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

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Date of Decision : 15.09.2025

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W.P.(C) 415/2025 & CM APPL. 2081/2025

UDIT GOYAL

..... PETITIONER

Through: Mr. Asheesh Jain, Sr. Adv., Mr. Shahrukh Ejaz and Mr. Danish Khan, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI 12

..... RESPONDENTS

Through: Mr. Vipul Agrawal (SSC) with Ms Sakshi Shairwal (Jr. SC), Mr. Akshat Singh (Jr. SC) and Mr. Gaorang Ranjan (Adv.) and Ms Harshita Kotru (Adv.) for respondent/Revenue.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO, J. (ORAL)**

1. This petition has been filed with the following prayers:

*“a) Issue Writ of Certiorari quashing the impugned Order dated 30.05.2023 passed by the Commissioner of Income Tax under Section 119(2) of the Income-tax Act, 1961 while condoning the delay of 12 days in filing income-tax Return;**b) Issue Writ of Mandamus directing the Respondent to accept the Petitioner's Income Tax Return for Assessment Year 2021-22 and allow carry forward of Long Term Capital Loss of Rs. 41,85,770/- (Rupees Forty-One Lakh Eighty-Five Thousand Seven Hundred and Seventy Only);*



c) Issue appropriate Directions while quashing the Demand Notice issued by the Revenue under Section 143(1) of the Income-tax Act, 1961 and stay other consequential actions that may arise out of the Impugned Order; and
d) Any other direction as this Hon'ble Court deems fit in the interest of justice.”

2. In effect, the petitioner is challenging the order dated 30.05.2023 passed by the respondent, on an application under Section 119(2)(b) of the Income Tax Act, 1961 ('the Act') seeking condonation of delay in filing the Income Tax Return ('ITR') for the Assessment Year ('AY') 2021-22. The impugned order reads as under:

“An application requesting for condonation of delay in filing ITR for A.Y. 2021-22 in the case of Sh. Udit Goyal, PAN: BNBPG4952J was filed in this office for following reason:

” The assessee in his application mentioned that he filed ITR on 12.01.2022 u/s 139(4) of the Act declaring gross total income of Rs 11,44,302/-. He claimed loss under head LTCG amounting to Rs 41,85,770/- from sale of securities which was claimed as loss carried over. As the ITR was filed with delay of 12 days, CPC disallowed the loss carried forward. Now, Assessee has requested for condonation of delay u/s 119(2)(b) to allow carry forward of loss on the ground of covid pandemic during the period.”

After perusal of assessee's application and report of ITO, Ward-52(1), New Delhi which was duly forwarded by the Additional CIT, Range-52, New Delhi in this regard, it is found that in late December 2021, only schools, colleges, cinemas, gyms were closed and metro trains and buses were running with 50% capacity and assessee has enough time (about 5 months) to file his ITR. Hence, reason for not filing the ITR u/s 139(1) of the Act i.e. till 31.12.2021 does not seem to be genuine.

After considering the facts of the case in light of the provisions of CBDT, Circular No. 9/2015 dated 09.06.2015, it is found that there was no genuine hardship in filing return of



income. Hence, the application filed in above case for condonation of delay in filing of return for Assessment Year 2021-22 is hereby rejected.”

3. Some of the facts relevant to be noted are, the assessee filed his ITR on 12.01.2022 under Section 139(4) of the Act, declaring taxable income of Rs. 11,40,040/- while claiming loss under the head ‘*long term capital gain*’ amounting to Rs 41,85,770/- from the sale of securities as carried over.
4. It is a matter of record that the petitioner/assessee was required to file the ITR on or before 31.12.2021. So, in other words, the filing of the ITR was delayed by 12 days as the same was filed on 12.01.2022.
5. The assessee/petitioner filed an application dated 28.02.2023 seeking condonation of delay in filing the return of income. The grounds for delay as submitted by the assessee primarily rested on COVID-19 pandemic, (‘the pandemic’). The same was rejected by the respondent in terms of the impugned order which we have already reproduced.
6. The submission of learned Senior Counsel for the petitioner is that the respondent has failed to appreciate that limitation would not come as a hindrance to do substantial justice. In any case, the delay was inadvertent due to the second and third waves of the pandemic. In late December, 2021, the assessee’s office was working with limited staff while trying hard to meet the deadlines. The delay was not deliberate/wilful. It was on account of genuine hardship that the ITR could not be filed on time.
7. According to him, there is no dispute that the pandemic variant ‘*Omicron*’ was hovering till December, 2021. Restrictions followed, even after that, on various services.



8. According to the counsel, the respondent failed to exercise the discretionary power under Section 119 of the Act to further the cause of equity. It is his submission that the respondent has also failed to follow the mandate of Section 119(2)(b) whereby the respondent was to focus on evaluating sufficiency of reasons for delay rather than merit.

9. He stated that the impugned order overlooks loss under sale of securities claimed by the assessee and return filed by him, demonstrating the assessee's intention to comply with applicable laws. It is also his submission that the impugned order is without any rationale/reasoning and merely states that the case is not a case of genuine hardship on merits as per the Central Board of Direct Taxes ('CBDT') Circular of 9/2015. The impugned order fails to consider that the assessee had already paid total taxes of Rs. 1,50,985/- against the total payable tax of Rs. 29,643/- resulting in a refund of Rs. 1,21,340/-.

10. He relied upon the judgment of this Court in the case of **Ramesh Kumar Shokeen vs. Pr. Commissioner of Income Tax-22 & Ors.**, in **W.P.(C) 13112/2018** wherein it is held that the authority must record proper reasons while exercising powers under Section 119(2)(b) of the Act. He has also heavily relied upon the order of the Supreme Court dated 23.03.2020 in **Suo Motu Writ Petition (Civil) No.3/2020**, wherein the Court took *suo moto* cognizance of the difficulties faced by litigants in filing petitions, application, suits, appeals, etc, within the limitation period prescribed under general/special law. He stated that due to the second wave of the pandemic, the order of the Supreme Court was extended till 28.02.2022 and as such the present case squarely falls within the said period.



11. He also relied upon the CBDT Circular No. 01/2022 issued on 11.01.2022 wherein timelines were extended for filing ITR and various reports of audit for the AY 2021-21 for a certain category of taxpayers.

12. According to him, the date of tax audit was extended till 15.02.2022 and the date for filing tax return was extended till 15.03.2022 which indicates lenient view must be taken due to hardship at the time of the pandemic.

13. It is his submission that the delay was not deliberate and corrective actions were taken i.e., ITR filed, showing *bona fide* conduct.

14. On the other hand, learned counsel for the respondent would oppose the writ petition by stating that the Circular No. 09/2015 requires the tax payer to prove that the delay was caused by circumstances beyond his control resulting in genuine hardship.

15. According to him, the loss of carry forward benefits is not allowed in belated ITRs in respect of any losses from the head business/profession and capital gains and accordingly Centralised Processing Centre ('CPC') disallowed the carry forward of long term capital loss amounting to Rs.(-) 41,85,770/- in the petitioner's case. He also stated merely referring to the pandemic is insufficient to justify the delay. The impugned order dated 30.05.2023 rejecting the petitioner's condonation application under Section 119(2)(b) of the Act was passed after due application of mind and in accordance with settled law and CBDT Circular No. 09/2015.

16. He also stated that the due date for furnishing the return of income for the AY 2021-22 was 31.07.2021 which was extended to 30.09.2021 and thereafter till 31.12.2021 and as such the petitioner had ample time between July 2021 to December 2021 to file the ITR but the same was not filed



within the time stipulated. No exceptional circumstances were shown for the delay that had occurred in filing their ITR. In support of his contention, he also relied upon the judgment of the Supreme Court in the case of ***B.M Malani vs. CIT, (2008) 10 SCC 617.***

17. Having heard the learned counsel for the parties, and perused the record, the short issue which arises for consideration is whether the respondent is justified in rejecting the application filed by the petitioner herein seeking condonation of delay of twelve days in filing the ITR. There is no dispute that as per circulars issued from time to time, the period to file the ITR was initially till 31.07.2021 for the AY 2021-22 which was extended till 31.10.2021, thereafter till 30.11.2021 and finally till 31.12.2021. The petitioner had filed the return on 12.01.2022.

18. It may be stated here that Section 119(2)(b) of the Act empowers the CBDT, if it considers it desirable or expedient so to do, for avoiding genuine hardship in any case or class of cases by general or special order, authorize any income tax authority, not being a Joint Commissioner (Appeals) or a Commissioner (Appeals), to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under the Act for making such application of claim and deal with the same on merits in accordance with law.

19. The exercise of power by the authority is regulated by empowering the various officers on the basis of monetary effect. The Principal Commissioner of Income Tax ('PCIT') had considered the application filed by the assessee seeking condonation of delay and has primarily stated that in the month of December 2021, the metro, trains and buses were running with



50% capacity and as such the assessee had enough time to file his ITR. Hence, the non-filing of the ITR does not seem to be genuine.

20. The conclusion of the PCIT is in the light of the provisions of the CBDT Circular No. 09/2015 dated 09.06.2015 to hold that there was no genuine hardship in filing the return of the income.

21. The Supreme Court in the case of ***B.M Malani (supra)*** on which reliance was placed by the learned counsel for the petitioner has interpreted the word ‘*hardship*’ and held in paragraph 16 that ‘genuine’ means not fake or counterfeit, real; not pretending. In paragraph 18, the Supreme Court held, the ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof, and the legal conspectus attending thereto. For the said purpose, another well known principle namely, a person cannot take advantage of his own wrong may also have to be borne in mind.

22. The Gujarat High Court in the case of ***Gujarat Electric Co. Ltd. vs. CIT, 255 ITR 396***, has held that the CBDT was not justified in rejecting the claim for refund on the ground that a case of genuine hardship was not made out by the petitioner and delay in claiming the relief was not satisfactorily explained.

23. We may also refer to the judgment of the Madras High Court in the case of ***Seshammal (R) vs. ITO (1999) 237 185 (Madras)*** wherein it held as under:

“7. This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter, seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the



hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund.”

24. We may also refer to the case of ***Sitaldas K. Motwani vs. Director General Of Income Tax, 323 ITR 223 (Bombay)***, wherein the Bombay High Court held that the phrase ‘*genuine hardship*’ in Section 119(2)(b) should have been construed liberally, even when the petitioner has complied with all the conditions mentioned in the Circular dated 12.10.1993. Paragraphs 15 and 16 of the judgment is reproduced as under:

“15. The phrase "genuine hardship" used in section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12-10-1993 The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late Refining to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after bearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be



justice-oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

16. Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”

25. In *Ramesh Kumar Shokeen vs. Pr. Commissioner of Income Tax-22 & Ors. W.P.(C) 13112/2018* on as which reliance has been placed by the learned counsel for the petitioner, this Court has observed as under:

“21. However, a bare reading of the impugned order would reflect that there is no element of any reasoning, rationale or discussion by the PCIT before arriving at the conclusion that the case of assessee does not fall under the ambit of genuine hardship.

22. At this juncture, it is fundamental to refer to the observations made by the Constitution Bench of Hon’ble Supreme Court in the decision of Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405], which are reproduced herein below:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by



fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“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 affect the actings 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 added]

23. Therefore, the reasons ascribed in the counter affidavit merit no consideration as the impugned order before us does not allude to any rationale before deciding the condonation of delay application filed under Section 119(2)(b) of the Act.

24. It is quintessential to understand that the PCIT while exercising the powers under Section 119(2)(b) of the Act acts like a quasi judicial body and is bestowed with the cardinal responsibility to pass a reasoned order. Thus, an order passed under Section 119(2)(b) of the Act which is devoid of any reasoning or rationale would be de hors the legislative mandate prescribed under the beneficial scheme of Section 119 of the Act.

25. It is strikingly clear that the impugned order is passed in a pedantic manner without any application of mind as



the order records no reasons before summarily rejecting the condonation of delay application.

26. Therefore, in light of the aforementioned discussion and judicial precedents analysed, we set aside the impugned order dated 28 March 2018 and remand the matter back to the desk of the concerned PCIT with a direction to consider the condonation of delay application filed by the assessee afresh, in accordance with the law and as per extant regulations.

27. In view of the aforesaid, the writ petition is allowed and disposed of accordingly, along with pending applications, if any.”

26. The CBDT Circular No. 09/2015 highlights the fact that while considering the case under Section 119(2)(b), it is to be seen that the case is of genuine hardship on merits.

27. The PCIT who admittedly exercises powers under Section 119(2)(b) of the Act acts as a quasi-judicial body, is under an obligation to pass a reasoned order.

28. Concedingly, the impugned order, except stating that there was no genuine hardship in filing the return of income, does not deal with the detailed application filed by the petitioner/assessee on 28.02.2023 in the following manner:

“Second wave of pandemic hit the country causing the lock down from mid of April 2021 to such an extent that the Government was forced to extend the various due dates in filing of returns vide Circular 9/2021 (Annexure-4) and the date of Non-Corporate Returns which was July31, 2021 was extended to December 31,2021.

During this period, the employees were forced to work from home with limited access to the office and thus causing lot of difficulty and the limitations, not only within the offices but also in commuting. Hence, the working of the offices was restricted substantially and was operative on the selective days as precaution. Hence, the physical absence of the teams and the



records being untouchable did put restrictions on the on the execution of the time bound work.

Keeping in view of such grave situation the tax department took several measures and provided relief to the tax payers & professionals by extending nearly all the dates of compliances. The due date of filing of return of income by the individual under section 139(1) of the Act was also extended from 31st July 2021 to 31st December 2021 vide Circular No. 9/2021 (Annexure-4).

The cases started going down from September 2021, the threat of third wave was still hovering around. In order to mitigate any kind of risk, the office was working with less staff trying really very hard to meet the deadlines. With such limited staff & approaching due date of 31st December for individuals & non-corporate assessee's (non-audit cases), the staff under the guidance & supervision endeavoured to file all the ITR on time. But however, few returns could not be uploaded till last minute. It was found later that the return of the assessee which was compiled and was made ready could not uploaded in last minute hustle and bustle and the same was uploaded on 12.01.2022.

During these circumstances between December 2021 and January 2022 despite taking precautions, Covid-19 affected whole of the office. Under these circumstances the return of the assessee was missed in December 2021 and got delayed by 12 days. Even, in the last week of December 2021, because of the fear of infection, the office was abruptly required to be shut for a certain period of time. Every single person was asked to operate from home since ITRs were required to be filed by 31st December 2021. Not only this, the infection was carried home by staff members who did show the courage to work but could finish the work and carried the infection home causing many members of respective staff got covid in January 2022. Thus, the office was again abruptly closed and sparingly operated on selective days.

When the office finally became functional it came to notice that the ITR of the assessee was not filed by virtue of the hustle, panic & stress created by the above explained situation.



The return was immediately filed on 12.01.2022 under section 139(4) of the Act wherein the Long-term capital loss of Rs. 41,85,770 was also claimed. Being a capital loss the same is proposed to be disallowed my CPC was not allowed to be carried forward to next year as the same was filed after the due date under section 139(1) of the Act. This application is filed before your good self to condone the delay in filing of return was due to genuine reasons and beyond the control of the assessee. The assessee is an individual who regularly files its ITR within the due date under section 139(1) of the Act which is verifiable from the records of the assessee. This was only the one time that the return of the assessee could not be filed for the reasons explained above and got marginally delayed.

It would not be out of place to mention that due to the outbreak of Covid-19 global pandemic, various government Authorities extended various compliance dates. The Hon'ble Supreme Court also took suo-moto cognizance of the difficulties vide Order dated 23rd March 2020 that might be faced by litigants in filing petitions, applications, suits, appeals, and all other proceedings within the period of limitation prescribed by the general law or any special law (both central and state). Thereafter, due to second surge in Covid-19 cases, the Order dated 23.03.2020 was also restored till 28.02.2022. The present case also falls in the aforesaid period.

Furthermore, keeping in view of the adverse impact of the 3 wave of the COVID-19 pandemic and the difficulties faced by taxpayers and professionals, the Hon'ble Central Board of Direct Taxes, via Circular No. 01 /2022 issued on January 11th, 2022 (Annexure-5) extended the timeline for filing of Income Tax Returns and various Reports of Audit for the Assessment Year 2021-22 for a certain category of taxpayers. The date of tax audit was extended to 15.02.2022 and the date of tax returns was extended to 15.03.2022.

The decision of Hon'ble Apex Courts extending the period of limitation & CBDT extending the due dates of ITRs in certain cases clearly show that at that point of time the assesseees' around the country were still facing problematic



situations following which decisions to extend the dates were taken to allow filing by 15.02.2022 in tax audit related returns.

In this regard, your good self's kind attention is brought on Circular No. 9/2015 dated 09.06.2015 issued by the Central Board of Direct stated that condonation could be considered only by exercising of powers under section 119(2)(b) of the Act in genuine cases. Section 119(2)(b) of the Act reads as under,

"The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize any income-tax authority, not being a Commissioner (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 or under this Act for making such application or claim and deal with the same on merits in accordance with law."

The above facts and the reasons given above are the genuine circumstances causing assessee, the delay beyond his control in filing the return for AY 2021-22 by 12 days.

In the conclusion it is prayed that Your Honour is vested with powers to condone the delay in filing the return in the present case. The condonation if granted would not be prejudicial to the interest revenue as well.

Kindly allow and oblige."

29. It is clear that the PCIT has not dealt with the various averments made by the petitioner/applicant and has rejected the application for condonation of delay in a mechanical manner, which, according to us, is clearly unsustainable.

30. Suffice to state, the leaned counsel for the petitioner has also relied upon the other judgments as mentioned above. We do not find it necessary to deal with the same, as they reiterate the position of law as noted by us in the above paragraphs.

31. Insofar as the judgment relied upon by the learned counsel for the respondent in the case of ***Lava International Limited vs. Central Board of***



Direct Taxes- [2024] 163 taxmann.com 148 (Delhi) is concerned, the said judgment is not applicable to the facts of this case. This we say so because though the case of the petitioner therein was that the filing of returns in respect of the financial year was impacted by the outbreak of the pandemic, this Court noted that the time for filing such returns was extended up to 15.02.2021. The petitioner despite signing the return on 31.07.2020 had ultimately filed the same on 30.03.2021. It was also noted that the recital of facts which appear under paragraph 7(iii) clearly demolished the assertion of financial constraints that may have befallen the assessee. Whereas in the case in hand, the return was filed with a delay of twelve days only and it is not a case where the return was signed much in advance, unlike the case of *Lava International Limited (supra)*. In any case, we have already held that the impugned order herein passed by the respondent is without considering the averments made by the petitioner in the application and to that extent, is an unreasoned order.

32. Accordingly, we set aside the impugned order dated 30.05.2023 and remand the matter back to the concerned PCIT for a *de novo* consideration to decide the application, keeping in view our observations made above.

33. The petition is disposed of.

34. Accordingly, the pending application is dismissed as infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 15, 2025

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