

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.3

Neutral Citation No. - 2025:AHC:115418-DB

CORAM : HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRAVEEN KUMAR GIRI, J.

WRIT TAX NO. 278 OF 2024

CELL COM TELESERVICES PRIVATE LIMITED

V.

UNION OF INDIA AND OTHERS

For the Petitioners : Mr. Rahul Agarwal, Advocate
For the Respondents : Mr. Manu Ghildyal, Advocate

Last heard on July 9, 2025
Pronounced on July 17, 2025

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard learned counsel appearing for both the parties.
2. The present writ petition has been filed with the following prayer:

“1) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 30.01.2024 passed by the Principal Commissioner of Income Tax, Ghaziabad (Annexure-1 to the writ petition);

(ii) Issue a writ, order or direction in the nature of Mandamus directing the Principal Commissioner of Income Tax, Ghaziabad to condone the delay in filing Form 10-IC for AY 2020-21 and allow the petitioner to file the same;

(iii) Issue a writ, order or direction in the nature of Mandamus directing the respondent no. 4 to extend consequential relief by recomputing the tax liability of the petitioner for AY 2020-21."

3. The brief facts of the case are as under:

i. The petitioner is challenging the order dated 30.01.2024, passed by the Principal Commissioner of Income Tax, Ghaziabad rejecting the application of condonation of delay filed by the petitioner for condoning the delay in filing Form 10-IC for assessment year 2020-21. The relevant portion of the impugned order dated 30.01.2024 is being quoted below:

"The assessee company filed a Petition u/s 119(2)(b) of the Income Tax Act 1961 dated 29.12.2023 through its director, which was received in the office on 29.12.2023, requesting for condonation of delay, in-filing Form No.10-IC for the A.Y. 2020-21. The assessee company has stated that it had prepared the Form No. 10-IC for filing at the I.T. Portal, but due to the technical glitches it could not submit at the time of filing of ITR."

2. The petition of the assessee company was forwarded to the Addl. Commissioner of Income Tax Range-2(1), Ghaziabad vide letter dated 04.01.2024 for his comments and report. Vide letter dated 17.01.2024 Addl.CIT Range-2(1), Ghaziabad has forwarded report of the JAO Concerned. The Assessing Officer in his report stated that the assessee company has submitted that the person in charge of Income Tax matters. Sh. Anupam Sharma and his family members were suffering from COVID-19 during the year under consideration. On perusal of documents submitted by the assessee company, it appears that its claim is correct and genuine. Therefore, the application for condonation of delay in filing of Form 10-IC may be accepted.

3. Different view has been taken by the Range Head, Ghaziabad and stated. that the assessee company did not file Form No. 10-IC at the time of filing ITR, which is required to be filed on or before the due date of filing return of Income u/s 139(1) of I.T. Act, 1961 and such option once exercised shall apply to subsequent year. But the assessee did not file the same within the specified date. The assessee company has claimed that due to some technical problem of the I.T. Portal, it could not file the Form 10-IC within due date. However, the assessee company did not file any evidence with regard to technical problem/glitches of I.T. Portal. The assessee company does not fulfil the 3rd condition laid down in the circular no. 6/2022 dated 17.03.2022, which is reproduced hereunder,

"Form 10-IC is filed electronically on or before 30.06.2022 or 3 months from the end of the month in which this circular is issued, whichever is later."

Therefore, it is recommended that the condonation application filed by the assessee company may not be considered..

4. On perusal of records and the reports of the authorities below, it is noted that assessee company was not in genuine hardship and therefore, the

condonation application filed by the assessee company may not be considered/condoned.

5. The assessee company does not satisfy the conditions for condonation of delay u/s 119(2)(b) as stipulated in Circular No. 9/2015 [F.No 312/22/2015-OT] dated 09.06.2015. Hence, the request for condonation of delay is hereby rejected”

ii. The petitioner-company filed its income tax return under Section 139(1) for the assessment year 2020-21 on 25th November 2020. The total income declared was Rs. 38,91,260/-. The petitioner had filed its return of income availing the benefit of the newly introduced Section 115BAA of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by which a concessional rate of 22% was applied to the total income of an assessee and the Minimum Alternate Tax (hereinafter referred to as ‘MAT’) regime was made inapplicable. The provision of Section 115BAA of the Act is produced hereinbelow:

“Section 115BAA of The Income Tax Act, 1961:

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied:

***Provided** that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.*

(2) For the purposes of sub-section (1), the total income of the company shall be computed,-

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of [Chapter VI-A other than the provisions of Section 80JJAA or section 80M];

(ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and

(iv) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation. - For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005.

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that in case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year."

iii. The petitioner has made this declaration in its return of income, as well as the statutorily required Form 3CD (audit report), which the petitioner was required to file, however, along with the return of income, the petitioner did not file the newly introduced Form 10-IC.

iv. On 24.12.2021, the Centralized Processing Center issued an intimation order under Section 143(1) of the Act, wherein a demand of Rs. 45,89,490/- was raised against the petitioner for the assessment year 2020-21. The relevant portion of intimation order dated 24.12.2021 is being quoted below:

“ स्थायी खाता संख्या: AACCC1688D | निर्धारण वर्ष: 2020-21 | पत्र सन्दर्भ संख्या: CPC/2021/A6/187513353 | पावती सं: 747236681251120

निर्धारण वर्ष 2020-21 के लिए आपके केस में मांग निर्धारित की गई है

माँग की राशि: रु 45,89,490 माँग सन्दर्भ सं : 2021202037030813732C

ITR फार्म का प्रकार स्थिति सूचना आदेश की दिनांक
ITR6 मूल Private Company 24/12/2021

फाइलिंग की दिनांक
25/11/2020

नियत दिनांक विस्तारित नियत दिनांक
15/02/2021 15/02/2021

आयकर विवरणी का विवरण

राशि (रु में)				
क्र.सं.	विवरण	रिपोर्टिंग शीर्ष	करदाता द्वारा प्रदान किया गया	धारा 143(1) की गणना के अनुसार
01	आय का विवरण	कुल आय	38,91,260	38,91,260
02	कर का विवरण	राहत के बाद कर दायित्व	8,90,321	42,06,089
03	ब्याज और देय शुल्क	कुल ब्याज और शुल्क (और)	0	9,48,482
04	पूर्व संदत्त कर	कुल भुगतान किया गया कर (अग्रिम कर टी डी एस टी	9,17.028	5,65,078

		सी एस स्व- मूल्यांकन कर)		
05	देय कर	कुल देय राशि	0	45,89,490

एन साईराज
सहायक आयकर निदेशक, सी.पी.सी.
बेंगलुरु”

v. Notification No. 06/2022 dated 17.03.2022 had permitted assessee to file Form 10-IC by 30.06.2022. The petitioner was unable to file Form 10-IC due to unavailability of Shri Anupam Sharma, the person handling income tax matters of the petitioner as due to severe health conditions of his mother and elder daughter and their subsequent deaths, he was unable to focus on work and as a result Form 10-IC could not be filed even before the extended date, i.e., 30.06.2022.

vi. In the application for delay condonation dated 29.12.2023, the petitioner has stated that it only came to know about the non-filing of Form 10-IC when a demand of Rs. 45,89,490/- was found on the portal. It was pleaded that the non-filing of Form 10-IC was not intentional but due to personal difficulties of the staff member and that non-filing of Form 10-IC was a procedural error and could be rectified.

vii. Vide order dated 30.01.2024, the Principal Commissioner of Income Tax, Ghaziabad rejected the application for delay condonation filed by the petitioner on grounds that the assessee company was not in genuine hardship. The same was done on the report of the Range Head, Ghaziabad who recorded in his report that the petitioner had failed to establish technical glitches suffered by him while uploading Form 10-IC. It is alleged that prior to passing of the order dated

30.01.2024, no opportunity of personal hearing was provided to the petitioner.

viii. The Principal Commissioner of Income Tax, Ghaziabad has recorded a specific finding that the Assessing Officer, in his report on petitioner's application, had stated that based on the documentary evidence attached to the application, the claim is correct and genuine. Despite a specific finding by the assessing authority that the case of the petitioner seems to be genuine, the Principal Commissioner of Income Tax, Ghaziabad, placing reliance on the report of the Range Head, Ghaziabad has rejected the application of the petitioner.

ix. The report of the Range Head, Ghaziabad, which was adverse to the petitioner and on the basis of which the order impugned has been passed was not made available to the petitioner before the order impugned was passed. The petitioner had no opportunity to review it and thereafter controvert its contents.

x. The Circular No. 9/2015 [F.No.312/22/2015-OT] dated 09.06.2015 provides for guidelines on conditions and procedure to be followed in cases where application has been filed under Section 119(2)(b) of the Act.

xi. Clause 5 of the Circular No. 9/2015 [F.No.312/22/2015-OT] dated 09.06.2015 is extracted below:

"5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCIT/CCSIT/Pr.CsIT/CIT in case of such claims will be subject to following conditions:

a. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

b. The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim."

xii. No reasons have been accorded for rejection of the application on grounds of lack of genuine hardship on the part of the petitioner when the circumstances explained by the petitioner have not been dealt with by the Principal Commissioner of Income Tax, Ghaziabad, in the impugned order dated 30.01.2024.

xiii. The order impugned dated 30.01.2024 does not record that the affidavit submitted by Mr. Anupam Sharma attesting to the deaths in his family and consequent personal difficulties were falsehoods, only set up to justify the application for condonation of delay submitted by the petitioner. Due to delay in filing Form 10-IC an additional demand of Rs. 45,89,490/- was raised against the petitioner for the assessment year 2020-21.

xiv. Relevant clause 9 of the Circular No. 9/2015 [F.No.312/22/2015-01] dated 09.06.2015 is extracted below:

"9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board."

4. Learned counsel for the petitioner submits that the Principal Commissioner of Income Tax, Ghaziabad, arbitrarily rejected the petitioner's application for condonation of delay in filing Form 10-IC, concluding a lack of "genuine hardship." The petitioner submitted the proof, including a detailed affidavit, demonstrating that the delay had occurred due to subsequent deaths of Shri Anupam Sharma's mother and elder daughter, the person responsible for the petitioner's tax compliance. To disregard such well-substantiated circumstance as not constituting genuine hardship represents an unjust exercise of discretionary power.

5. He further submits that the impugned order is fundamentally incorrect due to a clear violation of the principles of natural justice. The Principal Commissioner passed the order without giving any opportunity of hearing to

the petitioner. Further, the adverse report from the Range Head, Ghaziabad which served as the sole basis for the rejection, was never disclosed to the petitioner, thereby depriving the petitioner of any opportunity to review or refute the allegations made against it.

6. Learned counsel for the petitioner further argues that the Principal Commissioner has not used his discretion under Section 119(2)(b) of the Act correctly. This section is for ensuring justice by allowing delay condonation applications when there are genuine hardship, however, the Commissioner took a very narrow view and ignored the clear human reasons for the delay. The non-filing of Form 10-IC was an unintended procedural oversight, not a deliberate act of tax evasion. The petitioner had clearly signified its intention to opt for the beneficial Section 115BAA of the Act by including it in its original income tax return and audit report (Form 3CD). The subsequent substantial demand of Rs. 45,89,490/- is a direct consequence of this technical lapse. The delay had occurred due to the unavoidable personal circumstances and there is no indication that the petitioner has sought any advantage by late filing. The respondent authority was not justified in denying such benefit by not condoning the delay in filing such form which is procedural in nature.

7. Learned counsel for the petitioner further submits that the Principal Commissioner has ignored the Assessing Officer's report, who, after reviewing the documentary evidence, deemed the petitioner's claim "correct and genuine." The impugned order fails to provide any cogent reasons for rejecting the finding and for concluding a lack of genuine hardship despite the detailed report in favour of the petitioner.

8. Learned counsel for the petitioner relied upon the judgment passed by Hon'ble Supreme Court as well as various judgments of the Hon'ble High Courts in support of his aforesaid contentions. The judgments which are relied upon by the learned counsel are as under:

i. The Hon'ble Apex Court in ***B.M.Malani v. Commissioner of Income Tax and Anr (2008) 10 SCC 617*** observed as under:

"16. The term genuine' as per the New Collins Concise English Dictionary is defined as under: "Genuine means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)"

17. For interpretation of the aforementioned provision, the principle of purposive construction should be resorted to. Levy of interest although is statutory in nature, inter alia for re-compensating the revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

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. The said principle, it is conceded, has not been applied by the courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas Pvt. Ltd. & Anr. v. Union of India & ors. 1991 Suppl. (1) SCC 102, para 39, Union of India & ors. v. Major General Madan Lal Yadav (Retd.) (1996) 4 SCC 127 at 142, paras 28 and 29, Ashok Kapil v. Sana Ullah (dead) ors. (1996) 6 SCC 342 at 345, para 7, Sushil Kumar v. Rakesh Kumar (2003) 8 SCC 673 at 692, para 65, first sentence, Kusheshwar Prasad Singh v. State of Bihar ors. (2007) 11 sec 447, paras 13, 14 and 16).

19. Thus, the said principle, in our opinion, should be applied even in a case of this nature. A statutory authority despite receipt of such a request could have kept mum. It should have taken some action. It should have responded to the prayer of the appellant. However, another principle should also be borne in mind, namely, that a statutory authority must act within the four corners of the statute. Indisputably, the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised. He has to arrive at a satisfaction that the three conditions laid down therein have been fulfilled before passing an order waiving interest."

ii. The Hon'ble Gujarat High Court in ***Gujarat Electric Co. Ltd. v. CIT [2002] 255 ITR 396*** held that the word "**genuine hardship**" in Section 119 must be construed liberally and granted the benefit of refund to the petitioner where return could not be filed due to illness of the person in-charge of filing the returns.

iii. The Hon'ble High Court of Judicature at *Bombay in K.S. Bilawala Ors. v. Principal Commissioner of Income Tax 17, Mumbai & Ors (Writ Petition (1) No. 32261 of 2023)* has held as under:

"Therefore, the phrase genuine hardship' used in Section 119(2)(b) of the Act should be considered liberally. Respondent should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred to enable the authorities to do substantial justice to the parties by disposing the matters on merits. While considering these aspects, the authorities are expected to bear in mind that no applicant stand to benefit by lodging delayed 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 the delay is condoned, the highest that can happen is that a सन्धि would be decided on merits after hearing the parties."

iv. The Hon'ble High Court of Judicature at Bombay in *Sitaldas K Motwani vs. Director General of Income Tax and others (2009 SCC OnLine Bom 2195)* held as under:

"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 bereinabove and while considering this aspect, the authorities are expected to keep 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 authorities can decide the case 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."

v. Learned counsel for the petitioner has also relied upon a judgment of the High Court of Gujarat at Ahmedabad in *R/Special Civil Application No. 3445 of 2024; Deepak Pragjibhai Gondaliya vs. Principal Commissioner of Income Tax Vododara 1*, decided on 10.06.2025. Paragraph Nos. 7 and 8 of the judgment are quoted below:

"7. As held by this Court in various judgments while considering the late filing Form 10-IC, Form 10B as required under various provisions of the

Act for claiming deduction under Chapter-VI, that the filing of form for claiming benefit under the provisions of the Act is procedural, the case of **Sitaldas K. Motwani v. Director General of Income Tax (International Taxation)** reported in [2010] 187 Taxman 44 {=323 ITR 223 (Bombay)} as well as the case of **Bombay Mercantile Co-op. Bank Ltd., v. CBDT** reported in [2010] 195 Taxman 106 {=332 ITR 87(Bombay)} were followed. Similarly in case of **Pankaj Kailash Agarwal v. Assistant Commissioner of Income Tax** reported in [2024] 464 ITR 65 (Bombay), the Hon'ble Bombay High Court has held as under :-

“10. On the issue of genuine hardship, relying on *R. K. Madhani Prakash Engineers (Supra)*, Mr. Sarda submitted that while considering this aspect of genuine hardship, the authorities are expected to bear in mind that ordinarily applicant applying for condonation of delay does not stand to benefit by lodging its claim late. Moreso, when applicant is claiming the deductions under Section 80IC of the Act. Mr. Sarda submitted that CBDT has failed to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties and the approach of the CBDT should be justice oriented so as to advance cause of justice.

11. In the affidavit in reply, respondents have only reiterated what was stated in the impugned order and Mr. Rattesar resubmitted the same.

12. We would agree with Mr. Sarda that no assessee would stand to benefit by lodging its claim late. Moreso, in case of the nature at hand, where assessee would get tax advantage/benefit by way of deductions under Section 80IC of the Act. Of course, there cannot be a straight jacket formula to determine what is 'genuine hardship'. In our view, certainly the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction under Section 80IC of the Act, that will be certainly a 'genuine hardship'. It would be apposite to reproduce paragraph 4 of judgment in *K. S. Bilawala & Ors. Vs. PCIT & Ors. (2024) 158 taxmann.com 658 (Bombay)*, which reads as under:

“4. There cannot be a straight jacket formula to determine what is genuine hardship. In our view, certainly the fact that an assessee feels he has paid more tax than what he was liable to pay will certainly cause hardship and that will be certainly a 'genuine hardship'. This Court in *Optra Health Pvt. Ltd. v. Additional Commissioner of Income Tax (HQ), Pune & Ors. (Writ Petition No.15544 of 2023 dtd. 19 th December 2023)* in paragraphs No. 9 and 10 held as under:

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 Incometax (International Taxation)*, New Delhi, 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.

*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:*

"16. The term 'genuine' as per the New Collins Concise English Dictionary is defined as under : 'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)'.

*17. ******

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 justiceoriented 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, (2014) 52 taxmann.com 152 (Bombay) 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 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."

The Court has held that the phrase 'genuine hardship' used in Section 119(2) (b) of the Act should be considered liberally. CBDT should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred is to enable the authorities to do substantial justice to the parties by disposing the matters on merits and while considering these aspects, the authorities are expected to bear in mind that no applicant would stand to benefit by lodging delayed returns. The court also held that 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 the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Similar issue came to be considered in R. K. Madhani Prakash Engineers (Supra), where paragraph 8 reads as under :

"8 Further it is recorded in the impugned order that petitioner has failed in proving the genuine hardship. In this regard, we would refer to the judgment of a Division Bench of this court in the case of Sitaldas K. Motwani Vs. Director General of Income Tax (International Taxation) & Ors., (2009 Scc Online Bom 2195) where the court has discussed the phrase "genuine hardship" used in Section 119(2)(b) of the Act. The court has held that the phrase "genuine hardship" should be construed liberally particularly when the legislature had conferred the power to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. While considering this aspect of genuine hardship, the authorities are expected to bear in mind that ordinarily applicant applying for condonation of delay does not stand to benefit by lodging its claim late. More so, in the case at hand where applicant was seeking refund of a large amount of Rs.82,13,340/-. Refusing to condone the delay can result in

a meritorious matter being thrown out at the very threshold and cause of justice being defeated. The authorities fail to understand that when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. In our view, the approach of the authority should be justice oriented so as to advance cause of justice. If refund is legitimately due to applicant, mere delay should not defeat the claim for refund.

Paragraphs 13 to 16 of Sitaldas K. Motwani (Supra) 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 as to whether the petitioner was prevented by any substantial cause from filing return within due time. Other factors detailed herein below ought to have been taken into account.

14. The Apex Court, in the case of B.M. Malani v. CIT and Anr. MANU/SC/4268/2008 : (2008) 10 SCC 617, has explained the term "genuine" in following words:

16. The term "genuine" as per the New Collins concise English Dictionary is defined as under: 'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse).

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.

The Gujarat High Court in the case of Gujarat Electric Co. Ltd. V. CIT MANU/G1/0407/2001: 255 ITR 396, 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 was looking after the taxation matters of the petitioner.

The Madras High Court in the case of Seshammal (R) v. ITO MANU/ TN/ 0879/ 1998: (1999) 237 ITR 185 (Madras), 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 plea of limitation in such a situation to avoid return of the amounts. Section sit 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.

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 12th October, 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 malafides. 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." (emphasis supplied)

This court in R.K. Madhani Prakash Engineers (Supra) had quashed and set aside the impugned order on the ground that the impugned order is not passed by the CBDT but only with the approval of the Member (IT & R), CBDT. So also

in the case of TATA Autocomp (supra) wherein paragraphs 11, 12 and 13 read as under:

"11. Moreover, the order says, "This issues with the approval of Member (IT&R), Central Board of Direct Taxes" and is signed by one Virender Singh, Additional Commissioner of Income Tax (ITA Cell), CBDT, New Delhi. If a personal hearing has been granted by the Member (IT&R), the order should have been passed by him. Mr. Sharma states there could be file notings. If that is so, that has not been made available to Petitioner.

12. In the circumstances, on these two grounds alone, we quash and set aside the impugned order dated 5th December 2023 and remand the matter to CBDT. The Member/Members shall within three weeks from the date this order is uploaded make available to Petitioner all Field Reports/ documents/ instructions received by the CBDT from the Field Authorities and within two weeks of receiving the same, Petitioner shall file, if advised, further submissions in support of their application for condonation of delay.

13. Thereafter, an order shall be written, passed and that order shall be authored and signed by the Member of CBDT, who has given a personal hearing and when we say this, it is not the Member holding the same designation. The same individual who gave a personal hearing, shall write and sign the order. All rights and contentions of Petitioner are kept open. Before passing any order which shall be a reasoned order dealing with all submissions of Petitioner, a personal hearing shall be given to Petitioner, notice whereof shall be communicated at least seven working days in advance."

13. In our view, legislature has conferred power on respondent no.3 to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. Routinely passing the order without appreciating the reasons why the provisions for condonation of delay has been provided in the act, defeats the cause of justice."

*"8. This Court in the case of Surat Smart City Development Ltd. (supra) has also considered the decision of the Hon'ble Apex Court in the case of **Principal Commissioner of Income Tax v. Wipro Limited** reported in 446 ITR 1 (SC) and observed as under :-*

"17. On perusal of the above observation of the Hon'ble Apex Court, it is also apparent that the Hon'ble Apex Court has considered the significance of filing declaration under Section 10B(8) of the Act considering the provisions of Section 10B(5) of the Act being a check to verify the correctness of the claim of deduction at the time of filing of return so that if an assessee claims an exemption under the Act by virtue of Section 10B of the Act, then the correctness of the claim has already been verified under Sub-section (5) of Section 10B and therefore, if the claim is withdrawn post the date of filing of return, the report of the Accountant filed under Section 10B(5) of the Act would become

falsified and would stand to be nullified. However, the provisions of Section 115BAA of the Act are in a way granting relief to the assessee Companies to enable them to pay the reduced rate of tax at rate of 22% on exercise of the option on the various conditions mentioned therein.

18. In such circumstances, the respondent No.1 was required to consider the facts of the case by permitting the petitioner to file a fresh Form 10-IC and condoning the delay in filing such Form by molding the prayer made by the petitioner to treat the Form 10-IC filed by the petitioner for Assessment Year 2021-2022 to be treated as that of for Assessment Year 2021. The provisions of Section 119(2)(b) of the Act are meant for redressal of the grievance and hardships caused to the petitioner as held by the Hon'ble Madras High Court in case of R.Seshammal (Supra) as under :

“This is hardly the manner in which the State is expected to deal with the citizens, who under 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.”

vi. Learned counsel has further relied upon a judgment of the High Court of Madras in ***MRF Ltd. vs. Central Board of Direct Taxes, New Delhi***; [2025] 172 taxmann.com 776 (Madras). Paragraph Nos. 5 and 8 of the judgment are quoted below:

*“5. In this regard. it was submitted by the learned counsel for the petitioner that Section 119(2)(b) has been considered by various High Courts including Hon'ble Supreme Court and it has consistently been held that the discretion under this provision ought to be exercised liberally. It was then submitted by the learned counsel for the petitioner that the belated filing of Form 10-1C in support of the option exercised under Section 115BAA of the Act had been dealt with by this Court in *Axe Bpo Services (P) Ltd. v. Director* [W.P. No. 3425 of 2024, dated 13-11-2024] wherein after referring to various case laws on the scope of the expression "genuine hardship", it was found that there was substantial compliance inasmuch while filing the return it was stated that the petitioner had opted to pay taxes under Section 115BAA of the Act which is the case here as well. In this regard, it may be relevant refer to the following order.*

“...

13. The expression "genuine hardship" had come up for consideration on more than one occasion before various Court, including this Court and the Apex Court. It appears that it has been consistently held that the power conferred under Section 119(2)(b) of the Act, ought to be exercised liberally provided circumstances

set out therein exist. Here it may be relevant to keep in view the decision of the High Court of Bombay in the case of Pankaj Kailash Agarwal v. CIT, reported in (2024) 4641TR 65, wherein it was held that no assessee would stand to benefit by lodging its claim late. More so, where the assessee would get tax advantage/benefit. It was held that the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction will certainly constitute "genuine hardship". The phrase "genuine hardship" used in section 119(2)(b) of the Act should be 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 of the matters on merits."

8. This Court, after carefully considering the submissions and examining the scope, purport and object of Section 119(2)(6), finds that identical submissions were made before this Court and the same was rejected in W.P. No. 3425 of 2024, dated 13-11-2024. The relevant portion is extracted here under:

"10. Section 119(2x8) vests power in the Board to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the period specified under the said Act, for making such application or claim, if it is considered by the Board to be desirable or expedient so to do for avoiding genuine hardship in any case or class of cases.

11..... if the circumstances set out under Section

119(2)(6) of the Act exist, a duty is cast on the Assessing Officer to exercise its power under Section 119(2)(b) of the Act. It is trite law that vesting of power in an authority results in imposition of duties on that authority to exercise that power in a manner which would advance the purpose for granting/vesting of such power. In other words, this Court is of the view that the power under Section 119(2)(6) though seemingly an enabling provision, conferring discretionary power, such power is coupled with duty.

16. I also find that, there has been substantial compliance of the requirement under Section 115BAA of the Act, as evident from the fact that while filing the returns, it was declared/stated by the petitioner that the option to discharge the tax was exercised under Section 115BAA of the Act and taxes were in fact paid@ 22% without claiming deductions as contemplated under Section 115BAA of the Act. In this regard, it may be relevant to refer to the Hon'ble Supreme Court, in the case of Dilip Kumar (2018) 9 SCC, wherein while deciding the Doctrine of Substantial Compliance held as under:

"33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of

directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted."

17. In the circumstances this Court is of the view that the Respondent Authority/Board has completely mis-directed itself in not-examining if the failure to consider the claim of option to discharge tax under Section 115BAA on the ground of failure on the fact of the petitioner to file Form 10-IC within the period stipulated under Section 115BAA would cause "genuine hardship" to the petitioner/assessee and thus it is desirable as expedient to permit the petitioner to file Form 10-IC in support of its option under Section 115BAA and deal with the same on merit. The facts narrated supra leaves no room for doubt that the rejection of the petition under Section 119(2)(b) to permit the petitioner to file Form 10-IC in support of its exercise of option under Section 115BAA of the Act would cause genuine hardship and it is desirable and expedient to permit the petitioner to file Form 10-IC in support of its claim/option under Section 115BAA of the Act and deal with such claim on merits in accordance with law.

18. In view thereof, the impugned order is set-aside, the respondent shall keep the portal open to enable the petitioner to upload the Form 10-IC and the petitioner shall file the Form 10-IC within a period of four weeks from the date of receipt of a copy of this order, thereafter the respondent shall proceed to deal with the claim of the petitioner under Section 115BAA on merit and in accordance with law."

8.1. Following the same, this Court is inclined to set aside the order passed under Section 119(2)(b). In view thereof, the impugned order dated 26.03.2024 is set-aside, the respondents shall keep the portal open to enable the petitioner to upload the Form 10-IC and the petitioner shall file the Form 10-IC within a period of four weeks from the date of receipt of a copy of this order, thereafter the respondents shall proceed to deal with the claim of the petitioner under Section 115BAA on merit and in accordance with law."

vii. Learned counsel has also relied upon a judgment of the High Court of Bombay in ***Pankaj Kailash Agarwal vs. Assistant Commissioner of Income-tax and others***; 2024 SCC OnLine Bom 1025. Paragraph No. 12 of the judgment is quoted below:

““.....

12.1 The court has held that the phrase "genuine hardship" used in section 119(2)(b) of the Act should be considered liberally. The Central Board of Direct Taxes should keep in mind, while considering an application of this

nature, that the power to condone the delay has been conferred is to enable the authorities to do substantial justice to the parties by disposing of matters on the merits and while considering these aspects, the authorities are expected to bear in mind that no applicant would stand to benefit by lodging delayed returns. The court also held that 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 the delay is condoned, the highest that can happen is that a cause would be decided on the merits after hearing the parties. Similar issue came to be considered in R.K. Madhani Prakash Engineers, where paragraph 8 reads as under (page 51 of 458 ITR):

.....

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 October 12, 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 the 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.

..... (emphasis supplied)"

9. Learned counsel for the respondent vehemently opposed the submissions advanced by the learned counsel for the petitioner and submits that the benefit of Section 115BAA, offering a concessional tax rate, is conditional upon strict compliance with all statutory prerequisites, including the timely filing of Form 10-IC. The Centralized Processing Center (CPC) assessed the petitioner's income under the MAT regime, because Form 10-IC was not filed within the prescribed time limit. The option to avail Section 115BAA of the Act depends upon fulfilling all the conditions contained in sub-section (2) of Section 115BAA of the Act, which includes the mandatory

electronic filing of Form 10-IC and since this was not done, the petitioner is not eligible for the concessional rate.

10. Learned counsel for the respondent contended that the Principal Commissioner of Income Tax, Ghaziabad, correctly rejected the petitioner's application for condonation of delay under Section 119(2)(b) of the Act, due to a lack of "genuine hardship" because the responsibility for filing all statutory forms within the stipulated time lies with the assessee (petitioner) and not with its staff. The petitioner also failed to furnish documentary evidence to support claims of technical glitches.

11. Learned counsel for the respondent further submits that the petitioner failed to comply with Notification No. 6/2022 dated 17.03.2022, which extended the deadline for filing Form 10-IC to 30.06.2022. The petitioner's contention of "non-availability of the person handling tax matters" is not an acceptable reason for failing to meet this extended deadline. The third condition laid down in Circular No. 6/2022 regarding the timely electronic filing of Form 10-IC was not fulfilled, which directly led to the rejection of the condonation application.

12. Learned counsel for the respondent rebutted the petitioner's claims of arbitrariness and violation of natural justice and submits that the Principal Commissioner of Income Tax's order dated 30.01.2024 was passed after due consideration of the facts and material available on record. Even if an Assessing Officer initially found the claim genuine, the final decision rests with the higher authority, who is empowered to make inquiries and scrutinize the case as per clause 5(ii) of Circular No. 9/2015.

13. Learned counsel for the respondent has submitted that already intimation has been given to the petitioner under Section 143 of the Act, therefore, he cannot be allowed to submit its Form 10-IC beyond the period prescribed under the law.

14. Learned counsel for the respondent submits that **under Section 115BAA, a condition is stipulated that Form 10-IC must be filed by the assessee before submitting the Income Tax Return (ITR) so that the concessional tax rate of 22% is payable by the assessee.** In this case, the petitioner did not submit Form 10-IC within the prescribed period, as per the provisions of the Act, prior to filing its ITR. Therefore, there is no provision to allow the petitioner to submit its Form 10-IC subsequent to filing its ITR. Consequently, the impugned order has been passed in accordance with law.

15. Per contra, learned counsel for the petitioner submits that relaxation has been granted by the various Hon'ble Courts by passing judgments under the heading of "genuine hardship", and in such a condition, the delay may be condoned and the petitioner may be directed to submit its Form 10-IC even after filing its ITR. He further submits that a further direction may be issued to the concerned respondent to inform the petitioner that the said form has been accepted.

16. We have heard learned counsel for the parties and perused the record.

17. In this case following **legal provisions of law** are involved:

(I) Section 143(1) of The Income Tax Act, 1961:

(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:

(a) the total income or loss shall be computed after making the following adjustments, namely:

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C. —Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;

(b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of [nine months] from the end of the financial year in which the return is made.

Explanation. For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

(II) Section 119(2)(b) of The Income Tax Act, 1961:

“(b) 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, authorise [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 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.”

18. In the present matter, the Principal Commissioner of Income Tax, Ghaziabad, appears to have fallen into error by adopting an excessively precise and stringent approach to the application for condonation of delay under Section 119(2)(b) of the Act. The very essence of this statutory provision is to confer discretionary power upon the tax authorities to mitigate "genuine hardship" faced by assesseees. The undeniable and tragic circumstances of successive family deaths of the person handling petitioner-company's tax matters, as submitted by the petitioner through a detailed affidavit of Anupam Sharma, unequivocally establish a case of profound personal hardship that directly impaired the petitioner's ability to ensure timely compliance. To dismiss such a well-substantiated cause as insufficient for condonation not only negates the remedial intent of Section 119(2)(b) but also constitutes an arbitrary exercise of discretion, particularly when the petitioner's intent to avail the beneficial provisions of Section 115BAA was evident from its original return and audit report.

19. The arbitrary rejection of the condonation of delay in filing Form 10-IC are strongly supported by various judgments that widely interpret "genuine hardship" under Section 119(2)(b) of the Act. The Hon'ble Supreme Court in **B.M. Malani** (supra) emphasized that "genuine hardship" signifies "genuine difficulty" and requires a purposeful interpretation of the provision, mandating a judicious exercise of discretion by statutory

authorities. The Hon'ble Gujarat High Court in **Gujarat Electric Co. Ltd.** (supra) held that "genuine hardship" must be construed liberally. The Hon'ble Bombay High Court in **K.S. Bilawala Ors. (supra)** and **Sitaldas K Motwani (supra)** further consolidated this liberal interpretation, asserting that the power to condone delay is for substantial justice and refusing it can defeat the interest of justice. The Hon'ble Gujarat High Court in **Deepak Pragjibhai Gondaliya (supra)**, held that the filing of forms for claiming benefits is procedural and no assessee benefits from late filing. The Hon'ble **Bombay High Court in Pankaj Kailash Agarwal (supra)** recited by the **Madras High Court in MRF Ltd. (supra)**, firmly stated that the "an assessee feels that he would be paying more tax if he does not get the advantage of deduction will certainly constitute genuine hardship."

20. The judgments discussed hereinabove collectively stress that when substantial justice and technical considerations are aligned against each other, the preference should be given to the cause of substantial justice and the authorities' approach should be justice-oriented on merits. The clear and repeated position of law is that even if a procedural delay occurs due to "genuine hardship", it should not prevent an assessee from receiving a rightful tax benefit. Therefore, in light of the aforesaid judgments of Hon'ble Supreme Court and Hon'ble High Courts, we are of the view that filing of Form 10-IC prior to filing of return is not mandatory and if "genuine hardship" is shown then delay may be condoned and in this respect the provision of law shall be taken as a beneficial piece of legislation.

21. After perusing the contentions of the learned counsel for the parties, records and case laws cited, in the opinion of the Court, the genuine hardship shall be seen by the concerned respondent authority as the petitioner is not getting benefit of concessional rate of tax under the Act, in respect of delay, therefore, the impugned order dated 30.01.2024 passed by the Principal Commissioner of Income Tax, Ghaziabad is **quashed** and the respondent authority is directed to condone the delay in filing Form 10-IC and accept

the said Form 10-IC. The respondent concerned is further directed to provide consequential relief to the petitioner by recomputing its tax liability on the submission of its ITR by taking into account Form 10-IC.

22. Accordingly, the writ petition is **allowed**.

17.07.2025

K.Tiwari

(Praveen Kumar Giri, J.)

I agree

(Shekhar B. Saraf, J.)