*

2. As could be seen, what is relevant to decide the term "genuine", as envisaged under Section 119(2)(b) of the Income Tax Act, 1961, is to see that on the face of the returns by which refund is claimed, whether the claim of refund is bound to fail by virtue of some apparent defect. If the answer is in the negative, the delay, in ordinary course, should be condoned.

3. In view of the statement made by the learned counsel for the respondent, we allow the petition partly.

4. The orders dated 23/08/2017 passed by respondent are quashed and set aside. The matter is remanded back to respondent to consider afresh in accordance with law and what has been stated in body of the order.

5. The decision shall be taken within four weeks from today. All concern shall act on authenticated/uploaded copy of the order.

6. Disposed of in above terms.

[M.M. NERLIKAR, J] **[ANIL.L. PANSARE, J]**

PIYUSH MAHAJAN