



W.P. No.34500 of 2019

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.04.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.34500 of 2019**

M/s.Jaldhi Overseas Pte Ltd., (PAN:AADCJ0165F)  
Registered under the laws of Singapore,  
Represented by its Group Financial Controller,  
Ms.Sripriya Balasubramanian,  
1 Coleman Street, # 09-11, The Adelphi,  
Singapore 179 803.

.. Petitioner(s)

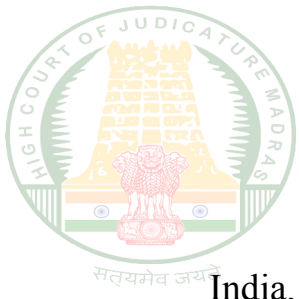
Vs.

1. The Central Board of Direct Taxes,  
Represented by its Deputy Commissioner  
of Income Tax (OSD) (OT&WT)  
Room No.13, 5<sup>th</sup> Floor,  
Jeevan Vihar Building, Sansad Marg.  
Department of Revenue (CBDT)/Ministry of Finance,  
Government of India, New Delhi.

2. The Deputy Commissioner of Income Tax,  
International Tax – 1(1),  
121 Nungambakkam High Road,  
Chennai 600 034.

.. Respondent(s)

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of



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India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1<sup>st</sup> respondent contained in the impugned order in F.No.312/90/2019-OT dated 29.08.2019 and to quash the same as arbitrary, unjust and illegal and to consequently direct the 1<sup>st</sup> respondent to accept the Return of Income filed by the petitioner for the Assessment Year 2011-12 in accordance with law.

For Petitioner(s) : Mr.R.Sivaraman

For Respondents(s) : Mr.B.Ramanakumar

### **ORDER**

The present writ petition is filed challenging the order dated 29.08.2019, whereby the petitioner's application under Section 119 (2)(b) of the Income Tax Act, 1961, (hereinafter referred to as “the Act”) for condonation of delay in filing Income Tax returns for the assessment year 2011-12 was rejected on the limited ground that the impugned order has been passed without affording the petitioner an opportunity of hearing.

2. The learned counsel for the petitioner would submit that they are challenging only the decision making process of the order and not the



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decision, on the limited ground that personal hearing ought to have been granted while exercising discretionary power under Section 119 (2) (b) of the Act. Failure to grant a personal hearing would prove fatal to valid exercise of power under Section 119 (2)(b) of the Act.

3. To the contrary, it is submitted by the learned counsel for the respondent that the petitioner had not filed its return for more than 6 years and therefore any claim of refund would only be rejected and therefore no prejudice is caused by non grant of personal hearing. It is further submitted that on a plain reading of Section 119(2)(b) of the Act, it would be clear that grant of personal hearing is not contemplated under the Act. It is further submitted that it is only in cases where there was a genuine hardship, beneficial provisions of Section 119(2)(b) of the Act would be applicable, however, that is not the position in the present case. The learned counsel for the respondent would place reliance upon the decision of this Court in the case of S.Manonmani v. The Principal Commissioner of Income Tax-1 and Ors. in W.P.No.24891 of 2022 dated 08.01.2025, to submit that in identical circumstances this Court had found that question of condonation of delay cannot be countenanced.



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4. Having considered the submission of both sides this Court finds that power under Section 119(2)(b) of the Act, has been consistently held to be quasi judicial in nature. Importantly, grant of personal hearing is found necessary for valid exercise of power under Section 119(2)(b) of the Income Tax Act. In this regard it may be relevant to refer to judgment of this Court in the case of Envision Communication (P) Ltd. v. Principal Commissioner of Income-tax in W.P.No.21279 of 2021 dated 06.10.2023 , wherein it was held as under:

*“5. The nature of the power/ function discharged by the Respondents in exercise of its power under Section 119(2)(b) of the Act is quasi-judicial in nature and thus ought to be made in compliance with principles of natural justice which inter-alia requires the authority to grant a reasonable opportunity apart from assigning reasons. In other words, an order under Section 119(2)(b) of the Act ought to be a speaking order. In this regard, it may be useful to refer to the decision of this Court in the case of H.S.Anantharamaiah vs. Central Board of Direct Taxes and Others reported in (1993) 201 ITR 526 (KAR), wherein it was held as under:*

*“9. ....Clause (b) of sub-section (2) of section 119 of the Act enables or empowers the Boards to admit an applications or a claim or return filed after the expiry of the period specified for avoiding genuine hardship caused in any case or class of cases. Thus, the statute makes it incumbent upon the Board to consider the case pleaded*



*under clause (b) of sub-section (2) of section 119 of the Act by an assessee who files his return beyond time. This power has to be exercised by the Board and the Board alone and not by any other authority. It is not possible to hold that this power is administrative when it relates to condonation of delay in a case where the return is filed beyond the period prescribed. The Board is required to exercise its discretion by taking into consideration all the relevant facts and circumstances and determine whether the delay in filing the return should or should not be condoned. The order must be informed by reasons. It is not an arbitrary exercise of power. This power has all the traits of judicial power. Therefore, we are of the view that the power exercisable by the Board under clause (b) of sub-section (2) of section 119 of the Act is quasi-judicial in nature.*

*10. In John Shalex Paints (P.) Ltd. MANU/KA/0145/1990 the question as to the nature of the power exercisable under clause (b) of sub-section (2) of section 119 of the Act is not considered. It is also not possible to hold that the said decision holds that the power exercisable by the Board is administrative in nature. When an authority discharges its quasi-judicial function, it goes without saying that it has to conform to the principles of natural justice. It has to afford an opportunity to the party who is going to be affected by the decision of the Board. Therefore, the Board is required to afford an opportunity of hearing to the assessee, either oral hearing or through submission of written arguments with reference to the points made against the assessee for not granting the relief sought for by him.....“*

*5.1. The above judgment of the Karnataka High Court was quoted with approval by the Division Bench of this Court in the case of Precot Mills Ltd., vs. Central Board of Direct Taxes and others reported in (2010) 321 ITR 293 (Mad), while considering Section 119(2)(a) of the Act wherein it was held as under:*



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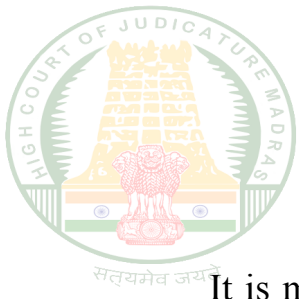
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*“8. ....We are entirely in agreement with the finding rendered in the said judgment. It is not in dispute that such applications from individual assesseees are also entertained by the Board and disposed of. In our opinion, no difference could be seen from either of the Clauses (a), (b) and (c) of Section 119(2)(a) of the Act for the reason that even though Section 119(2)(a) only relates to the power of the Board to issue certain guidelines and principles on specific matters, while it entertains the application and disposes of the same, it acts as a quasi-judicial authority and if that be so, a quasi-judicial authority is expected in law to give reasons on consideration of the materials available before it.....”*

*9. As we have held that the Board while disposing of an application under Section 119(2)(a) is acting as quasi-judicial authority, it should certainly give reasons even though the provision does not explicitly refer to the provision of such reasoning in the order.”*

*6. Having considered the arguments of both sides and following the above decisions, this Court finds that the power under Section 119(2)(b) of the Act being quasi-judicial in nature and which could result in adverse civil consequence, it must be exercised in compliance with principles of natural justice. However, this Court finds that the impugned order is made in violation thereof, in view of the fact that the impugned order does not assign reason but only contains the conclusion, in other words non-speaking and thus unsustainable”.*

5. Following the above decision of this Court, I am inclined to set aside the impugned order. The respondents are directed to pass fresh order after affording the petitioner a reasonable opportunity of hearing.



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It is made clear that this Court has not expressed any view on merits of the matter, the appropriate authority shall decide the matter independently in accordance with law, uninfluenced by any observation.

6. Accordingly, the writ petition stands disposed of. No costs.

**17.04.2025**

Speaking (or) Non Speaking Order  
Index: Yes/No  
Neutral Citation: Yes/No  
spp

To:

1. The Central Board of Direct Taxes,  
Represented by its Deputy Commissioner  
of Income Tax (OSD) (OT&WT)  
Room No.13, 5<sup>th</sup> Floor,  
Jeevan Vihar Building, Sansad Marg.  
Department of Revenue (CBDT)/Ministry of Finance,  
Government of India, New Delhi.
2. The Deputy Commissioner of Income Tax,  
International Tax – 1(1),  
121 Nungambakkam High Road,  
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**MOHAMMED SHAFFIQ, J.**

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