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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 21487 OF 2024**

Bharat Education Society,]
being a Society formed and registered,]
under the Societies Registration Act,]
1860, and having its registered office at,]
Ground Floor, Karthika High School,]
New Hall Road, Kurla (West),]
Mumbai – 400070] ...Petitioner

VERSUS

1. The Assessing Officer, Income,]
Tax Exemption-1(1) Mumbai,]
(AO) having his address at,]
Cumballa Hill Telephone]
Exchange Building, Pedder Road,]
Dr. GD Deshmukh Marg,]
Mumbai – 400 026]
2. The Principal Chief Commissioner]
of Income-tax (Exemption),]
Mumbai, Room No.601, 6th Floor,]
Cumballa Hill Telephone Exchange]
Building, Pedder Road,]
Dr. G D Deshmukh Marg,]
Mumbai – 400 026]
3. The Principal Chief Commissioner]
of Income-tax (Exemption),]
New Delhi, Room No.2503, E-2,]
Block, 25th Floor, Civic Centre,]
New Delhi – 110002]
4. The Central Board of Direct Taxes,]
Ministry of Finance, North Block,]
New Delhi – 110 001]

5. Union of India,]
 Through Joint Secretary and Legal]
 Adviser, Branch Secretariat,]
 Department of Legal Affairs,]
 Ministry of Law and Justice,]
 2nd Floor, Aayakar Bhavan,]
 M. K. Road, New Marine Lines,]
 Mumbai – 400 020] ...Respondents

APPEARANCES-

Adv Nitesh Joshi, i/b. Adv Atul K. Jasani, for the Petitioner.
Adv Dinesh R. Gulabani, a/w Adv Vibha D. Gulabani, for the
 Respondents/Revenue.

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

DATED : 21 January 2025

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The Petitioner challenges the order dated 23 February 2024, which is signed by Mr Virender Singh, Additional CIT (ITA Cell), CBDT, New Delhi, refusing to condone the delay of about 1585 days in filing a revised return under Section 139(5) of the Income Tax Act, 1961 (“IT Act”) for the Assessment Year 2015-2016.
4. The impugned order has been made by quoting Section 119(2)(b) of the IT Act, which empowers the Central Board of

Direct Taxes (“CBDT”) to condone such delay to avoid genuine hardship to the assesses.

5. Mr Joshi, learned counsel for the Petitioner, submits that the impugned order was neither made by the CBDT nor its member. He submits that this is a good ground to set aside the impugned order and remit the matter to CBDT for disposal of the Petitioner’s application seeking condonation of delay. He relies on **R. K. Madhani Prakash Engineers J V vs. Union of India and others**¹ and **Tata Autocomp Gotion Green Energy Solutions (P) Ltd. vs. Central Board of Direct Taxes**² in support of this contention.

6. Mr Joshi further submitted that in this case no opportunity of hearing was granted to the Petitioner or its representatives before the impugned order was made. He submitted that since the impugned order visits the Petitioner with serious civil consequences, the same, should have preceded due compliance with the principles of natural justice, which would include the opportunity of a personal hearing.

7. Mr Joshi, without prejudice to the above contention submitted that the Petitioner had shown sufficient cause and therefore, the delay should have been condoned. He submitted that in such matters, the authority should adopt the liberal approach. He also submitted that the length of delay is of no concern and what is important is the quality of the cause shown.

¹ [Writ Petition No.3620 of 2021 decided by a Coordinate Bench of this Court on 18 July 2023]

² [2024] 163 taxmann.com 643 (Bombay)

8. Mr Gulabani, learned counsel for the Respondents defended the impugned order based on the reasoning reflected therein. He submitted that this was a case of inordinate delay of 1585 days and the cause shown was by no means sufficient. He submitted that repeated filing of rectification applications does not constitute any sufficient cause to explain the inordinate delay of 1585 days.

9. Mr Gulabani submitted that the impugned order has been made by following the standard procedures prescribed. He submitted that the order notes that it was issued with the approval of the Member (IT), CBDT. He submitted that a show cause notice was issued to the Petitioner, to which the Petitioner responded. He submitted that no personal hearing was sought in this matter. Accordingly, he submitted that there was no breach of the principles of natural justice or fair play.

10. The rival contentions now fall for our determination.

11. From the perusal of the impugned order, it is apparent that the same is signed by Mr Virender Singh, Additional CIT (ITA Cell), CBDT, New Delhi. Paragraph 10 of the impugned order, however, states that the impugned order “*issued with the approval of Member (IT), Central Board of Direct Taxes.*”

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

“9. Further the petitioner has taken the plea in the writ petition that the order has been passed by an officer without jurisdiction, as the show cause notice dated 06.07.2023 was issued by the DCIT(OSD)(ITA Cell) **and the condonation order has been passed by the Addl.CIT (ITA**

Cell) with the approval of Member(IT). The petitioner has also contended whether the DCIT(OSD)(ITA Cell) or the Addl.CIT (ITA Cell) were competent to issue the show cause notice and pass the order and whether the authority as per whose direction/approval the said order has been passed, has applied his mind to the issues arising in the case.

In this connection, it is submitted that CBDT functions through its Members and the work allocation has been done amongst the Members. All the Members of the CBDT are the Special Secretaries to the Govt. of India and have office for processing all the matters dealt by them. Applications/petitions u/s 119(2)(b) of the Income-tax Act, 1961 received in the Board are processed in the office of the concerned Member after proper consideration of facts and circumstances of each case. **The work relating to the Order under section 119 of the Income-tax Act, 1961 on matters related to Sections 10, 11, 12 & 13 have been assigned to Member (IT) in CBDT. The orders in these cases are approved by Member concerned and after approval; these orders are issued with the signature of the officer, who is not below the rank of Under Secretary to Govt. of India, in the office of the Member.** Considering the extant office procedure and practices being followed, the Addl. CIT(ITA Cell) has signed the order after taking approval of the Member concerned In last para of the Order, it has been clearly mentioned that the Order issues with the approval of Member(IT), CBDT.”

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

14. The affidavit does not deny the specific case of the petitioner that the impugned order was passed by the Addl. CIT (ITA Cell) with the approval of Member (IT). The affidavit only states that that orders are approved by the Member concerned. After approval, these orders are issued with the signature of the officer, who is not below the rank of Under Secretary to the Government of India, in the Member's office. This means that there is no assertion that the impugned order was made by Member (IT). The only assertion is that the Member (IT) approved the impugned order in CBDT.

15. In *R. K. Madhani Prakash Engineers J V* (supra) a similar ground was raised by the Petitioner, and the same was upheld in paragraph 6, which reads as follows:-

“6. Before we proceed further, we should note that pursuant to Circular F No.312/22/2015-OT dated 9th June 2015 issued by CBDT, application/claim for amount exceeding Rs.50 lakhs shall be considered by the Board. We say this because the last sentence in the impugned order dated 24th December 2020 reads; “This order is passed with the approval of the Member (TPS & Systems), CBDT.” There is nothing to indicate that Board has considered petitioner's application. We also find that copy of the impugned order dated 24th December 2020 is sent to, (a) the Principal Chief Commissioner of Income Tax, Mumbai, (b) Principal Commissioner of Income Tax-21, Mumbai, (c) Director of Income Tax, Centralized Processing Cell, Bengaluru, (d) the applicant and (e) the Guard File but it is not sent to the Member on whose approval the said order is supposed to have been passed. In our view, this means the Member has not passed the order but has been passed by the Director. On this ground alone, this order has to be quashed and set aside.”

16. Similarly, in *Tata Autocomp Gotion Green Energy Solutions (P) Ltd.* (supra), the contention was that the Member of CBDT granted a personal hearing, but the order was made or signed by some other officer. Coincidentally, the

order in the case was also signed by Mr Virender Singh, Additional CIT (ITA Cell), CBDT, New Delhi. The order impugned in the said Petition also stated that “the same issues with the approval of Member (IT&R), Central Board of Direct Taxes.”

17. The Coordinate Bench of this Court quashed the impugned order on the grounds that the order was made by an officer who had never heard the Petitioner. Secondly, there was no material on record to show that the Member of CBDT had made the order. The material only indicates that the order was approved by such Member. The relevant discussion in this regard is found in paragraphs 10 and 11 of the judgment.

18. Therefore, relying upon the above two decisions and without going into the issue of merits or demerits of the cause shown, we set aside the impugned order and remand the matter to the CBDT to decide the Petitioner’s application for condonation of delay afresh and following law.

19. The CBDT or the Member of the CBDT to whom such functions are assigned must grant the Petitioner/its representative a personal hearing and pass a reasoned order.

20. This direction for a personal hearing is issued, having regard to the peculiar facts of the present case, which the Petitioner could better explain through a personal hearing. Even otherwise, the impugned order refusing to condone the delay visits the Petitioner with serious civil consequences. Such an order should generally be made after compliance with principles of natural justice and fair play. The fact that Section 119(2) does not explicitly refer to any show cause

notice or opportunity of hearing is not grounds for non-compliance with principles of natural justice. In the absence of any provision to the contrary, such principles should be read into the unoccupied interstices of a statute.

21. The impugned order is accordingly set aside. The matter is remanded to the CBDT for fresh consideration of the Petitioner's application for condonation of delay. Further consideration should be following the law and after giving the Petitioner an opportunity of a hearing. The CBDT or the Member to whom such function is assigned must pass a reasoned order and communicate to the Petitioner. This exercise must be completed within three months of uploading this order. All contentions on merits are, however, left open.

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

(Jitendra Jain, J)

(M. S. Sonak, J)