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

WRIT PETITION NO. 773 OF 2015

Mrs. Leena R. Phadnis .. Petitioner.
V/s.
The Commissioner of Income Tax-I, Thane
& Others .. Respondents.

Mr. Mandar Vaidya i/b. D. A. D'Souza, for the Petitioner.
Mr. Suresh Kumar, for the Respondents.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 16th APRIL, 2016.

P.C:-

This Petition by a senior citizen under Article 226 of the Constitution of India assails the order dated 10th February, 2012 passed under Section 119 (2) (b) of the Income Tax Act, 1961 (the Act), by the Commissioner of Income Tax, Thane. By the impugned order, the Petitioner's application for condonation of delay in filing the revised return of income for Assessment Year 2008-09, has been rejected. This, the Petitioner submits causes grave injustice and hardship, as the Petitioner's claim for exemption under Section 10 (10C) of the Act in respect of the amount received on voluntarily retirement from the State Bank of India (SBI), is not being examined.

2 The undisputed facts are as under:-

(a) The Petitioner had during the Assessment Year 2008-09, opted for the voluntarily retirement scheme (VRS) under Exit Option Scheme of the SBI.

(b) On 31st July, 2008, the Petitioner filed her return of income, claiming that to the extent of Rs.5,00,000/- received by her on a retirement from the SBI under the Exit Option Scheme, is exempted under Section 10(10C) of the Act.

(c) On 24th March, 2010, the return of income was processed under Section 143 (I)of the Act. By intimation, her claim for exemption under Section 10(10C) of the Act, was disallowed.

(d) Thereafter, Petitioner learnt that the benefit of Section 10(10C) of the Act was being extended by the Revenue to various ex-employees of SBI who had opted for VRS under the Exit Option Scheme just as the Petitioner had done.

(e) In the above view, on 30th March, 2013, the Petitioner filed a revised return of income for Assessment Year 2008-09, declaring a total income of Rs.4.60 lakhs. Therein recording the fact that tax payable for the subject Assessment Year was Rs.52 lakhs and tax already paid is Rs.2.07 lakhs. Thus, warranting a refund of Rs.1.55 lakhs. This was worked out after taking into account the benefit under Section 10(10C) of the Act.

3 As the Petitioner had filed her revised return of income for the Assessment Year 2008-09 on 30th March, 2013, the time to file a revised return had expired. In the above view, the Petitioner made an application under Section 119(2)(b) of the Act to the Principal Commissioner of Income Tax, Thane, claiming that the revised return of income though filed beyond a period of limitation, be entertained, as otherwise it would cause genuine hardship to her.

4 The Commissioner of Income Tax,Thane by the impugned order dated 10th February, 2015 rejected the application for condonation recorded as under:-

> " *On the facts of the case, the submissions made by the assessee and also the report of the Assessing Officer, though the assessee is facing genuine hardship, even though various decisions have been made in favour of the assessee by various ITAT & High Court Orders, since no specific instruction is issued by the CBDT in the case of SBI employees, the application filed by the assessee u/s. 119(2)(b) of the I.T. Act, 1961 is hereby rejected."*

5 It would, therefore, be noticed that the Principal Commissioner of Income Tax in the impugned order was satisfied that the Petitioner would face genuine hardship if the revised application is not entertained. However, same has been rejected on the ground that the CBDT has not issued specific instructions, directing the Department to extend the period of limitation in case of where revised return of income as filed beyond a period of limitation in case of ex-employees of SBI. We note that Section 119(2)(b) of the Act is very clear. Under the above provision, the Authority concerned has to apply his mind to the application before him and if he finds that not granting of the application would result in genuine hardship, than the application is to be allowed by condoning the delay. The merits of the application is not the subject of consideration at this stage. We find that the impugned order has come to a conclusion that not granting of the application to entertain the revised return of income,would lead to a genuine hardship to the Petitioner. This alone is sufficient for the purpose of allowing application under Section 119(2)(b) of the Act, as this is the only requirement. There is no requirement of any specific instructions being issued by the CBDT to the

Income Tax Department to entertain the revised return of income in case of ex-employee of SBI filed after expiry of period of limitation.

6 In the above view, the delay on the part of the Petitioner in filing revised return of income would lead to genuine case of hardship as made out by the Petitioner.

7 Further, Mr. Vaidya, learned Counsel appearing for the Petitioner states that persons similarly situated who have retired from State Bank of India and have made application under Section 119(2)(b) of the Act, for condoning the delay in filing revised return of income, the same has been allowed. In support, he places reliance upon the order dated 21st March, 2006 in the case of one – Mrs. Hemangi A. Deodhar, in respect of Assessment Year 2008-09 by Principal Commissioner of Income Tax, 34, Mumbai. It is submitted that on the same lines, relief be made available to the Petitioner. We find that above order dated 21st March, 2016 specifically prohibiting the grant of any interest while condoning the delay. The same would also apply to the present facts as in this case in the return of income originally filed exemption under Section 10 (10C) of the Act was claimed but disallowed by intimation under Section 143(1) of the Act. The Petitioner had accepted the same. Thus, it would be appropriate that no interest be granted in this case.

8 Accordingly, we set aside the impugned order dated 10th February, 2015 and delay in filing revised return of income for the Assessment Year 2008-09, is condoned.

9 Petition disposed of in the above terms. No order as to costs.

(A.K.MENON,J.) **(M.S.SANKLECHA,J.)**