

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF MARCH, 2018

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION No.40324/2016 (T - IT)

BETWEEN:

PDS LOGISTICS INTERNATIONAL P LTD
A COMPANY REGISTERED UNDER THE
PROVISIONS OF THE COMPANIES ACT OF 1956
AND HAVING ITS REGISTERED OFFICE
AT 126/3, GANGADHARA CHETTY ROAD
BANGALORE-560042.

REPRESENTED BY ITS MANAGING DIRECTOR
ARVINDSHARMA

... PETITIONER

[BY SRI K.B.S.MANIAN, ADV.]

AND:

1. THE CHIEF COMMISSIONER OF
INCOME TAX, BENGALURU-2
C.R. BUILDING, QUEENS ROAD
BENGALURU-560001.
2. CHAIRMAN
CENTRAL BOARD OF DIRECT TAXES
NORTH BLOCK, NEW DELHI-110001.
3. DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 12 (2) 14/3A, 4TH FLOOR
RP BHAVAN, NRUPATUNGA ROAD
BENGALURU-560001.
4. COMMISSIONER OF INCOME TAX
BENGALURU III, BENGALURU
1ST FLOOR, CENTRAL REVENUE BUILDING

QUEENS ROAD
BENGALURU-560001.

...RESPONDENTS

[BY SRI JEEVAN J NEERALAGI, ADV.]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QASH THE ORDER DATED 11.03.2016 PASSED BY THE RESPONDENT No.1 UNDER SECTION 119(2)(b) OF THE INCOME TAX ACT OF 1961 AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner has challenged the order of the respondent No.1 passed under Section 119(2)(b) of the Income Tax Act, 1961 ('Act' for short) whereby the petition filed by the petitioner for condonation of delay to submit the returns for the assessment year 2006-07 has been dismissed.

2. The petitioner is a Company incorporated under the Provisions of the Companies Act, 1956. It is the contention of the petitioner that for the assessment year 2006-07 due to the sudden crashing of its computer system, it was unable to file the returns

within the prescribed time, that there was substantial data pertaining to the past years which required to be updated. In order to finalize the returns, process of compiling the data for the 4 years, took a lot of time and hence sought for permission to file the return of income and requested to allow the refund claim of Rs.30,83,829/-. It is pointed out that the petitioner was appreciated by the Department for its prompt filing of returns and the taxes due. Annexure-C is one such appreciation letter. It is further submitted that the Assessing Officer by letter dated 09.07.2009, reported to the Commissioner of Income Tax that the refund claim made by the assessee is prima facie correct and genuine. The case is also of genuine hardship and merits consideration. In the circumstances, the assessee's claim for condonation of delay in filing the IT return may be allowed and the allowance of the refund may be considered favourably. Surprisingly on further report sought by the Chief Commissioner of Income Tax,

the Assessing Officer has changed his stance expressing that the claim of the assessee for condonation of delay in filing the income tax returns for the assessment year 2006-07 within the time available as per the IT Act, is not acceptable. It is based on the said report, the Chief Commissioner of Income Tax rejected the application for condonation of delay after nearly 6 years of filing of the petition which is wholly unjustifiable and the same added to the hardship and misery suffered by the assessee. In support of his contention, learned counsel placed reliance on the judgment of the Hon'ble Bombay High Court in the case of **ARTIST TREE PVT. LTD., V/S. CENTRAL BOARD OF DIRECT TAXES AND OTHERS**, reported in **(2014) 369 ITR 691**.

3. Learned counsel Sri.Jeevan J. Neeralagi, appearing for the Revenue justifying the impugned order submitted that the material on record discloses that the financial reports and audit reports were compiled and

signed by the Managing Director of the assessee Company on 04.09.2006. If the accounts were finalized, the assessee could have easily filed the report of income within the statutory due date. Observing the same, the Assessment Officer has submitted a fresh report which has been duly considered by the Chief Commissioner of Income Tax while rejecting the application.

4. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

5. The factual matrix of the case as narrated above is not in dispute. The petitioner filed petition for condonation of delay under Section 119(2)(b) of the Act before erstwhile Income Tax-III, Bengaluru on 24.02.2009 and further a letter was addressed to Chairman, CBDT, New Delhi seeking permission to file the said return of income and requesting to allow the refund claim of Rs.30,83,829/-. The same was

forwarded to the Chief Commissioner of Income Tax, Bengaluru for necessary action. In terms of the advise made by the Authorities, the petitioner filed the return of income on 09.09.2009 declaring the total income of Rs.2,39,46,244/- and claimed refund of Rs.30,83,829/-. The application seeking condonation of delay before the Chief Commissioner of Income Tax was filed on 11.06.2010. The same came to be disposed of on 11.03.2016. In the context, it is worth referring to Section 119(2)(b) of the Act which reads as under:

“Section 119(2)(b) – The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize (any income-tax authority, not being a Commissioner (Appeals)) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;”

6. In terms of Section 119(2)(b) of the Act, CBDT is vested with the powers to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of period prescribed under the Act for making such application or claim and appeal and to deal with the same on merits in accordance with law. Instruction No.12/2003 contemplates that the cases where delayed claims of refunds are being considered would be taken up for scrutiny. Similar instruction No.13/2006, interalia provides that no interest would be admissible on the belated refund claims. Phrase “genuine hardship” was interpreted by the Hon’ble Apex Court in **B.M.MALANI V/S. COMMISSIONER OF INCOME TAX**. It was held that the genuine hardship means a genuine difficulty. The Bombay High Court in the case of **SITALDAS K. MOTWANI V/S. DIRECTOR – GENERAL OF INCOME TAX**, held that the expression genuine hardship used in Section 119(2)(b) of the Act should be construed liberal, particularly in

matters of entertaining of applications seeking condonation of delay. The same view was taken in another judgment of the Bombay High Court in the case of **BOMBAY MERCANTILE COOPERATIVE BANK LIMITED V/S. CENTRAL BOARD OF DIRECT TAXES**. It is also the case of the petitioner that it is not avoiding any scrutiny; the Authorities can verify the genuineness of the petitioner by taking up the matter for scrutiny. It is also not in dispute that the petitioner was regularly filing the return of income and a genuine tax payee. It is prima-facie apparent that only for the assessment year 2006-07, owing to the alleged crashing of the system, no income of return was filed within the prescribed time, the petitioner is not avoiding any scrutiny. The circumstance that financial report and audit reports were signed by the Managing Director on 04.09.2006 would not be a ground to reject the condonation of delay in filing the report. It cannot be said that the petitioner

has obtained any undue advantage of the delay in filing the income tax returns.

7. It is trite law that rendering substantial justice shall be paramount consideration of the Courts as well as the Authorities rather than deciding on hyper-technicalities. It is obvious that there is some lapse on the part of the petitioner, that itself would not be a factor to turn out the plea for filing of the return, when the explanation offered was acceptable and genuine hardship is established. It was with a fond hope of getting justice at the hands of the Chief Commissioner of Income Tax, petition was filed on 11.06.2010. However, no decision was taken for nearly 6 years. Finally on 11.03.2016, the said petition has been dismissed which has to be viewed seriously while rendering substantial justice to the parties.

For the reasons aforesaid, Writ Petition is ***allowed.***

The order at Annexure-A dated 11.03.2016 is set aside. The matter is remanded to the Chief Commissioner of Income Tax, Bengaluru i.e., respondent No.1 to re-consider the application/petition filed by the petitioner for condonation of delay under Section 119(2)(b) of the Act, in the light of the observations made above, in an expedite manner.

**Sd/-
JUDGE**

NC.