

Deep Narayan Gupta Vs. Central Board of Direct Taxes and ors.

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Court : Patna

Decided On : Jul-02-2003

Judge : Nagendra Rai, Actg. C.J. and M.L. Visa, J.

Acts : [Constitution of India](#) - Article 226; [Income Tax Act, 1961](#) - Sections 119(2), 237, and 239(2)

Appeal No. : C.W.J.C. Nos. 5545 and 5678 of 2003

Appellant : Deep Narayan Gupta

Respondent : Central Board of Direct Taxes and ors.

Advocate for Def. : L.N. Rastogi and S.K. Sharn, Adv.

Advocate for Pet/Ap. : D.V. Pathy, Adv.

Disposition : Writ application dismissed

Prior history : 1. Both the matters are connected ones and as such they have been heard together and are being disposed of by this common order. 2. By order dated January 30, 2003, the Central Board of Direct Taxes has rejected the prayer of the petitioner for condonation of the delay in filing the application under Section 119(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for refund. 3. The matter relates to the assessment years 1993-94 and 1994-95. Admittedly, the petitioner had

Judgement :

1. Both the matters are connected ones and as such they have been heard together and are being disposed of by this common order.
2. By order dated January 30, 2003, the Central Board of Direct Taxes has rejected the prayer of the petitioner for condonation of the delay in filing the application under Section 119(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for refund.
3. The matter relates to the assessment years 1993-94 and 1994-95. Admittedly, the petitioner had not filed the returns within the statutory period and filed the same on October 9, 1998. Under Section 237, read with Section 239(2)(c) of the Act, the period for filing an application for refund is one year from the last day of such assessment year. Admittedly, the application for refund has not been filed within time. Section 119(2)(b) of the Act empowers the Board to extend the period for filing an application for refund in case of genuine hardship. The Board has issued circulars from time to time laying down conditions for condoning the delay in filing the application for refund on the ground of genuine hardship.
4. The petitioner had come earlier before this court with a prayer that his applications for refund in both the cases were not being disposed of and this court directed the concerned authorities to dispose of the matter and, thereafter, the impugned orders have been passed (annexure 6 in both the writ applications).
5. The only ground, on which the extension can be granted is genuine hardship. That has rightly not been defined under the Act. Whether there is genuine hardship or not depends upon the facts of each case and no fixed criteria in the strait jacket formula can be laid down for the said purpose. In the given case, admittedly, the returns were filed much beyond time. Nothing has been stated on behalf of the petitioner explaining the delay in filing the returns, on the other hand, the Board has found that this is a very deliberate attempt on the part of the petitioner to escape the liability under the Act. Detailed reasons are stated in paragraph 4 of the order, the relevant part whereof is quoted hereunder :

'The due dates for filing the return were before March 31, 1995, and March 31, 1996. However, the returns were filed on October 9, 1998. It is further noticed that the assessee has deliberately filed his returns much after the due date only to escape the scrutiny assessment. For example for the assessment year 1993-94, the net profit shown by the assessee is very low. There is no audit report enclosed with the return. In the balance-sheet, the assessee has shown unsecured loans and other finance as liabilities. The late filing of return apparently indicates that the assessee has manipulated his accounts and has prevented scrutiny assessment by the Department.'

6. The power of this court to interfere with the order of the authority is well-settled and needs no elaboration. This court does not sit as an appellate forum over the decision of the authority in exercise of the writ jurisdiction. It can interfere only when the authority has acted wrongly in the decision-making process or the order is such which cannot be supported by reasons and similar other grounds. That is not a case here. The Board has given reasons and learned counsel appearing for the petitioner in spite of his persuasive argument has not been able to persuade us that the orders have been passed without assigning any relevant reason.

7. Thus, we do not find any merit in these writ applications and, accordingly, the same are dismissed.

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