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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st November, 2012

+ W.P. (C) 6964/2009

KIWANIS CLUB OF NEW DELHI Petitioner
Through: Mr. Saurabh Jain, Advocate.

versus

DIRECTOR OF INCOME TAX (EXEMPTIONS) Respondents
Through: Ms. Gayatri Verma, Advocate on
behalf of Mr. Sanjeev Sabharwal, Sr.
Standing Counsel for the Revenue.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R. V. EASWAR, J: (OPEN COURT)

1. The petitioner in this writ petition is the Kiwani club of New Delhi which was registered as a charitable organisation under Section 12A of the Income Tax Act, 1961 ('Act', for short). Its President is a citizen of India. In respect of the assessment year 1998-99, relevant for the financial year that ended on 31.03.1998, the assessee received rents from its properties. While remitting the rent, the tenants had deducted tax and deposited the same with the banks. The following are the details of the tax deducted from the rents: -



	Name	T.D.S. Amount	Deposited with
1.	M/s. Roland Berger	₹7,27,353/-	PNB, G.K. I, New Delhi
2.	Enterprise Nexus communication Pvt. Ltd.	₹1,50,000/-	S.B.I., Worli (N), Mumbai
		₹8,77,353/-	

2. In the return of income filed on 10.10.2000, the petitioner mentioned in Part-III of the return that an amount of ₹8,77,353/-, being the tax deducted at source as above, was refundable. Apparently, the return was neither processed under Section 143(1) nor any notice under Section 143(2) was issued for the purpose of making an assessment under Section 143(3) and therefore, no refund was granted to the petitioner. The petitioner made several representations to the concerned authorities on various dates, including the Grievance Cell of the income tax department seeking the refund together with interest up-to-date but to no avail. Thereafter on 19.04.2005 a letter was addressed by the petitioner to the Central Board of Direct Taxes (CBDT) explaining the delay in making the refund and enclosing a copy of the return of income. A request was made that the delay in filing the return may be condoned and the refund be granted with interest keeping in mind the fact that the petitioner was a philanthropic organization established for the benefit of providing artificial limbs and therapy and for ensuring economic empowerment of women. In the further letters sent to the income tax authorities, the petitioner appears to have enclosed certificates from the banks. After protracted correspondence, the Director of Income Tax



(Exemptions), Delhi, who is the respondent herein, passed an order under Section 119(2)(b) of the Act turning down the request of the petitioner for condonation of the delay in filing the return of income and in claiming refund of ₹8,77,353/-.

3. It is the order passed by the respondent as above on 06.06.2007 that is impugned in the present writ petition. The contention of the counsel for the petitioner is that the petitioner being a philanthropic or charitable organization established for the benefit of the differently-abled and for the empowerment of women, the refusal to refund the tax deducted at source has caused genuine financial hardship and has impeded the charitable activities of the petitioner. It is further urged that the relevant tax deduction certificates and certificates from the banks for deposit of the tax were furnished to the respondent and in these circumstances, the order passed by the respondent refusing to condone the delay in filing the return of income and in refunding the TDS was arbitrary and illegal and, therefore, a direction be issued to the respondent to refund the amount along with interest till date.

4. The contention of the revenue, articulated in the counter affidavit is that the return of income was due to be filed on 31.10.1998 but was actually filed only on 10.10.2000 which is beyond the period prescribed under Section 139(1) and Section 139(4) of the Act and, therefore, it was *non est*, on the basis of which no processing under Section 143(1) or no assessment under Section 143(3) of the Act can be made. It is pointed out that no TDS certificates were enclosed with the return of income either in original or in photocopies, nor was any audit report attached to the return of income. It is further contended that after receipt of the petitioner's application dated 27.08.2003 in the office of the



Grievance Cell, a letter was issued to the petitioner on 10.11.2003 that the original TDS certificates were not enclosed with the return. Clarification was sought from the petitioner so that the grievance can be addressed. Even after this letter the original certificates of TDS were not filed and, therefore, the grievance of the petitioner could not be addressed. It is further stated in the counter affidavit that the reason advanced in the application made by the petitioner to the CBDT, through the respondent, on 19.04.2005 for the delay in filing the return was not found to be satisfactory. It is stated that the request for condonation of the delay in filing the return was not rejected arbitrarily but a report was called for by the respondent from the concerned assessing officer who reported that there existed no cause for the delay in filing the return. It is emphasised that the return was filed without the original TDS certificates and in the absence of the original certificates, no refund can be granted since there is no proof for making the deposit. It is further stated that the certificates from the banks furnished by the assessee were bereft of any detail and therefore the deposit cannot be traced to the credit of the petitioner and, therefore, no action can be taken on the basis of such certificates. It is, thus, urged on behalf of the revenue that the petition be dismissed.

5. It is not disputed by the petitioner that the return of income was filed beyond the time limit prescribed by Section 139(1) and even Section 139(4) of the Act. Under section 139(1) of the Act, the petitioner ought to have filed the return of income on or before 31.10.1998. Under section 139(4) of the Act, the assessee who has not furnished a return within the time allowed under Section 139(1) or within the time allowed under a notice issued under Section 142(1), may furnish the return at any time before the expiry of one year from the end of



the relevant assessment year or before the completion of the assessment, whichever is earlier. Under this sub-section the petitioner ought to have filed the return on or before 31.03.2000. However, the return was filed only on 10.10.2000. Under general principles, a refund of taxes can be granted only where the return of income is processed under Section 143(1) of the Act or an assessment is made under Section 143(3) of the Act after inquiry. There is no provision in the Act to grant a refund without the return being processed under Section 143(1) of the Act or an assessment being made under Section 143(3) of the Act. In the case of the petitioner since the return of income was filed not only beyond the time limit prescribed by Section 139(1) of the Act but also beyond time limit prescribed by Section 139(4) of the Act, the return could neither be processed under Section 143(1) of the Act nor could an assessment be made under Section 143(3) of the Act.

6. Moreover, the petitioner has not enclosed the original TDS certificates along with the return of income and this is evident from the fact that in the column showing the enclosures to the return of income, the petitioner has not mentioned that any original TDS certificates were enclosed. Therefore, there is no acceptable evidence for the tax deducted at source. In the course of the correspondence with the income tax authorities the petitioner was able to file only copies of the TDS certificates in Form No.16A, but the originals were not produced or filed. It would be contrary to law to grant refunds on the basis of the photocopies of the certificates without the originals being produced for verification or filed. The furnishing of the bank certificates also does not take the case of the petitioner further because a perusal of the certificate issued on 13.03.2006 by the Punjab National Bank, Greater Kailash, Part-I, New Delhi



shows that apart from showing the date of deposit, the amount deposited, the challan number and the date of onward submission to the government, no details as to whose credit the tax was deposited are shown. From the certificate it is not possible to establish that the tax was deposited to the credit of the petitioner. The PAN number of the person to whose credit the tax was deposited is not shown in the certificate. The respondent was, therefore, right in not acting upon the certificate issued by the bank. Thus there is no evidence for the deposit of the TDS to the credit of the petitioner.

7. The order passed by the respondent on 06.06.2007, which is impugned in the present proceedings, under Section 119(2)(b) of the Act does not, in our opinion, suffer from any infirmity. Under this provision, the CBDT may, if it considers it desirable or expedient so to do for the removal of genuine hardship in any case or class of cases, by general or special order, authorise any income tax authority other than the CIT (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 the Act for making such application or claim and deal with the same on merits in accordance with law. The respondent, it is not denied, has been duly authorised by the CBDT for the purpose of processing the application filed by the petitioner. The reason advanced by the petitioner for the delay in filing the return of income is that one Bhai Mohan Singh, the treasurer of the petitioner, who signed the belated return of income was out of the country. This reason was not found correct by the respondent, since he noticed that the Form No.10, which was annexed to the return of income was dated 30.10.1998 and was signed by the treasurer himself. He had also signed the audited accounts attached to the return and these accounts were



signed on 21.05.1999; therefore the reasons for the delay in filing the return of income were found to be factually incorrect by the respondent even on the basis of return and the annexures thereto. In these circumstances, the respondent has rightly stated that the explanation of the petitioner and the reasons for the delay cannot be accepted, as they were not beyond the control of the petitioner.

8. As regards the reasons given by the petitioner in its application dated 21.12.2006, namely that there were serious differences within the family which was concerned with the affairs of the petitioner, due to which Bhai Mohan Singh was forced to relinquish the treasurership of Ranbaxy Laboratories Ltd., the respondent has noticed that these reasons were an afterthought as they were not given in the application made by the petitioner for the first time on 19.04.2005; he has also stated that there was no supporting evidence to show that because of the differences in the family the concerned files and records could not be traced.

9. The petitioner has been given due opportunity to explain the delay in filing the return of income as also the delay in making the claim of refund on 19.04.2005. According to the CBDT's directions, the claim for refund should have been made within a period of six years from the end of the relevant assessment year. The petitioner ought to have made the claim on or before 31.03.2005. The claim was however made on 19.04.2005 and it was followed up by another application dated 21.12.2006. The respondent has in its order found that different reasons which are contradictory have been given in the two applications for condonation of delay. He has, therefore, refused to condone the delay. Having regard to the limits of judicial review, we are unable to say that the petitioner has been treated unfairly or that the decision of the respondent suffers



from any irrationality or perversity. All the relevant facts have been taken into consideration in the decision making process. In the circumstances of the case, we are unable to say that the decision not to condone the delay is arbitrary or is so irrational that no person properly instructed as to the facts and the legal position would have come to such a conclusion. Moreover, the petitioner has not been able to produce the original TDS certificates at any point of time. Thus, even if for argument's sake the delay is treated as explained, no relief can be granted to the petitioner as prayed for, in the absence of the original TDS certificates.

10. For the above reasons, the writ petition is dismissed with no order as to costs.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

NOVEMBER 1, 2012

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