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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 29th OF JUNE, 2022

WRIT PETITION No. 12861 of 2021

Between:-

BARDOLI JAN KALYAN AVAM VIKAS SAMITI
KATNI THR. ITS CHAIRMAN SHRI VINOD
KUMAR BILOUHAN, 161, JHINJHRI
GATARGHAT ROAD KATNI (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI SAPAN USRETHE, ADVOCATE)

AND

1. CENTRAL BOARD OF DIRECT TAXES THR. ITS
CHAIRMAN MINISTRY OF FINANCE
DEPARTMENT OF REVENUE NEW DEHLI -110001
2. COMMISSIONER OF INCOME TAX EXEMPTION
2ND FLOOR, METRO WALK BUILDING BITTAN
MARKET, BHOPAL (MADHYA PRADESH)
3. INCOME TAX OFFICER WARD EXEMPTION
CENTRAL REVENUE BUILDING, NAPIER TOWN
JABALPUR (MADHYA PRADESH)
4. DEPUTY COMMISSIONER OF INCOME TAX
DEPARTMENT CENTRAL PROCESSING CENTRE
INCOME TAX DEPARTMENT BANGALURU,
KARNATAKA

.....RESPONDENTS

(BY SHRI SANJAY LAL, ADVOCATE)

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*This petition coming on for hearing this day, JUSTICE SUJOY
PAUL passed the following:*

ORDER

With the consent finally heard.

The challenge is mounted in this petition filed under Article 226/227 of the Constitution to the order dated 15/09/2020 (Annexure P/1) whereby application filed by the petitioner for condonation of delay was dismissed.

Criticising this order, learned counsel for the petitioner submits that for the Assessment Year 2017-18, the petitioner was required to upload a Form 10B alongwith return whereas because of an error on the part of Chartered Accountant erroneously Form 10BB was uploaded. The petitioner apprised the authority by preferring representation (Annexure P/7) dated 13/03/2020 and prayed for condonation of delay of this mistake.

Shri Sapan Usrethe, learned counsel for the petitioner submits that for subsequent Assessment Years 2018-19 and 2019-20, the petitioner rectified the said mistake and filed the correct Form along with return i.e. Form 10B. Thus, the petitioner's bonafide mistake ought to have been condoned by the Commissioner of Income Tax (Exemption), Bhopal.

Shri Sapan Usrethe, learned counsel for the petitioner submits that perusal of entire impugned order dated 15/09/2020 makes it clear that there is no *iota* of discussion in the order as to why mistake committed by Chartered Accountant should not be treated as a bonafide mistake. For this purpose, he placed reliance on a judgment of Punjab & Haryana High Court in **CWP No.9339/2008 (National Horticulture Board vs. Chief CIT)**. Speaking for the Division Bench, Hon'ble Shri Justice Adarsh Kumar Goel (as his Lordship then was) opined that once provision having been substantially complied with, the audit report should have been taken into account even if, strictly speaking, it was not filed with the return and not in Form 10BB but in Form 10B as stated in the impugned order. This made no difference to the spirit of the requirement

laid down.

Next reliance is placed on a Division Bench judgment of Delhi High Court in the case of **G.V. Infosutions (P) Ltd. vs. Deputy Commissioner of Income Tax & another**. Hon'ble Shri Justice S. Ravindra Bhat (as his Lordship then was) speaking from the Division Bench has taken care of inadvertent mistake and held thus :-

"8. The rejection of the petitioner's application under s. 119(2)(b) is only on the ground that according to the Chief CIT's opinion the plea of omission by the auditor was not substantiated. This Court has difficulty to understand what more plea or proof any assessee could have brought on record, to substantiate the inadvertence of its advisor. The net result of the impugned order is in effect that the petitioner's claim of inadvertent mistake is sought to be characterised as not bona fide. The Court is of the opinion that an assessee has to take leave of its senses if it deliberately wishes to forego a substantial amount as the assessee is ascribed to have in the circumstances of this case. "Bona fide" is to be understood in the context of the circumstance of any case. Beyond a plea of the sort the petitioner raises (concededly belatedly), there can not necessarily be independent proof or material to establish that the auditor in fact acted without diligence. The petitioner did not urge any other grounds such as illness of someone etc., which could reasonably have been substantiated by independent material. In the circumstances of the case, the petitioner, in our opinion, was able to show bonafide reasons why the refund claim could not be made in time."

(Emphasis Supplied)

Another Division Bench order of Gujarat High Court in the case of **Trust for reaching the unreached through Trustee, Nimittaben N Bhatt vs. Commissioner of Income Tax (Exemption), Ahmedabad**, in which Hon'ble Shri Justice Ilesh J. Vora speaking for the Bench opined as under :-

"32. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the

approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, the respondent might be justified in denying the exemption under Section 12 of the Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially satisfied the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned."

(Emphasis Supplied)

Along with petition, the petitioner has filed a judgment of this Court reported in **(1998) 230 ITR 0714 (Commissioner of Income Tax vs. Devradhan Madhavlal Genda Trust)**.

In the light of these judgments, learned counsel for the petitioner submits that the application for condonation of delay is rejected in a hyper-technical manner. The impugned order dated 15/09/2020 is liable to be axed and the authority may be directed to reconsider the application for condonation of delay in its correct spirit.

Shri Sanjay Lal, learned counsel for the respondent opposes the prayer and submits that a conjoint reading of both the returns filed by the petitioner shows that petitioner had an opportunity to avail statutory alternative remedy but did not avail the said remedy. In this view of the matter, the petitioner has no right to get the application allowed and the delay condoned. He further submits that the petitioner in the subsequent Assessment Year 2019-20 had deposited the correct Form which itself shows that his previous Form 10BB was erroneously deposited.

No other point is pressed by learned counsel for the parties.

We have heard the parties at length and perused the record.

Even assuming that pursuant to certain communications filed with the return and the petition, the petitioner had an opportunity to avail alternative remedy, fact remains that application for condonation of delay was indeed maintainable. This is not a case of respondent that said application was not maintainable because petitioner did not avail the alternative remedy. The application for condonation of delay was also not dismissed on this ground and for this reason.

This is trite that validity of an order of statutory authority must be seen on the basis of grounds mentioned therein and not for any other reason. A Constitution Bench of Supreme Court in the case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others reported in 1978 (1) SCC 405** opined that when validity of an order of the statutory authority is called in question, the validity of order needs to be examined on the basis of grounds mentioned therein. The orders cannot be validated on the basis of counter affidavit or supplementary counter affidavit. The relevant portion of this judgment reads as under :-

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older.

(Emphasis Supplied)

In view of this matter, the reasons assigned in the order dated 15/09/2020

alone is to be seen for the purpose of condonation of delay. We find substance in the argument of learned counsel for the petitioner that the delay or mistake is on the part of Chartered Accountant was not taken into account at all in the said order whereas the judgment of Punjab & Haryana High Court and other judgments cited by Shri Sapan Usrethe, were relevant on the said point.

Considering the aforesaid, we deem it proper to set aside the impugned order dated 15/09/2020 (Annexure P/1) and remit the matter back before the CIT (Exemption), Bhopal to reconsider and decide the matter afresh in accordance with law.

It is made clear that this Court has not expressed any opinion on the merits of the case.

The said authority shall make endeavour to decide the said application within 45 days from the date of production of copy of this order.

With the aforesaid observation, the writ petition is **allowed and disposed off.**

(SUJOY PAUL)
JUDGE

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(PRAKASH CHANDRA GUPTA)
JUDGE

