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

+ W.P.(C) 1819/2022

SH UPDESH KAPUR

..... Petitioner

Through Ms.Monisha Handa, Advocate.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX &
ANR. Respondents

Through Mr.Sunil Agarwal, standing counsel
for the Revenue.

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Date of Decision: 31st January, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (ORAL)

C.M.No.5250/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

W.P.(C) 1819/2022

1. The matter has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 23rd August, 2021 passed by the Respondent No.1 for the Assessment Year 2018-19. Petitioner seeks condonation of delay in filing return of the income by the Petitioner for the Assessment Year 2018-19.
3. Learned counsel for the Petitioner states that the Petitioner is an NRI based in the UK who had received death compensation from Pepsu Road



Transport Corporation against the accidental death of his wife in the Financial Year 2017-18. She states that the Petitioner was issued a manual form 16A showing interest of Rs.75,12,950/- and TDS of Rs.15,02,590/-, however the same was not reflecting in Petitioner's 26AS. She states that the Petitioner filed grievances dated 27th May, 2019 and 28th May, 2019 with the Respondents pursuant to which the Petitioner's 26AS was updated and the TDS was reflected in it on 11th March, 2020.

4. Learned counsel for the Petitioner states that since the Petitioner was delayed in filing his return for the Assessment Year 2018-19, the Petitioner preferred an application dated 11th March, 2020 under Section 119(2)(b) of the Income Tax Act, 1961 seeking condonation of delay in filing the return. However, she states that the Respondents rejected the Petitioner's application without appreciating that the Petitioner was not able to file his return as the TDS was not reflecting in petitioner's 26AS at the time of due date of filing the ITR for the Assessment Year 2018-19. She further states that the Respondents while considering the Petitioner's application for condonation of delay, exceeded its jurisdiction by coming to the conclusion that TDS deducted on interest on delayed payment of accidental compensation should not be refunded. She emphasises that the Petitioner was not given an opportunity to urge his case on merits.

5. Issue notice. Mr.Sunil Agarwal, standing counsel, who appears on advance notice, accepts notice on behalf of the Respondents. He prays for some time to obtain instructions.

6. However, keeping in view the impugned order, this Court is of the view that no adjournment is required. In fact, the Petitioner's application for condonation of delay has been rejected in the present case without giving



any reason. In the impugned order, the Respondents had examined the Petitioner's case on merit and rejected the claim of the Petitioner on the ground that the same was not genuine. In the opinion of this Court, the Respondents by deciding an application for condonation of delay has effectively passed an assessment order without giving an opportunity to the Petitioner to argue his case, which is contrary to law.

7. Consequently, the impugned order dated 23rd August, 2021 is set aside and the delay in filing return of the income by the Petitioner for the Assessment Year 2018-19 is condoned. The Assessing Officer is directed to take up the matter on merit and pass a reasoned order, in accordance with law, after giving an opportunity of hearing to the Petitioner. With the aforesaid direction, the present writ petition stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

JANUARY 31, 2022
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