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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Judgment reserved on : 02/11/2026

Judgment delivered on : 21/11/2026

Judgment (full) uploaded on : 21/11/2026

D.B. Civil Writ Petition No. 10224/2024

CNR: RJHC020504082024 | URN: CW / 20347U / 2024

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A Sarraf and Om Group Developers, 1011, Horizon Tower, Jewel of India, Jawahar Lal Nehru Marg, Jaipur through Its Partner Shri Rachit Agarwal

----Petitioner

Versus

Central Board Of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi through Its Chairman

----Respondent

For Petitioner(s) : Mr. Siddharth Ranka with
Ms. Apeksha Bapna
Mr. Rohan Chhatter

For Respondent(s) : Mr. Siddharth Bapna
Mr. Sarvesh Jain
Ms. Tanushka Saxena

DIVISION BENCH

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE SAMEER JAIN

C.A.V. Judgment

For sake of exposition, this judgment is divided in the following parts:-

S. No.	Particulars	Page Nos.
1.	PREFACE	2
2.	SUBMISSIONS MADE BY THE LEARNED COUNSEL APPEARING FOR THE PETITIONER	2 - 10
3.	SUBMISSIONS MADE BY THE LEARNED COUNSEL APPEARING	11 - 18

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	FOR THE RESPONDENT	
4.	DISCUSSION AND FINDINGS	18 - 37

PREFACE:

1. The present writ petition is filed assailing the impugned order dated 30.04.2024 passed under section 119(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), as the same is alleged to be based on wrong reading of law; and thereby, the applications seeking condonation of delay under section 119 of the Act was rejected.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE PETITIONER :

2. Learned counsel for the petitioner submitted that the petitioner is a partnership firm engaged in the business of developing and constructing affordable housing projects and was duly registered with the Income Tax Department under PAN ABCFA1029. It was submitted that the petitioner had regularly maintained its books of accounts, got the same audited through its Chartered Accountant and had been filing its audit reports and income-tax returns on a year-to-year basis. It was contended that, being engaged in the development and construction of affordable housing projects, the petitioner was eligible to claim deduction under Section 80IBA of the Income Tax Act, 1961, and had accordingly claimed such deduction for the assessment years 2021-22, 2022-23 and 2023-24. It was further submitted that the petitioner had duly discharged its tax liability under the provisions

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relating to Alternate Minimum Tax before filing its income-tax returns.

3. Learned counsel submitted that, for the assessment year 2022-23, the audit report had been duly uploaded by the petitioner's Chartered Accountant on 30.09.2022, within the prescribed period; however, the income-tax return was inadvertently filed on 30.12.2022, resulting in a delay of merely 53 days. Consequently, the Central Processing Centre, Bengaluru, vide order dated 03.04.2023, denied the benefit of deduction under Section 80IBA of the Act on the ground of belated filing of the return, computed the petitioner's total income at Rs.4,84,93,638/- and raised a demand of Rs.77,11,470/-. An appeal preferred against the said order was stated to be pending before the Commissioner of Income Tax (Appeals), however, the same stands to be infructuous in light of the petitioner’s application for condonation of delay, being denied by the learned CBDT.

4. It was contended that, upon realising the consequences of the aforesaid delay, the petitioner had submitted an application dated 25.07.2023 before the CBDT under Section 119(2) of the Act, seeking condonation of delay in filing the return and consequential permission to claim deduction under Section 80IBA of the Act. Learned counsel further submitted that the CBDT, vide communication dated 29.11.2023, had informed the petitioner that an adverse report had been received from the DGIT (Investigation), Jaipur/PCCIT, Jaipur, recommending against the grant of condonation, and had accordingly afforded an opportunity

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to the petitioner to explain why its application should not be rejected. In response thereto, the petitioner had submitted a detailed reply dated 05.12.2023, specifically rebutting the objections raised against its application. However, the CBDT, vide the impugned order dated 30.04.2024, had rejected the application without properly appreciating the explanation and supporting material furnished by the petitioner.

5. Learned counsel assailed the impugned order primarily on the ground of lack of jurisdiction and competence of the authority passing the same. It was submitted that the order had been passed by the Additional Commissioner of Income Tax (ITA Cell), who was not competent to decide the petitioner's application, particularly when the amount of deduction involved exceeded Rs.3 crores. Referring to the CBDT Circular dated 09.06.2015, it was contended that such an application was required to be considered by the Board itself, whereas the impugned order had been passed by an authority subordinate in rank to the Commissioner/Principal,Commissioner/Chief,Commissioner/Principal Chief Commissioner of Income Tax. It was further submitted that the record did not disclose whether the requisite approval of the Board had been obtained before passing the impugned order.

6. It was further contended that the delay in filing the income-tax return was neither intentional nor deliberate and had occurred on account of genuine hardship faced by the petitioner at the relevant point of time. The delay was attributable to the negligence and incorrect professional advice of the Chartered Accountant engaged by the petitioner, who had failed to ensure

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timely filing of the return despite having uploaded the audit report within the prescribed period. It was submitted that the petitioner had subsequently discontinued the services of the said Chartered Accountant. The petitioner had also furnished affidavits explaining the circumstances leading to the delay and had clarified that it had neither adopted a casual approach towards statutory compliance nor had it sought condonation of delay in any preceding or succeeding assessment year.

7. Placing reliance upon the judgment of the Hon'ble Supreme Court in **B.M. Malani v. Commissioner of Income Tax**[1], and **Sujatha Ramesh V. CBDT**[2] learned counsel submitted that the expression 'genuine hardship' was required to be interpreted purposively and in a manner consistent with the object of the provision. It was contended that genuine hardship included genuine difficulty and that the authority was required to examine the circumstances of the assessee holistically rather than adopt a narrow or hypertechnical approach while considering an application for condonation of delay.

8. Learned counsel further submitted that the petitioner had not been supplied with copies of the reports submitted by the DGIT (Investigation), Jaipur and the PCCIT, Jaipur, particularly the report dated 07.11.2023, despite the CBDT having relied upon the same while rejecting the application. It was contended that the petitioner had, therefore, been deprived of an effective opportunity to rebut the adverse material relied upon against it, in violation of the principles of natural justice. It was also pointed out

1(2008) 10 SCC 617
2(2017) 11 TMI 395

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that the impugned order did not clearly indicate which of the two reports had ultimately formed the basis of rejection of the petitioner's application.

9. It was further argued that the petitioner had fulfilled all substantive conditions prescribed under Section 80IBA of the Act and that the only impediment in claiming the deduction was the delay of 53 days in filing the income-tax return. The audit report had already been furnished within the prescribed time and the petitioner had otherwise complied with the statutory requirements. Therefore, the benefit of deduction ought not to have been denied merely on account of such a marginal delay, particularly when the delay was explained by the petitioner and was not deliberate. At this juncture, learned counsel had relied upon Circular No. 09/2015 dated 09.06.2015 issued by the CBDT in exercise of its powers under section 119 of the Act, wherein it has prescribed the guidelines which are ought to be considered by the income tax authorities which considering the applications filed by the assessee under section 119(2)(b) of the Act. For the sake of reference the said circular is reproduced hereinbelow:

"CIRCULAR NO 09/2015
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES

Dated: June 9, 2015

Sub: Condonation of delay in filing refund claim and claim of carry forward of losses under Section 119(2)(b) of the Income-tax Act

In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central

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Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income-tax Act (the Act), the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

2. (i) of Income-The Principal Commissioners tax/Commissioners of Income-tax (Pr, CSIT/CSIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.50 lakhs for any one assessment year.

(ii) The Chief Commissioners of Income-tax (CCSIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.50 lakhs but is not more than Rs.2 crores for any one assessment year.
(iii) The Principal Chief Commissioners of Income-tax (Pr. CCSIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.2 crores but is not more than Rs.3 crores for any one assessment year.
(iv) The applications/claims for amounts exceeding Rs.3 crores shall be considered by the Board.

3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.
4. In a case where refund claim has arisen consequent to Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.
5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCSIT/CCSITin case of such claims will be subject to following conditions:
i. 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.

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ii. The Pr.CCIT/CCIT/Pr.CIT/CJT 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.

6. A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCSIT/Pr.CsIT/CSIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

i. The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

ii. No interest will be admissible on belated claim of refunds.

iii. The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

7. In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued Interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

8. This circular will cover all such applications/claims for condonation of delay under section 119(2)(b) which are pending as on the date of issue of the Circular.

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."

10. Learned counsel also contended that the petitioner had specifically pleaded acute liquidity constraints at the relevant point of time and had placed its bank statements on record in support of the same. However, the CBDT had erroneously conflated the petitioner's overall financial position, as reflected in its financial

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statements, with the actual availability of liquid funds at the relevant time. It was submitted that the authority had proceeded on irrelevant considerations, including the bank statements for the entire financial year, absence of narrations in the bank statements, non-furnishing of an affidavit regarding the number of bank accounts maintained by the petitioner, fund management, loan arrangements and non-deposit of advance tax, without having called upon the petitioner to furnish any such additional particulars. Such considerations, according to learned counsel, were extraneous to the question of genuine hardship and could not have constituted a valid basis for rejecting the application.

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11. It was further submitted that the CBDT had failed to appreciate that the delay was beyond the control of the petitioner and had occurred due to professional negligence on the part of its Chartered Accountant. The petitioner had never pleaded ignorance of law; rather, it had explained the specific circumstances which prevented timely filing of the return. The authority had also wrongly construed the petitioner's explanation as an attempt to shift the entire responsibility upon its Chartered Accountant, whereas the petitioner had substantiated its plea through supporting affidavits and other documents.

12. Learned counsel lastly submitted that the impugned order suffered from non-application of mind, absence of cogent reasoning and failure to consider the relevant material placed on record. It was contended that the CBDT had failed to adopt a liberal, equitable and justice-oriented approach while exercising its discretionary powers under Section 119(2) of the Act, particularly

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when the delay was only 53 days and the petitioner had demonstrated genuine hardship. The impugned order was, therefore, arbitrary, unreasonable and contrary to the settled principles governing condonation of delay. In support of the submissions made insofar, learned counsel had placed reliance upon a catena of judgments, inter alia, **BM Malani Vs. Commissioner of Income Tax[3]; Mangalore Chemicals and Fertilisers Limited Vs. Deputy Commissioner of Commercial Taxes[4]; Manav Seva Samiti Vs. PCCIT[5]; Radiant Digital Solutions Vs. PCCIT[6]; Cell Com Teleservices Private Limited Vs. Union of India[7]; Oneness Educational and Charitable Trust Vs. CIT[8]; Bar Council of India Vs. CIT:[9]; Shri Maharaja Agrasen Seva Sansthan Vs. CIT[10]; GV Infosutions Vs. CIT [11]; Artist Tree Pvt. Ltd. Vs. CBDT[12]; Pankaj Kailash Agarwal Vs. ACIT[13]**.

13. On the aforesaid grounds, learned counsel prayed that the impugned order dated 30.04.2024 passed by the CBDT be quashed and set aside and the respondents be directed to condone the delay in filing the income-tax return for the assessment year 2022-23, thereby extending the consequential benefit of deduction under Section 80IBA of the Act to the petitioner.

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3 (2008) SCC OnLine SC 1488
4 1992 Supp (1) SCC 21
5 2025 SCC OnLine Raj 5444
6 2026 SCC OnLine TS 8194
7 2025 SCC OnLine AII 4341
8 2024 SCC OnLine Ori 1269
9 2024 SCC OnLine Del 55
10 2022 SCC OnLine Guj 2613
11 2019 SCC OnLine Del 6861
12 2014 SCC OnLine Bom 1801
13 2024 SCC OnLine Bom 1025

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SUBMISSIONS BY THE LEARNED COUNSEL FOR THE RESPONDENT :

14. Learned counsel for the respondents, while supporting the stand taken in the reply to the writ petition, submitted that the controversy involved in the present matter arose out of the rejection of the petitioner's application seeking condonation of delay under Section 119(2)(b) of the Income-tax Act, 1961, for the purpose of claiming deduction under Section 80IBA of the Act for the assessment year 2022-23. It was submitted that the petitioner was required to furnish its income-tax return on or before 07.11.2022; however, the same was filed only on 30.12.2022, resulting in a delay of 53 days. The petitioner had claimed deduction of Rs.1,84,93,638/- under Section 80IBA of the Act. Since the return had not been furnished within the prescribed period under Section 139(1) of the Act, the Central Processing Centre, Bengaluru, had disallowed the deduction in terms of Section 80AC of the Act and raised a demand of Rs.77,11,470/- vide intimation/order dated 03.04.2023 under Section 143(1) of the Act.

15. Learned counsel further submitted that the petitioner had thereafter preferred an application dated 25.07.2023 before the Central Board of Direct Taxes (CBDT) under Section 119(2)(b) of the Act, seeking condonation of delay and consequential allowance of deduction under Section 80IBA. The said application had been duly examined by the CBDT after calling for reports from the Principal Chief Commissioner of Income Tax, Jaipur and obtaining

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relevant information from the departmental authorities. It was contended that the material collected by the Department had been communicated to the petitioner vide letter dated 29.11.2023, pursuant to which the petitioner had furnished its response dated 05.12.2023, which was duly considered before passing the impugned order dated 30.04.2024.

16. It was contended that the controversy could not be treated as a mere procedural delay in furnishing the income-tax return, inasmuch as the delay had a direct bearing upon the petitioner's statutory eligibility to claim deduction under Section 80IBA of the Act. Referring to Section 80AC of the Act, learned counsel submitted that no deduction under the provisions falling under Chapter VI-A, Heading C, could be allowed unless the assessee furnished its return of income on or before the due date specified under Section 139(1) of the Act. Since Section 80IBA fell within the aforesaid category, compliance with the prescribed statutory timeline constituted a mandatory condition for claiming the deduction. Therefore, the petitioner, having admittedly furnished its return beyond the due date, could not seek to circumvent the statutory requirement merely by describing the delay as technical or inadvertent.

17. Learned counsel further submitted that the petitioner's past compliance history was also relevant while examining its request for condonation. In this regard, reliance was placed upon Annexure-R/2, particularly the report dated 06.11.2023 submitted by the Deputy Commissioner of Income Tax, Central Circle-1, Jaipur, which contained details of earlier instances of delayed filing

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of returns. It was contended that the present delay could not be examined in isolation, particularly when the departmental record reflected previous instances of delayed compliance. The petitioner could not, therefore, portray the delay as an isolated and unavoidable occurrence without explaining its earlier defaults. Such compliance history was a relevant consideration for determining whether the delay had genuinely arisen out of circumstances warranting exercise of discretionary jurisdiction under Section 119(2)(b) of the Act.

18. Learned counsel submitted that the power conferred under Section 119(2)(b) of the Act was discretionary in nature and could be exercised only upon the assessee establishing genuine hardship. It was contended that the expression 'genuine hardship' constituted a substantive requirement and that the assessee seeking such discretionary relief was required to demonstrate circumstances establishing that the delay had occurred due to a genuine and reasonable cause. Mere existence of delay or the financial consequences arising from non-allowance of a deduction could not, by themselves, constitute genuine hardship. The provision was intended to alleviate genuine hardship arising from exceptional circumstances and could not be treated as a routine mechanism for extending statutory timelines whenever an assessee failed to comply with the prescribed requirements.

19. It was further submitted that, in the present case, the petitioner had failed to establish any compelling circumstance which had prevented it from furnishing the return within the prescribed statutory period. The explanation attributing the delay

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to negligence or incorrect professional advice on the part of the Chartered Accountant was insufficient to constitute genuine hardship. The responsibility to ensure compliance with statutory obligations rested upon the assessee itself and the consequences of non-compliance could not be avoided merely by attributing the lapse to its consultant or tax professional. In this regard, learned counsel invoked the principle *ignorantia juris non excusat*, i.e., ignorance of law was no excuse.

20. In support of the aforesaid submissions, learned counsel placed reliance upon the judgment of the Delhi High Court in **Puneet Rastogi v. Commissioner of Income-tax (International Taxation)**[14], wherein it was held that ignorance of law could not constitute a sufficient explanation for delayed compliance and that rejection of an application seeking condonation was justified in the absence of genuine hardship or reasonable cause. It was further pointed out that the aforesaid judgment had been carried before the Hon'ble Supreme Court and the Special Leave Petition had been dismissed.

21. Reliance was also placed upon the dictum enunciated in **Lava International Ltd. v. Central Board of Direct Taxes**[15], wherein the Delhi High Court had emphasised the importance of adherence to statutory timelines and declined to interfere with rejection of condonation in the absence of circumstances justifying relaxation. It was submitted that statutory deadlines could not be relaxed merely because the assessee described its default as inadvertent.

14[2023] 148 taxmann.com 362 (Delhi)
15[2025] 481 ITR 795 (Delhi)

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22. Learned counsel further relied upon **Manjit Singh Dhaliwal v. Commissioner of Income-tax (International Taxation)**[16], wherein the Delhi High Court had reiterated the principles laid down in **Puneet Rastogi** (supra) and **Lava International Ltd**. (supra) and upheld the rejection of an application seeking condonation in the absence of established genuine hardship. Reliance was also placed upon the ratio encapsulated in **Silver Rock Educational Charitable Society, Victoria International School v. Commissioner of Income-tax**[17], wherein the Punjab and Haryana High Court, while considering an application under Section 119(2)(b) of the Act for condonation of delay in filing Form 10BB, had held that inadvertent filing of an incorrect form could not, by itself, establish genuine hardship. It was contended that the aforesaid judgment supported the proposition that mere inadvertence or negligence was insufficient to warrant condonation.

23. Addressing the challenge founded upon CBDT Circular No.09/2015 dated 09.06.2015, learned counsel submitted that the said circular dealt with applications seeking condonation of delay in filing returns claiming refund, carry forward of losses and set-off thereof under Section 119(2)(b) of the Act. The present matter, on the other hand, concerned a claim for deduction under Section 80IBA, which was independently governed by the statutory requirement prescribed under Section 80AC of the Act. Therefore, the petitioner could not claim the benefit of the aforesaid circular as a matter of right in respect of a deduction

16[2026] 182 taxmann.com 22 (Delhi)
17[2025] 175 taxmann.com 530 (Punjab & Haryana)

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subject to a separate statutory condition. Without prejudice to the aforesaid contention, it was submitted that the impugned order had, in any event, been passed after obtaining approval of the competent authority, namely, Member (IT), CBDT, and thus the objection regarding lack of competence was misconceived.

24. Learned counsel further controverted the allegation of violation of principles of natural justice and submitted that the impugned order had been passed after due consideration of the original application, departmental reports and the response furnished by the petitioner. The petitioner had been duly informed of the material collected by the Department vide communication dated 29.11.2023 and had been afforded an opportunity to submit its explanation, which it had availed by filing its reply dated 05.12.2023. Therefore, the allegation that the impugned order had been passed on the basis of material collected behind the petitioner's back, without affording an opportunity of hearing, was factually incorrect. It was contended that the impugned order was a reasoned decision taken after considering the relevant material and did not suffer from any procedural impropriety or pre-determination. In support of the submissions made insofar, learned counsel had placed reliance upon a catena of judgments, inter alia, **Manjit Singh Dhaliwal Vs. Commissioner of Income Tax International Taxation[18]; Lava International Ltd. Vs. Central Board of Direct Taxes[19]; Puneet Rastogi Vs. Principal Chief Commissioner of Income Tax[20]; Puneet**

18 (2026) 309 Taxman 129 (Delhi)
19 (2025) 481 ITR 795 (Delhi)
20 (2023) 454 ITR 37 (Delhi)

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Rastogi Vs. Principal Chief Commissioner of Income Tax[21]; Silver Rock Educational Charitable Society, Victoria International School Vs. Commissioner of Income Tax[22]; Silver Rock Educational Charitable Society, Victoria International School Vs. Commissioner of Income Tax[23].

25. It was lastly submitted that the petitioner had failed to demonstrate any jurisdictional error, perversity or arbitrariness in the decision-making process warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Merely because the decision had gone against the petitioner could not constitute a ground for invoking the writ jurisdiction of this Court. Learned counsel also pointed out that the petitioner had independently challenged the demand arising out of the intimation dated 03.04.2023 before the Commissioner of Income Tax (Appeals), and the said appeal was pending consideration. Therefore, the petitioner could not bypass the statutory appellate mechanism and indirectly seek substantive relief against the assessment intimation through the present writ petition.

26. On the aforesaid grounds, learned counsel for the respondents submitted that the impugned order dated 30.04.2024 had been passed after following due procedure, upon consideration of relevant material and with the approval of the competent authority. It was, therefore, prayed that the writ petition, being

21 (2023) 292 Taxman 69 (SC)

22 (2025) 175 Taxman.com 530 (Punjab & Haryana)

23 (2025) 175 Taxman.com 1024 (SC)

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devoid of merit, be dismissed with costs and the impugned order be upheld.

DISCUSSION AND FINDING :

27. Having heard learned counsel for the parties, examined the pleadings and the material available on record, this Court finds that the controversy involved in the present writ petition primarily concerns the manner in which the respondent-authority exercised its discretion under Section 119(2)(b) of the Income-tax Act, 1961, while considering the petitioner's application seeking condonation of delay in furnishing its return of income for the assessment year 2022-23.

28. The question which arises for consideration is whether the respondent-authority was justified in rejecting the petitioner's application seeking condonation of delay of 53 days, particularly when the petitioner had furnished its audit report within the prescribed period, had explained the circumstances leading to the delayed filing of the return, had pleaded financial hardship and had placed supporting material on record.

29. At the outset, it is pertinent to observe that the power conferred under Section 119(2)(b) of the Act is not an empty formality or a mere enabling provision without substantive purpose. The legislature, while enacting the aforesaid provision, consciously vested the Board with the authority to relax the rigours of the prescribed timelines in appropriate cases so as to prevent genuine hardship to an assessee. The provision empowers the Board, where it considers it desirable or expedient for avoiding genuine hardship, to authorize an income-tax authority to admit

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an application or claim for exemption, deduction, refund or other relief after the expiry of the period specified under the Act and to deal with the same on merits in accordance with law. Thus, the very object underlying the provision is to ensure that procedural requirements, though ordinarily required to be complied with, do not operate as an insurmountable obstacle in cases where genuine hardship is demonstrated and the circumstances justify exercise of the discretionary power.

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30. It is true that Section 80AC of the Act prescribes the requirement of furnishing the return of income within the due date specified under Section 139(1) as a condition for claiming the deduction contemplated therein. It is equally true that Section 80IBA falls within the category of deductions to which the aforesaid statutory restriction applies. Consequently, the petitioner could not have claimed the deduction as an automatic entitlement notwithstanding the delayed filing of the return. However, the matter does not end there. Section 119(2)(b) of the Act itself provides a statutory mechanism for entertaining an application or claim beyond the prescribed period in order to avoid genuine hardship. Therefore, the provisions of Section 80AC cannot be read in isolation so as to render the remedial jurisdiction conferred under Section 119(2)(b) wholly ineffective.

31. The two provisions operate in their respective fields. Section 80AC prescribes the ordinary statutory requirement, whereas Section 119(2)(b) provides an enabling mechanism for relaxation in deserving cases. A harmonious interpretation of the two provisions is, therefore, necessary. If the mere existence of the

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statutory deadline under Section 80AC were sufficient to defeat every application seeking condonation, the very purpose of conferring the power under Section 119(2)(b) would stand frustrated.

32. The respondents were, therefore, required to examine the petitioner's application in the light of the object and purpose of Section 119(2)(b), rather than reject the same merely by reiterating the statutory consequence of belated filing. In this regard, the observations made by the Hon'ble Supreme Court in **B.M. Malani v. Commissioner of Income Tax & Anr.**[24], assume considerable significance. The Hon'ble Supreme Court, while interpreting the expression 'genuine hardship', observed that the expression was required to be understood purposively and that genuine hardship would, inter alia, mean a genuine difficulty. It was further observed that the circumstances constituting genuine hardship were required to be determined by keeping in view the dictionary meaning of the expression as well as the legal conspectus attending thereto. The relevant extract from the **B.M. Malani** (supra) is reproduced hereinbelow:

> *"AC Ms. Rajni Ohri Lal, learned counsel appearing on behalf of the respondents, however, drew our attention to the nature of the business the appellant had been carrying on and the magnitude thereof to contend that the appellant did not suffer any genuine hardship.*
>
> *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)"*
>
> *For interpretation of the aforementioned provision, the principle of purposive construction should be resorted*

24 (2008) 10 SCC 617

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to. Levy of interest although is statutory in nature, inter alla for recompensating 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.

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 P. Ltd. v. Union of India, 1991 Supp (1) SCC 102, paragraph 39, Union of India v. Major General Madan Lal Yadav (Retd.), (1996) 4 SCC 127 at 142, paragraphs 28 and 29, Ashok Kapil v. Sana Ullah, (1996) 6 SCC 342 at 345, paragraph 7, Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673 at 692, paragraph 65, first sentence, Kusheshwar Prasad Singh v. State of Bihar, (2007) 11 SCC 447, paragraphs 13, 14 and 16). 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 not have kept mum. It should have taken some action. It should have responded to the prayer of the appellant."

33. The Hon'ble Supreme Court observed that "A genuine hardship would, inter alia, mean a genuine difficulty." The Court further emphasised that the expression 'genuine' meant something real and not fictitious, bogus or merely a pretence. The aforesaid judgment clearly demonstrates that the authority exercising discretion under a provision intended to alleviate hardship is required to examine the actual circumstances of the assessee and cannot adopt a narrow or mechanical interpretation of the expression 'genuine hardship'. Applying the aforesaid

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principle to the facts of the present case, this Court finds that the petitioner's explanation was required to be examined in its entirety, including the circumstances surrounding the engagement of its Chartered Accountant, the timely uploading of the audit report, the subsequent delay in furnishing the return, the financial difficulties pleaded by the petitioner and the supporting affidavits furnished along with its application. A mere conclusion that the petitioner had failed to establish circumstances which prevented timely filing, without undertaking a holistic examination of the material placed on record, would not constitute a proper exercise of the jurisdiction vested under Section 119(2)(b) of the Act.

34. Another significant aspect which cannot be overlooked is that the petitioner had not remained completely non-compliant with its statutory obligations. The audit report for the assessment year 2022-23 had admittedly been uploaded on 30.09.2022, within the prescribed period. The return of income, however, came to be furnished on 30.12.2022, with a delay of 53 days. The aforesaid circumstance assumes relevance because it demonstrates that the petitioner had undertaken the requisite audit exercise within time and that the delay was confined to the subsequent filing of the return. Though timely uploading of the audit report, by itself, did not dispense with the statutory requirement of filing the return within the prescribed period, it was certainly a relevant circumstance while examining the bona fides of the petitioner and the explanation furnished for the delay. The respondents were, therefore, required to consider whether the petitioner's conduct, viewed in its entirety, indicated a deliberate attempt to evade

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statutory compliance or whether the delay had occurred on account of circumstances which could reasonably be accepted as genuine.

35. The explanation furnished by the petitioner that the delay had occurred on account of negligence and incorrect professional advice of its Chartered Accountant also required consideration in the proper perspective. There can be no quarrel with the proposition that an assessee cannot, in every circumstance, escape statutory consequences merely by attributing its default to a professional consultant. The responsibility of complying with statutory obligations ordinarily rests upon the assessee. However, the aforesaid principle cannot be applied as an inflexible rule so as to exclude consideration of professional negligence altogether while examining an application seeking condonation on the ground of genuine hardship.

36. The authority was required to examine whether the explanation was bona fide, whether the petitioner had taken reasonable steps towards compliance, whether the audit report had been uploaded within time, and whether any material suggested that the petitioner had deliberately withheld the return or had derived any undue advantage from the delay. The fact that the petitioner had subsequently discontinued the services of the Chartered Accountant and had furnished affidavits explaining the circumstances was also a relevant circumstance which ought to have received due consideration. It was, therefore, not appropriate for the respondents to reject the explanation solely on

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the ground that the petitioner was ultimately responsible for filing its return.

37. This Court also finds substance in the petitioner's contention that the authority failed to properly appreciate the financial circumstances pleaded by it. The petitioner had specifically contended that it was undergoing acute liquidity constraints at the relevant point of time and had furnished copies of its bank statements in support of such contention. The respondents, however, appear to have proceeded on the basis of the overall financial statements of the petitioner and had drawn conclusions regarding its financial capacity without adequately distinguishing between the overall financial position of a business entity and the actual availability of liquid funds at a particular point of time.

38. It is a settled proposition that the existence of assets or a substantial balance sheet does not necessarily establish the immediate availability of liquid funds. Financial hardship cannot be examined merely by referring to the gross financial position of an assessee without considering the nature of its liabilities, cash flows, fund commitments and actual liquidity at the relevant time.

39. In **B.M. Malani** (supra), the Hon'ble Supreme Court specifically cautioned against drawing an automatic inference that a person having substantial assets could never suffer genuine hardship merely because such assets could theoretically be sold to discharge an obligation. The aforesaid principle was directly relevant to the petitioner's explanation. The authority was required to examine the liquidity position of the petitioner at the relevant time instead of treating its financial statements as

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conclusive proof of its capacity to comply with the statutory timeline.

40. Equally significant is the objection regarding the reliance placed upon the departmental reports obtained from the DGIT (Investigation), Jaipur and the PCCIT, Jaipur. The petitioner had specifically contended that the CBDT, in its communication dated 29.11.2023, had referred to adverse reports received from the departmental authorities and had indicated that the recommendation was against grant of condonation. However, copies of the underlying reports were not supplied to the petitioner, despite the same having been relied upon while passing the impugned order.

41. The respondents, on the other hand, submitted that the reports had been communicated to the petitioner and that an opportunity to submit a response had duly been afforded. This Court is of the considered opinion that there exists a material distinction between informing an assessee about the existence or conclusion of an adverse departmental report and actually furnishing the report or the relevant material forming its basis. An opportunity of hearing cannot be reduced to a mere formality. Where an authority proposes to rely upon adverse material collected from another departmental authority, fairness requires that the affected party be furnished with such material, at least to the extent that it forms the basis of the proposed adverse decision, so that an effective response can be submitted.

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42. Similarly, in **Kishinchand Chellaram v. Commissioner of Income Tax**[25], the Hon'ble Supreme Court emphasised that material collected behind the back of an assessee could not be relied upon to his prejudice without affording him an adequate opportunity to controvert the same. The aforesaid principle assumes greater significance in the present matter because the departmental reports were apparently treated as an important basis for rejecting the petitioner's request for condonation.

43. Merely mentioning in the show-cause communication that adverse reports had been received could not be treated as sufficient compliance with the requirement of natural justice, particularly when the petitioner was not furnished with the reports themselves or the material forming the basis of the adverse conclusions. The requirement of fairness is not satisfied by providing an opportunity to make a representation in the abstract. Such opportunity must be real, meaningful and effective. Consequently, this Court finds that the failure to furnish the material relied upon by the respondents materially impaired the petitioner's opportunity to effectively defend its application.

44. The respondents had also relied upon the report dated 06.11.2023 submitted by the Deputy Commissioner of Income Tax, Central Circle-1, Jaipur, which contained details of certain earlier instances of delayed filing of returns by the petitioner. This Court is conscious of the fact that the past compliance history of an assessee may constitute a relevant circumstance while considering an application for condonation of delay. However, such

25(1980) 4 SCC 660

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history cannot be treated as an independent or conclusive ground for rejecting an application without examining the explanation furnished in respect of the particular assessment year under consideration.

45. Every application seeking condonation has to be examined on its own facts and circumstances. The existence of previous instances of delayed compliance may invite closer scrutiny of the explanation furnished by the assessee, but it cannot lead to an automatic presumption that the subsequent delay was also deliberate or without sufficient cause. The respondents were, therefore, required to examine whether the earlier defaults had any bearing upon the delay in question and whether the circumstances leading to the present delay were genuine. A mere reference to the petitioner's past compliance history, without examining the explanation furnished for the delay of 53 days in the assessment year under consideration, could not have constituted a sufficient basis for rejection. The authority was required to undertake an objective assessment of the petitioner's conduct instead of allowing one adverse circumstance to eclipse all other relevant material.

46. Another aspect which deserves consideration is the reliance placed by the respondents upon the alleged failure of the petitioner to furnish complete bank statements, narrations of transactions and an affidavit disclosing the number of bank accounts maintained by it. The petitioner had specifically contended that no such particulars had been demanded from it during the proceedings. In the absence of any specific requisition

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or opportunity to furnish additional documents, the authority could not have drawn an adverse inference against the petitioner merely because such particulars had not been furnished.

47. It is undoubtedly open to an authority exercising statutory discretion to seek additional information which may be necessary for arriving at a just conclusion. However, where the authority considers certain particulars essential for determining the genuineness of the hardship pleaded by an assessee, fairness demands that the assessee be specifically called upon to furnish such particulars before an adverse inference is drawn. The respondents could not have expected the petitioner to anticipate every document or clarification which might subsequently be considered relevant by the authority.

48. The same principle applies to the observations made in respect of fund management, loan arrangements and non-deposit of advance tax. These circumstances could certainly have been examined if they had a demonstrable nexus with the petitioner's liquidity position and the reasons for delayed filing. However, they could not have been treated as independent disqualifications without establishing their relevance to the question of genuine hardship. The exercise of discretion under Section 119(2)(b) required consideration of relevant material and exclusion of considerations which were extraneous to the issue involved. The relevant provisions i.e. Section 119(2)(b) is reproduced hereinbelow:

> *"**Instructions to subordinate authorities.***
> *119(2) Without prejudice to the generality of the foregoing power,-*

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(a) xx xx xx
(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."

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49. Now, it is also necessary to examine the nature and scope of the discretion vested in the respondent-authority under Section 119(2)(b) of the Act. The expression 'discretionary power' does not confer an unfettered or arbitrary authority upon the decision-making body. Every statutory discretion is required to be exercised in accordance with the object of the enactment, relevant considerations and settled principles of law.

50. The discretion must be exercised judiciously, reasonably and upon an objective consideration of the material placed before the authority. It cannot be exercised mechanically or with a pre-determined approach. In **B.M. Malani** (supra), the Hon'ble Supreme Court emphasised the requirement of purposive interpretation while determining genuine hardship. The underlying principle is that the authority must examine the real difficulty faced by the assessee rather than adopt a rigid interpretation which defeats the very purpose for which the power was conferred.

51. Similarly, in **Collector**, **Land Acquisition, Anantnag v. Mst. Katiji**[26], the Hon'ble Supreme Court held that the expression 'sufficient cause' should receive a liberal construction so as to

26(1987) 2 SCC 107

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advance substantial justice. The Court observed that ordinarily a litigant does not stand to benefit by lodging a claim late and that refusal to condone delay may result in a meritorious matter being thrown out at the threshold. Though the aforesaid judgment arose in the context of condonation of delay under the law of limitation, the principle underlying the same assumes relevance while examining the exercise of discretion under Section 119(2)(b) of the Act.

52. The Hon'ble Supreme Court further in the case of **Mangalore Chemicals and Fertilizers Ltd.** (supra) emphasised that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. The aforesaid principle does not mean that every delay, irrespective of its explanation, must necessarily be condoned. It does, however, require the authority to distinguish between a deliberate default and a bona fide lapse and to adopt an approach which advances substantive justice without compromising the statutory framework.

53. In **Manav Seva Samiti** (Supra) the Hon'ble Supreme Court observed that the length of delay is not material so much as the acceptability of the explanation. The Court held that the primary function of a court while considering condonation is to advance substantial justice and that the acceptability of the explanation, rather than the mere number of days of delay, is the relevant consideration. The aforesaid principle reinforces the requirement that the authority must examine the explanation in its proper perspective. In the present case, the delay was only 53 days. The

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petitioner had already uploaded its audit report within the prescribed period and had furnished an explanation attributing the subsequent delay to professional negligence and financial constraints.

54. The respondents have not demonstrated that the petitioner had deliberately withheld the return, intended to evade tax or derived any undue advantage by filing the return belatedly. Nor has any material been brought to the notice of this Court to establish that the petitioner had adopted a calculated course of non-compliance for the assessment year in question. The mere fact that the petitioner was a partnership firm engaged in the business of developing affordable housing projects and had claimed a substantial deduction could not, by itself, justify an adverse inference against it. The amount involved in the deduction was a relevant factor for scrutiny, but not a substitute for examination of the explanation regarding delay.

55. The Court is also mindful of the submission advanced by learned counsel for the respondents that the petitioner had not established any genuine hardship and that the delay was attributable to the negligence of its own Chartered Accountant. However, the aforesaid submission does not persuade this Court to sustain the impugned order. The question was not whether the petitioner could be absolved of every responsibility arising from the conduct of its professional consultant. The real question was whether, considering the totality of the circumstances, the delay was sufficiently explained and whether refusal to condone the same would result in disproportionate hardship.

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56. The petitioner had specifically pleaded that it had been dependent upon its Chartered Accountant for professional assistance in taxation matters, that the audit report had been uploaded within time, that the return could not be furnished on account of incorrect professional advice and that it had subsequently discontinued the services of the said professional. The explanation was supported by affidavits. Whether such explanation was ultimately sufficient was required to be determined by examining the surrounding circumstances and supporting material. It could not have been rejected merely by invoking the general proposition that the assessee was responsible for statutory compliance.

57. This Court further finds that the impugned order does not demonstrate an adequate consideration of the petitioner's specific explanation regarding the liquidity constraints prevailing at the relevant point of time. The petitioner had furnished bank statements and had specifically asserted that its financial position during the relevant period did not permit it to arrange the requisite funds and complete the necessary compliance within the prescribed timeline. The authority, instead of examining the availability of liquid funds at the relevant point of time, appears to have drawn conclusions from the overall financial statements and transactions extending over the entire financial year.

58. Coming to the question of availability of an alternative remedy, it is true that the petitioner had preferred an appeal against the intimation dated 03.04.2023 before the Commissioner of Income Tax (Appeals), which was pending consideration,

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however, the same stands to be infructuous in light of the petitioner's application for condonation of delay, being denied by the learned CBDT. Nonetheless, the present writ petition primarily challenged the subsequent order dated 30.04.2024 passed by the CBDT under Section 119(2)(b) of the Act.

59. It is clarified that condonation of delay would not, by itself, establish the petitioner's entitlement to deduction under Section 80IBA of the Act. The petitioner would still be required to satisfy the substantive conditions prescribed under the said provision. Nevertheless, the question of substantive eligibility and the question of condonation of delay operate at different stages and ought not to be conflated.

60. The authority concerned, while examining an application under Section 119(2)(b), is required to determine whether the circumstances warrant relaxation of the prescribed timeline. It is not expected to finally adjudicate the entire claim for deduction as though it were exercising appellate jurisdiction over the assessment.

61. In the present case, the petitioner had not merely pleaded inadvertence in abstract terms. It had relied upon the timely uploading of the audit report, the circumstances concerning its Chartered Accountant, the affidavits furnished in support of its explanation, the liquidity constraints prevailing at the relevant time and the fact that the delay was confined to 53 days, and the fact that in the previous years also such benefit has been granted. Learned counsel for the petitioner, in support of the prayer for condonation of delay, placed reliance upon a catena of judicial

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pronouncements, including the judgments of the Hon'ble Supreme Court in **B.M. Malani** (supra) and **Mangalore Chemicals and Fertilizers Ltd.** (supra), to emphasise that the expression 'genuine hardship' was required to be construed purposively and that procedural requirements ought not to be applied in a manner which defeats substantial justice. Reliance was further placed upon inter alia, **Maharashtra Seva Samiti** (supra), wherein the issue of condonation of delay of 700 days had been considered by this Court. Placing reliance upon the aforesaid decisions, learned counsel submitted that the judicial approach towards applications seeking condonation of delay ought to be pragmatic, equitable and guided by the object of preventing genuine hardship, rather than being governed by a rigid or hypertechnical interpretation of procedural requirements. It was contended that when delays extending to several months and even years had been considered by various High Courts in the context of genuine hardship, the petitioner's delay of merely 53 days, supported by an explanation regarding professional negligence and financial constraints, deserved consideration on a more liberal and justice-oriented approach. It was, therefore, submitted that denial of the benefit of condonation in the facts of the present case would result in undue prejudice to the petitioner and defeat the very object underlying Section 119(2)(b) of the Act; and thus, we are satisfied with the contentions so put forth.

62. Further, it is noteworthy that the petitioner had approached the CBDT by submitting an application dated 25.07.2023, seeking condonation of the delay and had also responded to the show-

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cause communication by submitting a detailed reply dated 05.12.2023. There is nothing on record to suggest that the petitioner had sought to obtain any undue advantage by deliberately withholding its return. On the contrary, the audit report had been uploaded within time and the return had subsequently been furnished, though belatedly. It is also relevant that the petitioner had claimed deduction under Section 80IBA for the assessment years 2021-22, 2022-23 and 2023-24. Its claim for the assessment year in question was, therefore, not shown to be an afterthought devised merely to take advantage of the condonation proceedings. The circumstances, therefore, warranted a justice-oriented approach rather than a rigid or hypertechnical consideration.

63. The petitioner was not seeking exemption from the substantive requirements of Section 80IBA. Its request was confined to condonation of the delay so that its claim could be considered in accordance with law. The distinction is material. By condoning the delay, the Revenue does not lose its right to examine the genuineness of the deduction claimed, verify the conditions prescribed under Section 80IBA or determine the tax liability in accordance with the applicable provisions. The Revenue merely becomes obligated to examine the claim on its merits rather than reject it at the threshold solely on account of the procedural delay.

64. It is well settled that the existence of discretionary power does not mean that its exercise is immune from judicial scrutiny. Where the authority fails to consider relevant material, relies upon

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undisclosed adverse material or adopts an approach contrary to the object of the statutory provision, the resulting decision becomes amenable to judicial review under Article 226 of the Constitution of India.

65. The Hon'ble Supreme Court in **B.M. Malani** (supra) and **Mangalore Chemicals and Fertilizers Ltd.** (supra) itself recognised that the principle that a person cannot take advantage of his own wrong must be considered in the overall factual and legal context while determining genuine hardship. Thus, the said principle cannot be mechanically employed to defeat an otherwise bona fide claim without examining the explanation furnished by the assessee.

66. The legislative intent underlying Section 119(2)(b) is to enable the competent authority to alleviate genuine hardship and ensure that a procedural default does not, in appropriate cases, result in denial of consideration of a claim on its merits. The authority was, therefore, expected to adopt a balanced approach, as the substantial requirements were already fulfilled by the petitioner; keeping in view the nature of the delay, the explanation furnished, the conduct of the petitioner and the consequences of refusing condonation.

67. This Court is satisfied that the petitioner had made out a case warranting condonation of the delay. Refusal to condone the same, in the circumstances noticed hereinabove, would result in the petitioner's claim being excluded from consideration without an adequate adjudication of its substantive entitlement.

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68. Accordingly, this Court finds that the impugned order dated 30.04.2024 cannot be sustained in the eyes of law and is liable to be quashed and set aside. Consequently, the present writ petition is **allowed**. The order dated 30.04.2024 passed by the respondent-authority rejecting the petitioner's application under Section 119(2)(b) of the Income-tax Act, 1961, is hereby quashed and set aside.

69. All consequential proceedings arising solely on account of denial of deduction due to delayed filing shall abide by the decision taken in terms of the aforesaid directions.

70. Ordered accordingly. There shall be no order as to costs. Pending applications, if any, shall stand disposed.

(SAMEER JAIN),J (SANJAY K. AGRAWAL),CJ

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