



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2930 OF 2024

ND'S Art World Private Limited

...Petitioner

Versus

Additional Commissioner of
Income Tax (OSD) (OT & WT) & Ors.

...Respondents

Ms. Priyanka Jain a/w Mr. Pankaj Soni i/b. Vaish Associates for the
Petitioner.

Mr. P. A. Narayanan for the Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED: 28 January 2025

ORAL JUDGMENT:- (Per M. S. Sonak, J.)

1. Heard Ms. Jain, learned counsel for the Petitioner and Mr. Narayanan, learned counsel for the Respondents.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The Petitioner challenges the order dated 24 January 2024, which dismissed the Petitioner's application for condonation of a delay of around 10 months in filing the return of income for the assessment year 2020-2021.
4. Ms. Jain submits that the impugned order in this case has been made by the Additional Commissioner of Income Tax (CIT) (OSD) (OT & WT) "with the approval of competent authority". She submits that the power to consider and dispose of an application for condonation of delay is vested in the Central Board of Direct Taxes (CBDT) under the provisions of Section 119(2)(b) of the Income Tax

Act, 1961 (“the IT Act”). She submits that the impugned order is neither by CBDT nor any of its members. There is no clarity about which competent authority has approved the making of this order. She submits that in any event, even if the CBDT or its members approve the order, it cannot be regarded as an order made by the CBDT or its members. She submits that on this short ground, the impugned order is liable to be set aside. She relies on *R. K. Madhani Prakash Engineers J V vs. Union of India*¹, *Tata Autocomp Gotion Green Energy Solutions (P) Ltd. vs. Central Board of Direct Taxes*² and *Bharat Education Society vs. The Assessing Officer, Income Tax Exemption-1(1) Mumbai*³ in support of her contention.

5. Ms. Jain, without prejudice to the above, submits that the Petitioner showed sufficient cause, but without assigning any good reasons, this cause has not been considered. She submits that the period in question was affected by the COVID-19 pandemic. Genuine hardships were pleaded and demonstrated. She submits that all these relevant materials were not considered when making the impugned order.

6. Mr. Narayanan defends the impugned order based on the reasoning reflected therein. He refers to the Central Secretariat Manual for Office Procedure and stresses paragraph 9.3, which deals with the authentication of Government orders. He also refers to the Central Boards of Revenue Act, 1963, to justify making the impugned order by the Additional CIT (OSD) (OT & WT). He submits that the Petitioner was found to be a habitual defaulter when it comes to filing the return of income. For all these reasons, Mr. Narayanan submits that this petition may be dismissed.

7. The rival contentions now fall for our determination.

1 [2023] 154 taxmann.com 16 (Bombay)

2 [2024] 163 taxmann.com 643 (Bombay)

3 Writ Petition (L) No.21487 of 2024 dtd. 21 January 2025.

8. As noted earlier, the impugned order has been signed by the Additional CIT (OSD) (OT & WT). The last line states that it was passed “with the approval of competent authority.”

9. The affidavit does not throw much light on the status of competent authority approving the making of this order by the Additional CIT (OSD) (OT & WT). In any event, this Court had to interfere with similar orders made by officers who neither had any authorisation from the CBDT to make such orders nor any authorisation from CBDT members. This is assuming that the CBDT or its members could have delegated such powers to the officers like Additional CIT (OSD) (OT & WT). There is a difference between the CBDT or its authorised member making an order and some other officers making an order with the approval, even of the member of the CBDT.

10. In *Bharat Education Society (supra)*, the affidavit was filed on behalf of the Commissioner of Income Tax (Exemptions), in which an order similar to that made in this petition was sought to be justified by contending the following: -

“12. In the affidavit filed by Mr Salil Mishra, Commissioner of Income Tax (Exemptions), the contention regarding the impugned order not being made by the CBDT or its Member is answered in paragraph 9, which reads as follows:-

“9. Further the petitioner has taken the plea in the writ petition that the order has been passed by an officer without jurisdiction, as the show cause notice dated 06.07.2023 was issued by the DCIT(OSD) (ITA Cell) **and the condonation order has been passed by the Addl. CIT (ITACell) with the approval of Member(IT)**. The petitioner has also contended whether the DCIT(OSD)(ITA Cell) or the Addl.CIT (ITA Cell) were competent to issue the show cause notice and pass the order and whether the authority as per whose direction/approval the said order has been passed, has applied his mind to the issues arising in the case.

In this connection, it is submitted that CBDT functions through its Members and the work allocation has been done amongst the Members. All the Members of the CBDT are the Special Secretaries to the Govt. of India and have office for processing all the matters dealt by them. Applications/petitions u/s 119(2)(b) of the Income-

tax Act, 1961 received in the Board are processed in the office of the concerned Member after proper consideration of facts and circumstances of each case. **The work relating to the Order under section 119 of the Income-tax Act, 1961 on matters related to Sections 10, 11, 12 & 13 have been assigned to Member (IT) in CBDT. The orders in these cases are approved by Member concerned and after approval; these orders are issued with the signature of the officer, who is not below the rank of Under Secretary to Govt. of India, in the office of the Member.** Considering the extant office procedure and practices being followed, the Addl. CIT (ITA Cell) has signed the order after taking approval of the Member concerned. In last para of the Order, it has been clearly mentioned that the Order issues with the approval of Member (IT), CBDT.”

11. The above explanation was not accepted by this Court and the reasoning in this regard is in paragraph 13, which reads as follows:-

“13. The reply suggests that the CBDT functions through its Members, and the works are allotted amongst the Members of the CBDT who are Special Secretaries to the Government of India. The affidavit states that the member is allocated the work of considering applications/Petitions under Section 119(2)(b) of the IT Act to consider the facts and circumstances of each case. There is a specific statement in the affidavit that the work relating to orders under Section 119 of the IT Act on matters pertaining to Sections 10, 11, 12 and 13 have been assigned to Member (IT) in the CBDT.”

12. In ***R. K. Madhani Prakash Engineers J V (supra)***, a similar justification for a similar order was not accepted by yet another Division Bench of this Court. Paragraph 6 of ***R. K. Madhani Prakash Engineers J V (supra)*** reads as follows: -

“6. Before we proceed further, we should note that pursuant to Circular F No.312/22/2015-OT dated 9th June 2015 issued by CBDT, application/claim for amount exceeding Rs.50 lakhs shall be considered by the Board. We say this because the last sentence in the impugned order dated 24th December 2020 reads; “This order is passed with the approval of the Member (TPS & Systems), CBDT.” There is nothing to indicate that Board has considered petitioner's application. We also find that copy of the impugned order dated 24th December 2020 is sent to, (a) the Principal Chief Commissioner of Income Tax, Mumbai, (b) Principal Commissioner of Income Tax-21, Mumbai, (c) Director of Income Tax, Centralized Processing Cell, Bengaluru, (d) the applicant and (e) the Guard

File but it is not sent to the Member on whose approval the said order is supposed to have been passed. In our view, this means the Member has not passed the order but has been passed by the Director. On this ground alone, this order has to be quashed and set aside.”

13. Similar view was taken in ***Tata Autocomp Gotion Green Energy Solutions (P) Ltd. (supra)*** .

14. Paragraph 9.3 of the Central Secretariat Manual of Office Procedure only relates to authentication of Government orders. This paragraph does not dispense with the requirement of CBDT or its members making orders on the application seeking condonation of delay. Section 119(2)(b) empowers the CBDT to decide such applications. The CBDT, as a part of its functioning, may have allocated the work amongst its members. However, nothing was shown to us regarding any further allocation or delegation to the Additional CIT (OSD) (OT & WT). At this stage, we do not make any observations on the permissibility of any such further delegation. Similarly, there is nothing in the Central Boards of Revenue Act, 1963 or at least nothing was shown to us based upon which the making of the order by the Additional CIT (OSD) (OT & WT) could be held as valid or validated.

15. Therefore, by following the previously decided cases, we quash and set aside the impugned order dated 24 January 2024 and remand the matter to the CBDT or its duly allocated member to pass an order on the Petitioner's application for condonation of delay. Needless to add the Petitioner / its representatives must be heard before such an order is made. A reasoned order must be communicated to the Petitioner. This exercise must be completed within 3 months of uploading this order.

16. However, all parties' contentions on merits are kept open.

17. The Rule is made absolute in the above terms without any cost order.
18. All concerned to act on an authenticated copy of this order.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)