

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NO.18419 OF 2018 (T-IT)

BETWEEN:

VASUDEV ADIGAS FAST FOODS PVT. LTD.
No.36, 12TH MAIN, 27TH CROSS
JAYANAGAR, 4TH BLOCK, BANGALORE-560011
REP. HEREIN BY ITS DIRECTOR
MR. BIJU JOSE THOMAS.

... PETITIONER

(BY MS. TANMAYEE RAJKUMAR, ADV., FOR
MR. SURYANARAYANA T. ADV.,)

AND:

1. CENTRAL BOARD OF DIRECT TAXES
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI, DELHI - 110001
REP. BY THE DEPUTY COMMISSIONER
OF INCOME - TAX, (OSD) - OT & WT SECTION.
2. THE PRINCIPAL COMMISSIONER OF INCOME TAX -2
BMTc BUILDING
30 FEET ROAD, KORAMANGALA
BENGALURU - 560095.
3. THE INCOME TAX OFFICER
WARD 7(1)(3)
BMTc BUILDING
30 FEET ROAD, KORAMANGALA
BENGALURU - 560095.

... RESPONDENTS

(BY MR. JEEVAN J. NEERALGI, ADV.,)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER DATED 16.1.2018 PASSED BY THE 1ST RESPONDENT UNDER SECTION 119(2)(B) OF THE ACT (ANNEXURE-M) AND ALLOW THE PETITIONER'S APPLICATION DATED 13.10.2016 FOR CONDONATION OF FILING THE RETURN OF INCOME FOR THE ASSESSMENT YEAR 2014-15 AND ETC.

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

ORDER

Ms.Tanmayee Rajkumar, learned counsel for Sri.Suryanarayana T., learned counsel for the petitioner.

Mr.Jeevan J.Neeralgi, learned counsel for the respondents.

2. The petition is admitted for hearing. With consent of the learned counsel for the parties, the same is heard finally.

3. In this petition under Article 226 and 227 of the Constitution of India, the petitioner *inter alia* seeks a writ of certiorari for quashment of order dated 16.01.2018 passed by the Central Board of Direct Taxes under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) and to

allow the application submitted by the petitioner dated 13.10.2016 for condonation of delay in filing the return of income for the assessment year 2014-15.

4. Facts giving rise to the filing of the writ petition briefly stated are that in the financial year 2012-13, there was a change in the majority shareholding of the petitioner. Subsequently, there were several disputes between the erstwhile management of the Company i.e. promoters and new management i.e. investors of the petitioner Company. In 2014, a petition was also filed before the Company Law Board alleging oppression and mismanagement of the investors. In the aforesaid petition, an interlocutory application was also filed seeking appointment of an administrator to oversee the affairs of the Company as there was deadlock in the management of the petitioner. The Company Law Board appointed an administrator to oversee the affairs of the Company. The orders passed by the Company Law Board was challenged before this Court in which a

Bench of this Court passed an order in October 2014 by which an auditor was appointed to audit the books of accounts for the financial years 2012-13 and 2013-14.

5. The statutory audit of books of accounts of the petitioner was completed in February 2015. However, on account of continuing disagreement of the promoters and investors, there was deadlock in the adoption of audited accounts of the petitioner and the matter was referred to this Court for clarification with regard to the administrator's right to exercise a casting vote and appointment of new administrator on account of previous administrator having resigned from office. Thus, on account of circumstances beyond the control, the return of income for the assessment year 2014-15 was filed beyond the time prescribed under the Act along with an application under Section 119(2)(b) of the Act seeking condonation of delay.

6. The Central Board of Direct Taxes, by impugned order dated 16.01.2018, examined the return on merits

and *inter alia* held that the delay in filing the return of income was on account of extraordinary factors. It was further held that the reluctance of tax auditor to verify the veracity and correctness of the claim of the petitioner and the impact of differences and incorrectness in claim, has created a serious doubt on the correctness of claim made by the assessee in its return of income. In view of condition laid down in para 5(i) of the Circular No.9/2015 issued by the Central Board of Direct Taxes, the claim of the petitioner for condonation of delay is not admissible. Accordingly, it was rejected. In the aforesaid factual background, the petitioner has approached this Court.

7. Learned counsel for the petitioner submitted that the expression 'genuine hardship' used under Section 119(2)(b) of the Act has to be construed liberally. It is further submitted that while dealing with an application for condonation of delay, Central Board of Direct Taxes could not have examined the merits of the

claim of the petitioner. Learned counsel for the petitioner has also invited the attention of this Court to paragraph 3 of the order of the Central Board of Direct Taxes and has submitted that the Prl. Chief Commissioner of Income Tax, Karnataka and Goa as well as Additional Chief Commissioner of Income Tax and Assessing Officer had also made a recommendation that the delay in filing the return be condoned. However, the aforesaid aspects of the matter were not taken into account by the Central Board of Direct Taxes and the order has been passed in a mechanical manner. In support of his submissions, learned counsel for the petitioner has placed reliance on the decision in the case of '**SITALDAS K.MATUANI Vs. DIRECTOR GENERAL OF INCOME TAX (INTERNATIONAL TAX, NEW DELHI)**' (2010) 187 TAXMAN 44 BOMBAY.

8. On the other hand, learned counsel for the revenue, while supporting the order passed by the Central Board of Direct Taxes, has submitted that the

order is just and proper and does not call for any interference. It is further submitted that the question of condonation of delay is a discretionary matter and the aforesaid discretion has been exercised in a clear manner by the Central Board of Direct Taxes and therefore, no interference is called for, for exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In support of his submissions, learned counsel for the respondent has placed reliance on the decision of this Court in the case of '**SHARAVATHY CONDUCTORS (P) LTD. Vs. CHIEF COMMISSIONER OF INCOME TAX, BENGALURU-2' (2017) 87 TAXMAN.COM 244 (KARNATAKA)**.

9. I have considered the submissions made by the learned counsel for the parties and have perused the record. Section 119(2)(b) of the Act empowers the Board to condone the delay for avoiding genuine hardship in any case or class of cases by general or special order. The expression 'genuine hardship' was

considered by the Supreme Court in the case of **'B.M.MALANI Vs. CIT' (2008) 10 SCC 617** and it has been held that the ingredients of the expression 'genuine hardship' must be determined keeping in view the discretionary meaning thereof and legal conspectus attending thereto. It is well settled in law that the expression 'genuine hardship' should be construed liberally so as to advance the cause of justice. It is equally well settled legal proposition that the authority must satisfy itself with regard to the genuineness of the claim. However, the same does not mean that the authority should examine the merits of the claim closely and come to the conclusion that the applicant's claim is bound to succeed as it amounts to prejudging the case.

10. In the backdrop of the aforesaid well settled legal position, the facts of the case may be examined. From perusal of paragraph 3 of the order passed by Central Board of Direct Taxes, it is evident that the Prl. Chief Commissioner of Income Tax, Additional Chief

Commissioner of Income Tax as well as Assessing Officer, had recommended that the delay in filing the return be condoned. From perusal of paragraphs 5 to 9 of the impugned order, it is evident that the Central Board of Direct Taxes has examined the return filed by the petitioner on merits and thereafter, in paragraph 10 has recorded the conclusion which reads as under:

"10. The reluctance of tax auditor to verify the veracity and correctness of the claim of petitioner and the impact of differences and incorrectness in claim, as discussed above has created a serious doubt on the correctness of claim made by the assessee in its return of income. In view of condition laid down in para 5(i) of CBDT circular No.9/2015 dated 9th June, 2015, as discussed above, the claim of petitioner for condonation of delay is not admissible and hence stands rejected."

11. Thus, from perusal of paragraph 10 of the impugned order, it is evident that it is cryptic and while deciding the application filed by the petitioner under

Section 119(2)(b) of the Act, the claim of the petitioner has been dealt with on merits. It is also pertinent to mention that the circular dated 09.06.2015 does not apply in cases of Central Board of Direct Taxes. However, by placing reliance on the aforesaid decision, the claim of the petitioner for condonation of delay has been held to be not admissible and has been rejected.

12. In the considered opinion of this Court and in the fact situation of the case as well as bearing in mind the well settled legal proposition that the expression 'genuine hardship' should receive liberal consideration, the instant case was a fit case for condonation of delay. In view of the preceding analysis, the impugned order dated 16.01.2018 passed by the Central Government is hereby quashed and delay in filing the return of income for the assessment year 2014-15 is condoned.

In the result, the petition is allowed.

**Sd/-
JUDGE**

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