

High Court unhappy with CBDT for refusing to condone delay of one day in filing return

Summary – The High Court of Bombay in a recent case of Cosme Matias Menezes (P.) Ltd., (the Assessee) held that Refusal by CBDT to condone one day delay in filing of return of income is a failure to exercise of power vested under section 119(2)(b)

Facts

- The petitioner assessee filed its return of income for the assessment year 2006-07 on 31-3-2008 and the server of the department uploaded the return of income on 1-4-2008.
- However, as the filing of return of income was one day late, the return of income would not be examined resulting in refund not being granted.
- An application for condonation of delay was also filed in filing the return of income under section 119(2) with the CBDT, but however, the same was dismissed.
- On writ petition:

Held

- Reading the provisions of section 239(1) and section 139(4) , it is found that sections 139 and 239 itself allows for filing of the returns and claim of refund within a period of one year from the end of the assessment year, *i.e.*, on or before 31-3-2008. The provisions of section 119(2)(b) allow the CBDT to admit an application beyond the time prescribed under section 139 and section 239. In the instant case it is found that the respondents have failed to exercise such powers to condone the delay in filing returns and consequent refund by the petitioners on irrelevant and extraneous reasons.
- Taking note of the observations made by this Court in the case of *Bombay Mercantile Co-op. Bank Ltd. v. CBDT* [\[2010\] 195 Taxman 106](#) and considering that the delay in the instant case is only of one day, it is found that the approach of the respondents in refusing to condone the delay is a pedantic which, if allowed to stand, would result in great hardship to the petitioners for no fault of the petitioners. The petitioners have also produced the hard copy to show that in fact such return in Form-1 were filed on 31-3-2008 which was admittedly the last date of filing such returns. This factual aspects have not been disputed by the respondents. Needless to say, the merits of the claim of the petitioners based on the returns filed by the petitioners have not been examined but only considered whether the delay in filing such returns deserves to be condoned. Such returns and the claim of the petitioners have to be examined by the respondents on its own merits.