

HC condones delay in filing ITR of NRI as there was delay due to severe financial crisis in USA

Summary – The High Court of Karnataka in a recent case of Smt. Dr. Sudha Krishnaswamy, (the Assessee) held that where assessee-NRI claimed condonation of delay in filing return owing to recession in us and accidental injuries suffered, delay of 1232 days in filing returns was to be condoned

Facts

- The assessee, a non-resident, had filed a petition for condonation of delay under section 119(2)(b) before Commissioner. She contended that she sold one vacant site and being non-resident, purchaser of property had deducted income tax as per provisions of section 195, which had resulted in a refund for assessment year 2012-13. As regards assessment years 2010-11 and 2011-12, it was submitted that she had no taxable income and claimed that entire refund was relating to TDS from interest and bank deposits. Accordingly, she requested to condone delay on ground that she was not in a position to file her returns on time due to severe financial crisis in United States of America and injuries sustained by her in an accident, enclosing a medical report in support of the claim and direct Assessing Officer to accept returns for aforesaid 3 years and process return of income on merits and issue refund orders.
- Said application was rejected on ground that assessee had professional advisor available to her and required returns ought to have been filed within a stipulated period and, accordingly, rejected the application relating to the three assessment years in question.

Held

- It is not the case of the assessee that she is avoiding any scrutiny of the returns. On the other hand, it is the case of the assessee that she is entitled for refund, being a non-resident owing to the recession at U.S. and the accidental injuries suffered, no returns were filed within the period prescribed. In the circumstances, it cannot be held that the assessee-petitioner has obtained any undue advantage of the delay the income tax returns.
- It is trite law that rendering substantial justice shall be paramount consideration of the Courts as well as the Authorities rather than rejecting on hyper-technicalities. It may be true that there was some lapse on the part of assessee, that itself would not be a factor to turn out the plea for filing of the return, when the explanation offered was acceptable and genuine hardship was established. Sufficient cause shown by the petitioner for condoning the delay is acceptable and the same cannot be rejected out-rightly on technicalities.
- Considering the overall circumstances, the delay of 1232 days in filing the returns for the relevant assessment years in question is condoned subject to denial of interest for the delayed period if found to be entitled for refund.