IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14411 of 2016

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LALJIBHAI MOHANBHAI GHORI....Petitioner(s)

Versus

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

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Appearance:

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

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 06/09/2016

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has prayed for a direction to the respondent to accept the revised return for the assessment year 2011-12.

2. Brief facts are as under:

The petitioner is an individual. For the assessment year 2011-12, the petitioner had filed a late return declaring total income of Rs. 4,39,410/-. According to the petitioner, in such return, he had mistakenly offered income from sale of agricultural land to capital gain tax though the same was exempt in terms of the provisions contained in the Income Tax Act,1961 ['the Act' for short]. Realizing such mistake, the petitioner sought to file a revised return on 08.11.2012. He also moved an application dated 20.12.2012 citing reasons for filing late return and requested the authority to exercise powers under Section 119 of the Act and to treat the original return as having been filed in time and to accept the revised return.

3. Such application came to be dismissed by the respondent by an order dated 03.12.2014 stating that such petition cannot be accepted since there is no genuine and satisfactory reason for late filing of return. Thereupon, the petitioner filed the present petition.

4. Learned counsel for the petitioner submitted that:

(i) The petitioner had shown sufficient reasons for filing late return;

(2) In the original return, sale of agricultural land was shown as capital gain which was not taxable;

(3) The petitioner, therefore, had to file revised return which ought to have been accepted.

5. Counsel submitted that now relevant portion of Section139 of the Act has been amended so that it is open to the assesee to revise return even in case of late filing of return. This was done to obviate undue hardship. Such provision should, therefore, be seen as retrospective.

6. From the materials on record, we gather that admittedly, the return filed by the petitioner was late by merely seven months. In order to explain such delay, the petitioner contended that the documents were misplaced in the Chartered Accountant's office and he, therefore, could not have filed the return in time. He further stated that his wife was suffering from “some severe illness for which she was operated on 14.02.2012 and after her recovery, I was in a position to handover an another set of documents to my Chartered Accountant's office for filing return”.

7. The explanation offered by the petitioner cannot be accepted unless sufficiently strong reasons are shown. It would not be possible to find fault with the Revenue authorities in exercising powers under Section 119 of the Act. Routine, liberal and overindulgent approach in condoning delay would open floodgates of applications, completely throwing the tax assessment and recovery machinery out of gear. We may recall, the grounds raised by the petitioner for delay of nearly seven months were that Chartered Accountant's office lost the papers and therefore, could not file return and further, that due to the illness of his wife, he could not follow filing of return with the Chartered Accountant.

8. A minor or a few days' delay could perhaps be explained by

suggesting that the Chartered Accountant's office lost the papers. The delay was substantial. Further, in the application that the petitioner filed, he only stated that his wife had some severe illness without specifying the nature of illness, its duration and the kind of treatment needed. These aspects would be relevant since the operation that the petitioner claimed his wife underwent, took-place on 14.02.2012 i.e. long after the due date for filing the return, in the end of July of previous year. Thus, very clearly, the illness of wife had nothing to do with the petitioner's missing the date for filing the return. This additional ground, therefore, also does not in any manner, explained the delay.

9. The amendment under Section 139 does not in any manner suggest either explicitly or by necessary implication the same is meant to apply to all pending proceedings.

10. In the result, the petition is dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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