IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 38769 of 2023

Dillip Kumar Barik	…..	***Petitioner***
		Mr. B. Panda, Advocate
	Vs.	
The Income Tax Officer, Keonjhar and another	…..	***Opposite Parties***
		Mr. S.C. Mohanty, Sr. Standing Counsel for IT Dept.

CORAM:
DR. JUSTICE B.R. SARANGI
MR. JUSTICE G. SATAPATHY

ORDER
23.04.2024

Order No. 05.

This matter is taken up by hybrid mode.

2. Heard Mr. B. Panda, learned counsel appearing for the petitioner and Mr. S.C. Mohanty, learned Sr. Standing Counsel for I.T. Department.

3. The Petitioner has filed this writ petition challenging the order passed by the Principal Commissioner of Income Tax, Sambalpur dated 01.08.2023 under Annexure-1, rejecting the request of the Petitioner to condone the delay in filing the IT return for the Assessment year 2021-22 under Section 119(2)(b).

4. Mr. B. Panda, learned counsel appearing for the petitioner contended that for the assessment year 2021-22 when the petitioner submitted his return, the same was rejected on the ground of delay. According to him the return under the provisions of the statute could not be furnished because of delay made under various reasons which were beyond his control and unless the delay is condoned, the filing of return could not be made by the petitioner. As such, the petitioner

was under treatment on account of his frequent illness and finally kept under the treatment of Dr. P.G. Satpathy, a Medicine Specialist for the period commencing from 22.03.2022 to 01.04.2022 and medical certificate was issued in this connection which was produced for consideration. The petitioner's transactions for the assessment year 2021-22 was in fact coming under the limit of statutory audit as per Section 44AB of the IT Act and unless the Auditor's Report is accompanied in the IT return as prescribed, the filing of the return cannot be entertained. Since there was delay in furnishing the return, which was beyond the control of the petitioner, the same has been rejected without taking into consideration the fact that the relief has been granted by the apex Court for condonation of delay.

5. Mr. S.C. Mohanty, learned Senior Standing Counsel for I.T. Department vehemently contended that since there was delay on the part of the petitioner to furnish the return, therefore, the delay has not been condoned and the authority is well justified in passing the order impugned, which does not warrant interference of this Court at this stage.

6. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner is a regular assessee before the opposite party-department. Even if the filing of IT Return was within his knowledge and was deriving income from sale of high speed diesel and income from firm's business etc., he was required to file the IT Return disclosing the income at Rs.15,97,750/- and deposit of advance tax and all other dues of the department even if were paid to the credit of the IT Department and excess amount as per the statement prepared accrued the claim of refund at Rs.10,939/- and unless the return was entertained and delay is condoned considering the illness etc., it could not be possible to file IT Return

in the relevant year. Therefore, when the petitioner submitted the IT return, the delay could have been condoned invoking Section 119 (2)(b) of the IT Act. The petitioner's transactions of the relevant year were in fact coming under the limit of Statutory Audit as per Section 44AB of the IT Act and unless the Auditor's Report is accompanied in the IT return as prescribed, the filing of the return cannot be entertained. On the whole the deficiency in the return could not be complied and the Form 3CB and 3CD as prescribed for filing of the return was required to be uploaded by the Chartered Accountant which came to the notice of the petitioner for the uploading on 31.03.2022. Therefore, the illness of the petitioner as well as uploading of statutory Audit Report made on 31.03.2022 by the concerned Chartered Accountant made the delay which was beyond the control of the petitioner. When the petitioner filed his IT return the same could have been accepted condoning the delay by invoking Section 119 (2)(b) of the IT Act, but the same has been rejected. But fact remains, the Apex Court in a Suo Motu Writ Petition (C) No. 3 of 2020 and this Court in W.P.(C) No. 15941 of 2021 had been pleased to extend the limitation/ relaxation of general and special laws due to extra ordinary situation prevailing for COVID-19 Pandemic, but however the CBDT vide Circular dated 09.06.2015 had provided the guidelines for condonation of delay in filing of the IT return, could be made for refund and carry forward of loss and set up provided to follow the procedure referring Section 119 (2) (b) within a period of six years from the end of assessment year for which applications have been filed. The present dispute also covers the aforesaid guidelines which could have been exercised by the opposite party department. As such, the condonation delay application filed by the petitioner should not have been rejected straightway in a cryptic, confused and absurd manner without considering the orders passed by the apex Court as well as by this Court as mentioned above. Had the order of the apex Court been taken into consideration, the authority could not have been rejected the condonation of delay application of the petitioner. Therefore, this Court is of the considered view that the order so passed by the Principal CIT, the opposite party no.2 dated 01.08.2023 under Annexure-1 cannot be sustained in the eye of law and the same is liable to be quashed and is hereby quashed. As a consequence thereof, the matter is remitted back to the Principal CIT-opposite party no.2 to consider the return submitted by the petitioner at belated stage and pass appropriate order in accordance with law.

7. With this observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

S.Sasmal