IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15544 OF 2023

Optra Health Private Limited ...Petitioner
Versus
Additional Commissioner of Income Tax (HQ), Pune & Ors. ...Respondents

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Mr. Sham Walve i/b Mr. Abhishek Khandelwal for Petitioner.
Mr. Suresh Kumar for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 19th December 2023

PC:-

1. Petitioner filed return of income for Assessment Year ("AY") 2017-2018 on 25th November 2017 in the name of Optra Technologies Private Limited. By that date, the name of Petitioner had already been changed with the approval and sanction of the Ministry of Corporate Affairs vide communication dated 31st January 2017. The PAN number reflected in the income-tax return filed by assessee for the relevant AY was correctly mentioned. On account of a mismatch between the PAN number reflected in the income-tax return and the name of the company, a communication dated 29th May 2018 came to be issued by the Deputy Commissioner of Income Tax ("DCIT"), Centralised Processing Centre ("CPC"), Bangalore asking Petitioner to rectify the defects within a period of fifteen days from the date of receipt of such a communication. As Petitioner did not do the needful within the prescribed time, the income-tax return

filed by Petitioner (assessee) was declared to be invalid.

2. In order to overcome this difficulty, an application under Section 119 of the Income Tax Act, 1961 ("**the Act**") was filed by Petitioner before the Principal Commissioner of Income Tax ("**PCIT**")-2, Pune, which came to be rejected by an order dated 9th September 2021 passed by the Principal Chief Commissioner of Income Tax ("**PCCIT**"), Pune.

3. Against the order, Petitioner filed a Writ Petition being Writ Petition No. 88661 of 2022 impugning the order passed by the PCCIT and one of the primary grounds raised was Petitioner's application came to be rejected without even giving a personal hearing. This Court was pleased to dispose the petition vide its order dated 3rd October 2022 by quashing and setting aside the order dated 9th September 2021 and remanding the matter for *de-novo* consideration.

4. The matter was considered *de-novo* by the PCCIT, who again rejected Petitioner's application for condonation of delay under Section 119(2)(b) of the Act. The reason for rejection is contained in paragraph 6 of the impugned order, which reads as under :

> *"6. Contention of the AR was duly considered. Communication by email is an established and legally accepted and sufficient mode of communication. A company being artificial judicial person, is always represented by an individual to discharge its legal and other obligations. The argument that the company's CFO was irregular in his duties and hence the*

> *company could not discharge its legal obligation, is not an acceptable view. If such an argument is permitted, the companies can get away from very serious obligations too. Based on facts of the case, it is observed that the applicant has failed to prove any genuine hardship, which was beyond it's control, with necessary evidence."*

5. Mr. Suresh Kumar wanted time to file an affidavit-in-reply. In our view, no purpose will be served by filing a reply because the impugned order speaks for itself. Moreover, the petition was served in early November 2023 and the department had almost six weeks to file a reply if they really wanted to oppose the petition.

6. We are not happy with the reason given in the impugned order rejecting Petitioner's application for condonation of delay.

7. Petitioner's explanation for not meeting with the time prescribed for correcting the mismatch is that, the first notice of invalid return under Section 139(9) of the Act was sent on registered email-ID of one Mr. Prasad Sathe on 30th May 2018 and the final notice of invalid return dated 19th June 2018 under Section 139(9) of the Act was also sent on the email-ID of Mr. Prasad Sathe. Mr. Prasad Sathe was the Chief Operating Officer leading Petitioner's Pune office operation and was heading Human Resources, Finance, Information Technologies and Operation teams. He was also responsible for statutory compliance of the company. All responsibilities of complying with statutory provisions were entrusted to Mr. Prasad Sathe. Mr. Prasad Sathe did not deliver despite the responsibility

given to him. Mr. Prasad Sathe left the organization with effect from 7th March 2019. Prior to leaving the office, he was irregular in attending work due to his personal issues. As the notices issued under Section 139(9) of the Act were sent on Mr. Prasad Sathe's official ID, none of the other members of the company had any access to the same. Admittedly, no physical copy of notice was sent to company's registered address. All this came to light when the new team including one Mr. Kapil Bhakre (Director) and Mr. Dinesh Pande (Director-Finance), found out the error during the finalization of accounts for AY 2018-2019 and immediately took remedial action by submitting an application dated 5th November 2019 to the office of the DCIT, Circle-3, Pune. Petitioner immediately provided details about the invalid return and requested him to activate the action on the Income Tax Portal so as to enable Petitioner to rectify the return of income for AY 2017-2018. It is stated that Petitioner would also get a refund of Rs. 13,09,230/- and only wanted to rectify the invalid return and comply with the Rules as per the Act. It is stated that Petitioner had filed the return for AY 2017-2018 on 25th November 2017 within the deadline prescribed under the Act. The Audit Report under Section 44AB of the Act was also filed on 25th November 2017. So also, Form 3CEB reporting international transactions was filed. In short, Petitioner has acted as a prudent assessee and carried out all compliances on time. Petitioner declared income of Rs. 73,77,136/-

for AY 2017-2018 and determined tax payable of Rs. 11,57,086/-. Petitioner had even deposited Rs. 24 lakhs as advance tax during Financial Year 2016-2017 pertaining to AY 2017-2018. Therefore, Petitioner has always acted as a prudent assessee with the only error being Petitioner did not use the changed name in the income-tax returns.

8. In view of this background, it is obvious that the error for the mismatch was not caused due to any deliberate or culpable negligence or any *mala-fides* on the part of Petitioner.

9. While considering the genuine hardship, the PCCIT was not expected to consider a solitary ground as to whether the assessee was prevented by any substantial cause from filing the corrections within a due time. Other factors also ought to have been taken into account. The phrase “genuine hardship” used in Section 119(2)(b) of the Act should have been construed liberally. The Legislature has conferred the power to condone the delay to enable the authorities to do substantial justice to the parties by disposing the matters on merits. The expression ‘genuine’ has received a liberal meaning in view of the law laid down by the Apex Court and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay, does not stand to benefit by lodging erroneous returns. Refusing to condone the 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 hearing 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 action. There is no presumption that a delay in correcting an error or responding to a notice of invalid return received under Section 139(9) of the Act 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 authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim. We find support for this view in ***Sitaldas K. Motwani v. Director General of Income-tax (International Taxation), New Delhi***[1], relied upon by Mr. Walve, where paragraph nos. 13 to 17 read as under :

> *"13. Having heard both the parties, we must observe that while considering the genuine hardship, Respondent No. 1 was not expected to consider a solitary ground so as to whether the petitioner was prevented by any substantial cause from filing return within due time. Other factors detailed hereinbelow ought to have been taken into account.*
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> *14. The Apex Court, in the case of B.M. Malani v. CIT [2008] 10 SCC 617, has explained the term "genuine" in following words:*
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> > *"16. The term 'genuine' as per the New Collins Concise English Dictionary is defined as under :*

1. 2010 (87) taxman.com 44 (Bombay).

> *'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)'.*
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> *17. *******
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> *18. 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....." (p. 624).*

The Gujarat High Court in the case of Gujarat Electric Co. Ltd. (supra) was pleased to hold as under:

> *"... The Board 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, more particularly when the returns could not be filed in time due to the ill health of the officer who was looking after the taxation matters of the petitioner...." (p. 737).*

The Madras High Court in the case of R. Seshammal (P.) Ltd. (supra), was pleased to observe as under:

> *"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." (p.187)*

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. Refusing 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 hearing 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.

17. Having said so, turning to the facts of the matter giving rise to the present petition, we are satisfied that respondent No. 1 did not consider the prayer for condonation of delay in its proper perspective. As such, it needs consideration afresh."

10. This was followed by this Court in ***Artist Tree (P.) Ltd. v. Central Board of Direct Taxes***[2], relied upon by Mr. Walve, where paragraph nos. 19, 21 and 23 read as under :

"*19. The circumstance that the accounts were duly audited way back on 14 September 1997, is not a circumstance that can be held against the petitioner. This circumstance, on the contrary adds force to the explanation furnished by the petitioner that the delay in filing of returns was only on account of misplacement or the TDS Certificates, which the petitioner was advised, has to be necessarily filed alongwith the Return of Income in view of the provisions contained in Section 139 of the said Act read alongwith Income Tax Rules, 1962 and in particular the report in*

2. [2014] 52 taxmann.com 152 (Bombay)

the prescribed Forms of Return of Income then in vogue which required an assessee to attach the TDS Certificates for the refund being claimed. The explanation furnished is that on account of shifting of registered office, it is possible that TDS Certificates which may have been addressed to the earlier office, got misplaced. There is nothing counterfeit or bogus in the explanation offered. It cannot be said that the petitioner has obtained any undue advantage out of delay in filing of Income Tax Returns. As observed in case of Sitaldas K. Motwani (supra), there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It cannot be said that in this case the petitioner has benefited by resorting to delay. In any case when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to prevail without in any manner doing violence to the language of the Act.

21. We find that the impugned order dated 16 May 2006 of the CBDT also seeks to reject the application for condonation of delay on account of delay from the date of filing the Return of Income, i.e., 14 September 1999 upto 30 April 2002. This was not the ground mentioned in notice dated 7 February 2006 given to the petitioner by the CBDT for rejecting the application for condonation of delay. Thus the petitioner had no occasion to meet the same. It appears to be an afterthought. However, as pointed out in paragraph 20 hereinabove, the delay in filing of an application if not coupled with some rights being created in favour of others, should not by itself lead to rejection of the application. This is ofcourse upon the Court being satisfied that there were good and sufficient reasons for the delay on the part of the applicant.

23. In light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner and a case of genuine hardship was made out. The refusal by the CBDT to condone the delay was a result of adoption of an unduly restrictive approach. The CBDT appears to have proceeded on the basis that the delay was deliberate, when from explanation offered by the petitioner, it is clear that the delay was neither deliberate, nor on account of culpable negligence or any mala fides. Therefore, the impugned order dated 16 May 2006 made by the CBDT refusing to condone the delay in filing the Return of Income for the Assessment Year 1997-98 is liable to be set aside. Consistent with the provisions of Section 119(2)(b) of the said Act, the concerned I.T.O. or the Assessing Officer would have to consider the Return of Income and deal with the same on merits and in accordance with law."

11. In the circumstances, having considered the averments in the petition, we are satisfied that the delay in not responding to the

notice is received under Section 139(9) of the Act, was neither deliberate nor on account of culpable negligence or any *mala-fides*. The issue is only of correcting the name of Petitioner in the returns so that there is no mismatch between the PAN number and name of the company.

12. We, therefore, direct Respondents to permit Petitioner to correct its name in the returns for AY 2017-2018 from 'Optra Technologies Private Limited' to 'Optra Health Private Limited'. Therefore, we hereby quash and set aside the impugned order dated 23rd December 2022. Within two weeks of this order being uploaded, the required portal will be opened for Petitioner to do the needful, under advice to Petitioner.

13. We hasten to add that we have not examined the contents of the returns filed by Petitioner or claims which have been made in the returns. That will be subject of appropriate assessments/proceedings under the Act.

14. Petition disposed. No order as to costs.

(DR. NEELA GOKHALE, J.) (K. R. SHRIRAM, J.)