



% 06.02.2008

Present: Ms. Sonia Mathur, Advocate for the Petitioner.

+ Crl. Rev. P. No.776/2007; Crl. M.A. No.14671/2007 & Crl. M.A. No.14670/2007

The present matter relates to late filing of income tax returns by respondent No.1 Company for the assessment year 1988-89. The return is stated to have been filed but delayed by more than twelve (12) months.

The petitioner Department is aggrieved by the impugned order dated 5.7.2005 wherein respondent No.3 has been discharged since there was no material placed on record to show that he was either the Director of the company or looking after the day-to-day affairs of the company.

The present petition is also accompanied by an application for condonation of delay in refilling which is to the extent of 600 days.

Learned counsel for the petitioner contends that in matter of refilling a more liberal view has to be taken as observed by this Court in CIT Vs. Bharat Heavy Electricals Ltd. 1987 168 ITR 499. There can be no dispute about this proposition but it cannot be a license for the department to cure the defects as and when it pleases. The defects have been cured after 600 days. All that is stated in the application is that the objections included objection in regard to certain orders being dim and requiring re-typing, but



the Steno of the counsel fell ill due to conjunctivitis and thus the delivery of the said appeal got delayed by a week. Thereafter the Clerk of the counsel misplaced the petition. It is inconceivable that none from the Department made an endeavour to contact the counsel once a reasonable time period had elapsed to find out the fate of the case. If it would be so, it would be a negligence on the part of the Department. There is no communication to place on record as to what enquiries have been made by the Department or steps taken to find out the fate of the case. I, thus, find no ground to condone the delay.

Be that as it may, I have also deemed it appropriate to examine the merits of the controversy. A perusal of the impugned order shows that the department did not place an iota of material on record to show that respondent No.3 was even the Director much less a Director looking after the day-to-day affairs of the company. The only submission of the learned counsel for the petitioner is that there was material in possession of the department as is apparent from the statement made by the officer who appeared before the trial court but it is not disputed that the said material was not placed before the trial court for its benefit. If the Department chooses to keep important material in its pocket without producing it before the trial court the natural consequences are bound to follow. The court cannot be expected to go and hunt for the material for the department. Such material cannot be permitted to be produced at this stage



especially when there is no explanation for its non-production  
before the trial court.

I find no infirmity in the impugned order.

Dismissed.

FEBRUARY 06, 2008  
*b'nesh*

  
SANJAY KISHAN KAUL, J.