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

WRIT PETITION NO.1544 OF 2010

M/s. Bombay Mercantile Co-op Bank Ltd.)
having its registered office at)
Zain G. Gandoonwala Building, 78,)
Mohamedali Road, Mumbai 400 003)..Petitioner

Vs.

1. The Central Board of Direct Taxes)
Ministry of Finance, Government of India)
North Block, New Delhi 110 001)
2. Commissioner of Income-Tax-I)
Mumbai, having his office at)
Aayakar Bhavan, M.K.Road, Churchgate,)
Mumbai 400 020)
3. Income Tax Officer)
1(1)(4), Mumbai having his office at)
Aayakar Bhavan, M.K.Road, Churchgate,)
Mumbai 400 020)..Respondents

Mr. Ajay R. Singh a/w Hasan Renu Choudhari for the Petitioner

Mr. Suresh Kumar for the Respondents

CORAM :- V.C.DAGA &
R.M.SAVANT,JJ.
DATE :- 20th September, 2010

JUDGMENT (Per Shri R.M.Savant, J.)

1 Rule. With the consent of the parties made returnable forthwith
and heard.

2 The above petition filed under Article 226 of the Constitution of
India, takes exception to the order dated 18-3-2010 passed by the Government

of India, Ministry of Finance, by which order, the Application filed by the Petitioner under Section 119(2)(b) of the Income Tax Act for condonation of delay in filing the return and to allow to carry forward loss for Assessment Year 2001-2002, came to be rejected.

3 The Petitioner is a Multi State Co-operative Bank and as such registered under the Multi State Co-operative Society Act. The Petitioner filed a return of income for the Assessment Year 2001-2002 declaring the loss of Rs. 15,94,19,523/-. The said return was filed after the statutory audit was completed on 15-11-2001 and the audit under Section 44AB was completed on 28-11-2001. In so far as, the aspect of condonation of delay in filing the return is concerned, the CBDT at the relevant time had issued circular No.8 of 2001 in the context of the power of the Board to condone the delay. In view of the delay in filing the return, the Petitioner had filed an application under Section 119(2)(b) for condonation of delay, in filing the return. In the said application the reasons, as to why the return could not be filed within time were mentioned in paragraph 3 of the said application. The principal ground on which the condonation of delay was sought by the Petitioner was on account of the fact that the statutory auditors for the Assessment Year 2000-2001 were appointed by the Commissioner of Corporation and the Registrar Co-operative Societies , Maharashtra State, Pune, on 3-9-2001 and since the said statutory auditors had to complete the audit of 53 branches spread all over the country, the same consumed some time and the said statutory auditors were able to complete the audit only on 15-11-2001 and the audit under Section 44AB was

completed on 28-11-2001 and that the return for the said year was filed the very next day. The other reason cited in the said application was that there was a change in management inasmuch as, the person who was appointed as the Managing Director on account of the retirement of the incumbent, joined only on 26-5-2001 and, therefore, some time was lost in the said process. It was also mentioned that the Board of Directors were unable to approve annual accounts for the year ended 31-3-2001 on or before 31-10-2001. According to the Petitioner, the said grounds were sufficient grounds for not filing the return in time and for condonation of delay in filing the same. The said application inter alia also contained the submission of return of loss.

4 The said application filed under Section 119(2)(b) was considered by the Government of India, Ministry of Finance and by the impugned order dated 18-3-2010, the said application came to be rejected. The Government of India did not find the reasons mentioned by the Petitioner worthy of acceptance for condonation of delay. The Government of India was of the view that, only general reasons have been mentioned for seeking condonation of delay and no exceptional circumstances which were beyond the control of the applicant to file the return, were mentioned by the Petitioner. The Government of India was of the view that the Petitioner bank has been operating for the several years and was, therefore, aware of its statutory obligation under Section 44AB of the said Act, so as to get its accounts audited within specified time to file the return of income within due date.

5 We have heard the Learned Counsel for the Petitioner Shri Ajay R. Singh and the Learned Counsel for the Respondents Shri Suresh Kumar. Both the Learned Counsel made submissions in respect of their respective cases for condonation of delay and against it. We have considered the rival contentions.

6 At the outset, it would be relevant to reproduce Section 119(2) (b) of the said Act, which reads as follows:

“119(2)(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 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”.

7 As can be seen from the reading of the said provision that the board is vested with the power to admit any application after the expiry of the period specified by or under this Act if sufficient grounds are made out. To

effectuate such power, that the CBDT had issued the circular No.8 of 2001. It is in the context of the said statutory provision as well as the circular that the reasons mentioned by the Petitioner in the application for condonation of delay have to be considered. As indicated above, the principal reason cited by the Petitioner is that the statutory auditors were appointed by the Central Registrar on 3-9-2001 and that the said statutory auditors completed the audit on 15-11-2001 and the tax auditors completed the audit on 28-11-2001 and, therefore, there was a delay in filing the return. It would have to be noted that, the Petitioner is a Multi State Co-operative Bank operating under the Multi State Co-operative Society Act 1984. The power to appoint the statutory auditors is that of the Central Registrar, who is the Registrar of the Co-operative Societies, Maharashtra State. The said authority had appointed the statutory auditors on 3-9-2001. It appears that the said authority appointed Chartered Accountants to be statutory auditors in place of the Departmental Auditors. This change was made in respect of all the societies. Therefore, the Petitioner, in our view, cannot be blamed for the delay in carrying out its audit, as the same was beyond its control. The contention of the Learned Counsel for the Respondents that the departmental auditors, in fact, had started the audit in the year 2000 and it was for the Petitioner to get the audit expedited, cannot be accepted. Though the departmental auditors might have started the audit, it appears that pursuant to the said policy decision that was taken, the departmental auditors were replaced by the Chartered Accountants to be the statutory auditors, which was by letter dated 3-9-2001. In our view, therefore,

the said reason mentioned by the Petitioner in its application, deserves to be accepted. The other reasons cited for condonation of delay, therefore, need not be gone into as the Petitioner in our view, would be entitled to condonation of delay on the said ground alone. The other grounds raised in the Petition to assail the impugned order also need not be gone into. It is further required to be noted that the assessing officer imposed a penalty of Rs.1,00,000/- under Section 271(b) of the said Act. However, CIT (A)-I in the Appeal filed by the Petitioner has set aside the penalty holding that there was reasonable delay in filing the return late by one month. Therefore, the CIT (Appeal) accepted the very same facts as were mentioned by the Petitioner in the Application under Section 119(a)(b) of the said Act.

8 It is well settled that in matters of condonation of delay a highly pedantic approach should be eschewed and a justice oriented approach should be adopted and a party should not be made to suffer on account of technicalities.

9 In that view of the matter the above Petition is required to allowed. The impugned order dated 18-3-2010 is required to be set aside and is accordingly set aside and resultantly the delay in filing the return to stand condoned and the Petitioner would be entitled to the carry forward and set off of losses in accordance with law.

10 Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

(R.M.SAVANT,J.)

(V.C.DAGA,J.)