

HIGH COURT OF DELHI**Bench: Hon'ble Mr. Justice Rajiv Shakdher****Hon'ble Mr. Justice Girish Kathpalia****Date of Decision: January 05, 2024**

W.P.(C) 4330/2019

BAR COUNCIL OF INDIA**..... Petitioner****versus****COMMISSIONER OF INCOME TAX (EXEMPTION) Respondent****Sections, Acts, Rules, and Articles Mentioned:**

Article 226 of the Constitution of India

Advocates Act, 1961

Section 12A of the Income Tax Act

Section 10(23A) of the Income Tax Act

Section 11 of the Income Tax Act

Section 13 of the Income Tax Act

Finance Act, 2015

Section 11(2) of the Income Tax Act

Section 139(1) of the Income Tax Act

Section 119(2) of the Income Tax Act

Subject of Judgment:

Condonation of Delay in Filing Form 10 by Bar Council of India for the Assessment Year 2016-17 under the Income Tax Act.

Headnotes:

Income Tax – Delay in Filing Form 10 – Condonation of Delay – Petitioner sought quashing of order by Commissioner of Income Tax (Exemption) and for directions to accept Form No.10 with condoned delay. Amendments in Income Tax Act and rules leading to inadvertent delay acknowledged. Comparison with similar condonation in AY 2017-18 and AY 2018-19 highlighted. [Para 1, 2, 3]

Administrative Oversight – Lack of Awareness of Amendments – Delay due to lack of awareness of officials about amendments in Income Tax Act. CBDT Circulars emphasizing liberal approach in condonation of delays for mitigating genuine hardships of assesseees considered. [Para 5, 7]

Judicial Reasoning – Discretion in Condonation of Delay – Court observed absence of valid reasons in impugned order for non-condonation of delay. Emphasis on understanding the motive behind delay and the principle of mitigating genuine hardship. [Para 6, 9]

Decision – Quashing of Impugned Order and Condonation of Delay – Impugned order set aside. Delay in submission of Form 10 for AY 2016-17 condoned. Form-10 to be accepted with necessary consequences. [Para 10]

Referred Cases with Citations:

Not explicitly mentioned in the provided text of the judgment.

Representing Advocates:

For Petitioner: Mr. Preetpal Singh, Advocate.

For Respondent: Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Sanjeev Menon, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J.:

1. By way of this writ petition brought under Article 226 of the Constitution of India, the Bar Council of India has sought quashing of order dated 30.01.2019 passed by the Commissioner of Income Tax (Exemption) and for directions to the respondent to accept Form No.10 after condoning the delay in submission of the same. On notice, being issued in the petition, the respondent entered appearance through counsel and filed a counteraffidavit. We heard learned counsel for both sides.

2. Briefly stated, the circumstances relevant for present purposes are as follows.

2.1 The petitioner is the apex professional body created for the purposes of regulating the legal education and profession under the Advocates Act, 1961. Being a non commercial organization registered under Section 12A of the Income Tax Act (“the Act”), income of petitioner by way of fees from members, legal reforms and education has been exempt from imposition of tax by virtue of provisions of Section 10(23A) of the Act since 01.04.1962.

The petitioner has been regularly submitting its returns of income.

2.2 For the Assessment Year 2016-17, petitioner filed on 30.09.2016 its return of income claiming exemption under Section 10(23A) of the Act. In the meanwhile, with effect from 01.04.2016, Section 11 and 13 of the Act was amended by way of Finance Act, 2015 but these amendments were not noticed by the petitioner at the time of filing its return of income. It is only during the assessment proceedings that the inadvertent mistake was noticed. Consequently, the petitioner, immediately, took remedial steps and filed on 12.12.2018 a revised computation, seeking exemption under Section 11 of the Act.

2.3 On 17.12.2018, the petitioner filed Form 10 along with an application seeking condonation of delay in filing the same. Thereafter, by way of communication dated 28.12.2018, the petitioner also requested the respondent to dispose of the application for condonation of delay in filing Form 10 prior to 31.12.2018 i.e., before completion of assessment proceedings for AY 2016-17.

2.4 On 30.12.2018, the Assessing Officer passed order dated 30.12.2018, for the AY 2016-17, without taking into consideration the exemption claimed by the petitioner. Thereafter, by way of impugned order dated 30.01.2019 the respondent dismissed the condonation of delay application preferred by the petitioner, holding that the petitioner had no intention of filing Form 10 within due date and was not prevented by any reasonable cause from filing the same.

2.5 Hence, the present writ petition, seeking to set aside the impugned order dated 30.01.2019 and to condone the delay in filing Form 10.

3. During arguments, learned counsel for petitioner took us through the aforementioned background and contended that the impugned order is liable to be set aside, mainly, on account of the fact that for the AY 2017-18 and AY 2018-19, the delays in filing Form 10 were condoned by the same Assessing Officer on similar grounds as in the present case. It was submitted by learned counsel for petitioner that the reason for delay in filing Form 10 being lack of

awareness on the part of the officials of petitioner, coupled with there being no prejudice caused to anyone, the delay ought to have been condoned.

3.1 On the other hand, learned counsel for respondent/revenue supported the impugned order, contending that no sufficient reason explaining the delay was tendered on behalf of the petitioner/assessee, so the delay condonation application was rightly rejected. It was further contended on behalf of the respondent/revenue that even in the return of income for AY

2016-17, the petitioner/assessee neither claimed accumulation under Section 11(2) of the Act nor claimed the accumulation in Form 10, so the impugned order suffers from no infirmity.

4. We are of the considered view that so far as claim of accumulation is concerned, the same can always be considered after the delay is condoned and Form 10 is taken on record. Therefore, that argument advanced on behalf of respondent does not impress us.

5. As mentioned above, according to the petitioner, the delay in filing Form 10 occurred because their officials failed to notice the amendments in the Act and the Rules. In the impugned order dated 30.01.2019, despite having perused the CBDT Circular No. 07/2018 dated 20.12.2018 the respondent rejected the delay condonation application, observing thus:

“5. I have gone through the submission made by the applicant. As per the report submitted by the Assessing Officer, it is seen that the applicant has filed return of income for A.Y. 2016-17 on 30.09.2016, but has neither claimed accumulation u/s 11(2) of the I.T. Act, 1961 in the return of income for A.Y. 2016-17 nor claimed accumulation in Form 10B (Audit Report).

6. In view of above facts, I have reasons to believe that the applicant had no intention of filing form 10 within due date specified u/s 139(1) of the I.T. Act, 1961. Therefore, as required vide para 6 of CBDT Circular No.7/2018 dated 20.12.2018, the assessee was not prevented by any reasonable cause from filing of application in form no. 10 within the stipulated time. Hence, the case of the applicant is not considered justified for grant of condonation of delay in filing of Form 10 for A.Y.2016-17.”

6. We are unable to decipher from the impugned order as to what those “reasons to believe” were which led the respondent to arrive at a conclusion that the petitioner had no intention to file Form 10 within the due date. Mere

failure to claim accumulation cannot be read as “reasons to believe” that the petitioner did not intend to file Form 10.

7. The CBDT Circular No. 7/2018 dated 20.12.2018 records that representations had been received qua Forms No. 9A and 10 not having been filed within specified time for AY 2016-17, which was the first year of e-filing qua those forms; and that in supersession of earlier circular in that regard with a view to expedite the disposal of such representations, the CBDT authorized the Commissioners of Income Tax to admit the belated applications in Forms No. 9A and 10 in respect of AY 2016-17 where such forms were filed after expiry of the prescribed period, in case the Commissioners were satisfied that the assessee was prevented by reasonable cause from filing the said forms within the stipulated period.

7.1 By way of further circular No. 30/2019 dated 17.12.2019, similar directions were issued by CBDT for the AY 2017-18 as well. Subsequently, by way of CBDT Circular No.03/2020 dated 03.01.2020, the Commissioners were authorized to admit the belated delay condonation applications under Section 119(2) of the Act where delay is upto 365 days.

7.2 More recently, by way of similar CBDT Circular No. 17/2022 dated 17.07.2022, the Commissioners were authorized to condone delay beyond 365 days upto 03 years in filing Forms 9A and 10 for AY 2018-19.

8. For AY 2017-18 also, the petitioner/assessee had filed a similar application seeking condonation of delay in filing Form 10, which was allowed by the Commissioner Income Tax vide order dated 26.12.2019 correctly, laying emphasis that the mandate of Section 119(2)(b) of the Act is to mitigate the genuine hardship of assessee in certain circumstances and authorization to the Commissioners to admit the belated Form 10. In the said order dated 26.12.2019, the Commissioner Income Tax condoned the delay in filing Form 10 (*which was electronically filed on 05.03.2019*) for AY 2017-18. Similarly for AY 2018-19 also, delay on the part of the petitioner in filing Form 10 was condoned in view of the underlying principle of the above mentioned circulars to liberally condone such delays in order to mitigate hardships of the assessees.

9. As mentioned above, the delay in filing Form 10 in the present case occurred because the amendments went unnoticed by the officials of the petitioner. The assessment year 2016-17 was the first occasion subsequent to those amendments. Therefore, we find no reason to disbelieve the explanation furnished by the petitioner to explain the delay in filing Form 10. Further, we are unable to fathom as to what benefit would accrue to the petitioner by delaying the filing of Form 10. In our opinion the discretion conferred for condoning the delay was not correctly exercised by the Commissioner Income Tax.

10. In view of the aforesaid, the petition is allowed and accordingly, the impugned order dated 30.01.2019 is set aside and the delay on the part of the petitioner in submission of Form 10 is condoned. Resultantly, Form-10 will be accepted and necessary consequences will follow.

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