VINA ARVIND KHADPE Digitally signed by VINA ARVIND KHADPE Date: 2025.10.23 12:05:23 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16638 OF 2024

Balaji Landmarks LLP Eartwhile ; Balaji Landmarks Private Limited ..Petitioner

Versus

Central Board Of Direct Taxes (CBDT), Through the Ministry of Finance, Department of Revenue & Ors. .. Respondents

Percy Pardiwala, Senior Advocate, a/w Sanket Bora, Archena Shetty, Vidhi Punmiya, Amiya Das i/b. SPCM Legal, *Advocates for the Petitioner.*

Mr. Vikas Khanchandani, *Advocate for the Respondents.*

CORAM: B. P. COLABAWALLA & AMIT S. JAMSANDEKAR, JJ.

DATE: OCTOBER 14, 2025

P. C.

1. The present Petition challenges an Order dated 7th August 2024 passed by Respondent No. 1, rejecting the Petitioner's Application for condonation of delay in filing its return of income for the Assessment Year 2018-19. The Petitioner is also seeking appropriate directions/orders to get

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the delay of 5 months in the filing of the said return of income for the A.Y.2018-19 condoned.

2. For the impugned A.Y., the due date for filing a return of income, in which return an Assessee was returning a loss, under Section 139(3) read with Section 139(1) of the Income Tax Act, 1961 (for short "the Act") was 31st October 2018. The Petitioner, however, filed its return belatedly on 30th March 2019 within the time permissible under Section 139(4). Accordingly, the Petitioner on 15th June 2023, in light of Respondent No.1's Circular No. 9 of 2015, filed an application for condonation of delay of 5 months under Section 119(2)(b) of the Act. This Application was filed by the Petitioner within the time stipulated in the said Circular, i.e. within a period of 6 years.

3. Respondent No. 1 refused to condone the delay on the following grounds :-

a. the Petitioner failed to exercise due diligence to ensure timely filing of its return of income ;

b. the Petitioner had ample time to ensure filing of its return of income within time ;

c. the delay is caused by the Petitioner's lack of supervision and, hence, this does not constitute genuine hardship.

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4. The case of the Petitioner is that the delay occurred because the Petitioner's Chartered Accountant was not acquainted with the legal and accounting treatment to be given apropos the compensation received in the form of Transferable Development Rights (TDR) in lieu of compulsory acquisition of certain immoveable property and, accordingly, the Petitioner sought appropriate legal advice. The time taken for obtaining such views caused the delay in filing of the return. In the application filed by the Petitioner with Respondent No. 1, to the support of aforesaid contentions, the Petitioner, *inter alia,* filed an affidavit of the said Chartered Accountant, the legal opinions obtained and several judicial precedents in support of its contentions. The Petitioner states that various advices were obtained by it from May 2018 to March 2019, thereby establishing the substance, validity and *bona fides* of the claim of the Petitioner and its Chartered Accountant.

5. It is further contended by the Petitioner that if the delay is not condoned, then the Petitioner will suffer genuine hardship. It is stated that in the impugned year, the Petitioner had suffered a loss, and as per Section 80 of the Act, in order to carry forward the loss to the subsequent years in accordance with Section 72 of the Act, it is mandatory to file such a loss return of income in accordance with Section 139(3) of the Act, which in turn refers to the due date provided for in Section 139(1) of the Act. Accordingly,

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as the return of income was filed by the Petitioner beyond the due date of 31st October 2018, the Petitioner is deprived of claiming the carry forward losses suffered in A.Y. 2018-19 to the subsequent years as a result of the delay in filing of its return. This deprivation, according to the Petitioner, is causing hardship thereby, satisfying the pre-condition of Section 119(2)(b) of the Act. Therefore, it is submitted that the delay ought to be condoned so as to treat the Petitioner's return of income for A.Y.2018-19 as within limitation period.

6. Further, the Petitioner also argues that it is otherwise a law-abiding Assessee and generally files its return on time. The Writ Petition expressly avers that the Petitioner has filed its return of income since A.Y.2013-14 onwards, within time, save and except the current Assessment Year.

7. The learned Counsel for the Respondent, however, opposes the Petition and contends that the Petitioner was negligent and, hence, the delay ought not be condoned. He further submits that the various claims made by the Petitioner in its return of income are also unverified and as such the condonation of delay, if allowed, would result in allowance of such unverified claims. According to him, the time limit to carry out an assessment for A.Y. 2018-19 has otherwise expired and, therefore, the delay ought not to be

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condoned else unverified claims of the Petitioner will be allowed leading to a possible leakage of Revenue.

8. In response, the learned Counsel for the Petitioner submitted that the apprehension of the Revenue's Counsel that the delay in filing the return filed by the Petitioner, if condoned will result in the Revenue being prejudiced is unwarranted. This is because, Section 153(1B) extends the time for completing the assessment inasmuch as it is provides that :-

> *"(1B). Notwithstanding anything in sub-section (1), where a return is furnished in consequence of an order under clause (b) of sub-section (2) of section 119, an order of assessment under section 143 or section 144 may be made at any time before the expiry of twelve months from the end of the financial year in which such return was furnished."*

Accordingly, an Order of assessment under Section 143 and 144 pursuant to a belated return where the delay is condoned in terms of Section 119(2)(b) can be made before the expiry of 12 months from the end of the financial year if such return of income is furnished. Hence, the statute has provided sufficient safeguards to ensure that the Revenue is not left remedy-less. In the present case, if the delay is condoned, the Assessing Officer is

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empowered to make enquiries as to the correctness of the losses claimed in such a return by the Petitioner.

9. Having heard both parties, we are of the view that the Petition deserves to be allowed. We find merit in the arguments raised by the learned Counsel for the Petitioner that grave hardship will be suffered by the Petitioner if the delay is not condoned as genuine losses will not be permitted to be carried forward. The delay in the present case is not due to any negligence on the part of the Petitioner but due to inadequate advice by the Chartered Account, which fact stands admitted by him in his affidavit. It is settled law that where an Assessee takes a course of action bases on an opinion of a professional, then, in that case, there is a reasonable cause for the Assessee to act based on such advice and that such acts are to be regarded as *bona fide*. In the present case, the Petitioner ought not to be put to a considerable disadvantage as a result of belated advice given to it by the Chartered Accountant, especially when the issue that was being grappled with is fairly complex and for which there were no well settled judicial precedents at the relevant time. In fact, paragraph 3 of the impugned order states : *"The field authorities have stated that it may be possible that taxability of certain proceeds was not known to the CA and the assessee and that the CA sought legal opinion about the same, which was beyond its*

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control in filing the ROI within the due date. The field authorities have further stated that a more diligent and disciplined taxpayer may have sought the legal opinion on time and could have filed its ROI within the due date, more so, if it wanted to carry forward the losses of the A.Y.2018-19 to subsequent years". The Petitioner will otherwise suffer genuine hardship in such a case. Further, the apprehension of the learned Counsel for the Revenue is appropriately taken care of by the provisions of Section 153(1B) of the Act. The AO will have 12 months from the end of 31st March 2026 to complete an assessment, i.e. he will have time till 31st March 2027 to frame an assessment under Section 143/144 of the Act in accordance with law.

10. We had also put it the learned Counsel for the Petitioner as to why the application under Section 119(2)(b) was filed only on June 15, 2023, i.e. more than four years after the return was filed. The learned Counsel had clarified that initially, that the Petitioner was not aware of the procedure of 119(2)(b) and profits of A.Ys.2019-20, 2020-21 and 2021-22 were not enough to adjust the huge losses of A.Y.2018-19 amounting to Rs.4,47,30,811/-. Basis the forecasts then prevailing the Petitioner was not anticipating the loss for the A.Y. 2018-19 being set off within a period of eight years and, therefore, even if the condonation of delay in filing the loss return was allowed, the determination of the loss pursuant to the belated return may have turned out

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to be an exercise in futility. It was only in June 2023 when the Petitioner realised that the business conditions had improved for A.Y. 2022-23 and there were huge profits and there was a possibility of the loss being set off, and was not able to set off the same against the losses for A.Y. 2018-19, the Petitioner file the Application with Respondent No. 1. We are satisfied with the aforesaid explanation.

11. In view of the foregoing discussion, we pass the following order:-

ORDER

(a) The impugned Order dated 7th August 2024 passed by Respondent No. 1 under Section 119(2)(b) of the Act is hereby quashed and set aside.

(b) The delay in filing the return of income for the A.Y.2018-19 is hereby condoned. The ROI filed on 30th March 2019 shall be treated to be a return filed in accordance with Section 153(1B) and the time frame to complete the assessment mentioned therein shall apply.

(c) The Revenue is directed to frame the assessment in accordance with law.

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(d) All rights and contentions of the Petitioner as well as of the Revenue are kept open.

12. Rule is made absolute in the aforesaid terms of the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**

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