

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21411 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SAHEBSINGH BINDRASINGH SENAGAR HUF....Petitioner(s)

Versus

CHIEF COMMISSIONER OF INCOME TAX-1....Respondent(s)

Appearance:

MR. HARDIK V VORA, ADVOCATE for the Petitioner(s) No. 1

MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 21/02/2018

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. The petitioner has challenged an order dated 1.8.2017 passed by the Chief Commissioner of Income-tax, Ahmedabad, by which he rejected the petitioner's application under section 119(2) of the Income Tax Act, 1961 ("the Act" for short) for condoning the delay in filing the return for the assessment year 2009-2010.
2. Brief facts are as under. The petitioner is a HUF and is engaged in the business of providing buses under contract mainly to Ahmedabad Municipal Transport System (AMTS) and Ahmedabad Municipal Corporation(AMC). The petitioner has been regularly filing return of income. Case of the petitioner is that during the period relevant to the assessment year 2009-2010, for the first time, the on-line filing of TDS details was introduced. The petitioner was subjected to deduction of payments being made to the petitioner by AMTS and AMC who were subjected to Tax Deducted at source. Such TDS were sometimes realised belatedly and in some cases there were large number of discrepancies in the tax actually deducted and certificate

issued for such purpose. The petitioner therefore, had to have the corrections made and reconcile the mismatch. This consumed considerable time due to which the petitioner could not file return for the said year before the last date prescribed under the Act. Such return was filed on 8.6.2011 against the last date of 31.3.2011. Thus there was a delay of about two months and few days in filing the return.

3. The petitioner points out that Karta of the petitioner HUF also was engaged in same business in his individual capacity. For identical reasons, he also missed the deadline for filing return for the assessment year 2009-2010 and as in case of the petitioner filed on 8.6.2011.
4. The petitioner filed an application dated 12.10.2011 seeking condonation of delay in filing the return. He urged the Commissioner of Income tax to exercise powers under section 119(2) of the Act. The petitioner in such application sought to explain the delay as under :

“I am carrying the business of running the buses under the contract with Ahmedabad Municipal Transport System (AMTS). I issue the bills as per running kms of the buses as per contract and receive the payments against the buses. AMTS deduct the tax at source u/s 194C of the Income Tax Act. However, they issued the TDS certificate very late even almost one year after the due date of filing

income tax return. After receiving the TDS certificates, I found the major discrepancies in the TDS certificates. I approached them and requested to revised the same. However, they ignored all my requests. After my constant requests and follow up, they revised the TDS Returns and issued fresh corrected certificates recently. This also happen with the Nationalised Banks also. I have Fixed Deposits with Nationalised Banks and they also issued the TDS Certificates under wrong PAN No and with the discrepancies with amounts. I have requested them to make corrections in TDS Certificates and issue the revised certificates after revising the TDS returns. This also took the time.

Due to abovementioned reasons, I could not file my Income Tax Return in time. So, you are requested to condone the delay to file Income Tax Returns after the due dates.

I hereby attaching the copy of 26AS the TDS Information of assessee which was taken before discrepancies and after revisions of the TDS Returns by concern deductor for your kind reference.”

5. Similarly, the Karta of the petitioner HUF also filed a similar application for condonation of delay on 12.10.2011. Such application was identically worded. In other words, the explanation rendered for late filing of the return in case of the petitioner HUF and Karta of the HUF in his individual capacity was identical.

6. In case of individual, the Commissioner of Income Tax by an order dated 30.6.2016 allowed the application. He recorded the following reasons :

“The applicant, Shri Sahebsingh Bindrasingh Sengar, has filed a petition dated 12/10/2011, for condonation of delay in filing the Return of Income (ROI) for the A. Y. 2009-10. It is reported by the Assessing Officer that the applicant is a regular income tax payer and has been filing returns of income for all the years in time since A.Y.2005-06 except the return of income for AY 2009-10. It has been further reported that the delay in filing of return of income for A.Y.2009-10 has occurred by the applicant due to major mismatch in TDS by the deductors and this fact had come to the knowledge of the applicant at the time of audit. The applicant could get it done only at the end of May 2011 after putting in serious efforts to get the TDS certificates revised and corrected from the deductors.

2, As tax was deducted at source and it became necessary for the Applicant to file the return of income for the purpose of claiming refund. The assessee would not be entitled to the claim of refund of Rs. 5,24,333/- unless the delay is condoned. Since the refund claimed is less than Rs.10 lakhs, the acceptance of petition is within the powers of Pr Commissioner of Income-tax. I have carefully considered the facts of the case, especially the reason reported by the AO that the claim of refund is genuine and not issuing the refund is causing hardship to the assessee, therefore this is a case of genuine hardship. The claim for refund is within 6 years.

3. Therefore, in exercise of the powers conferred on me u/s. 119(2)(b) of the Act, I hereby condone the delay in filing the ROI for the A Y 2009-10. No interest shall be admissible on belated claim of refund. The Assessing Officer is directed to make necessary enquiries and scrutinize the case to ascertain the correctness of the claim.”

7. In case of the petitioner HUF, however, since the proposed return gave rise to refund of tax in excess of Rs. 10 lacs, case was placed before the Chief Commissioner of Income-tax. Chief Commissioner of Income-tax by the impugned order rejected the application mainly on two grounds. One was that even with mismatch of TDS, the petitioner could have filed return within time. He did not have to wait for reconciliation for mere filing of the return. Second reason cited by him was, the petitioner was all along aware about discrepancies in the TDS certificates. Possibly to avoid scrutiny selection, he filed the return late. He also hinted that the petitioner's declared net profit ratio is extremely low.
8. For the reasons to follow, we cannot sustain the order of the Chief Commissioner. Firstly, his observation that the petitioner filed return late possibly to avoid scrutiny assessment is based on conjectures. If the application of the petitioner was decided by the Chief Commissioner and accepted, there was sufficient time to enable the Revenue to take such a return in scrutiny if so desired. This by itself therefore, cannot be a ground for rejecting the petitioner's case. The other ground namely, that the petitioner should not have waited for reconciliation of the TDS certificates for filing the return perhaps would have weighted with us. However, in the present case, we have noted that in case of

Karta of HUF in his individual capacity under identical circumstances, application for condonation of delay based on identical grounds came to be accepted by the Revenue. In same set of facts and same situation, there cannot be a differential treatment. Merely because one application was decided by the Commissioner and another by the Chief Commissioner cannot be a point of distinction. Only on this ground, we are inclined to allow the petition. This would however be with two riders. Firstly, in case of individual while condoning delay, the Commissioner has provided that he will not be entitled to interest to the extent of period of delay. Same direction will apply in the present case. It is clarified that the petitioner shall not be entitled to any interest on refund even if ultimately allowed by the department till 8.6.2011. Second is that if the delay is condoned and effect of condonation is that the return filed by the petitioner after delay is treated as valid return filed on the date of its submission to the department, the period envisaged in the proviso to sub-section(2) of section 143 of the Act would have lapsed by now. This would mean that even if the department wanted to scrutinise the return, there would be no such facility. To obviate this difficulty, while condoning the delay, it is provided that the petitioner's return shall be treated to have been validly filed from the date of this order i.e. today for the purpose of scrutiny and completion of assessment, if taken in

scrutiny. All consequential provisions for scrutiny, final assessment and limitation would consequentially apply.

9. Impugned order dated 1.8.2017 is set aside. Petition is disposed of.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

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