

Carry forward of losses couldn't be denied if return wasn't filed in time due to technical snags in dept.'s website

Summary – The High Court of Madras in a recent case of Regen Infrastructure & Services (P.) Ltd., (the Assessee) held that where delay of a day in filing return was only due to technical snags of website of department on last date of filing return, such delay was to be condoned; claim of carry forward of losses could not be denied

Facts

- The petitioner-assessee was engaged in the business of execution and commissioning of wind turbine generators, filed return of income. The due date of filing of return was 15-10-2010. On 15-10-2010 the server of the department could not upload the return and it could be filed on 16-10-2010.
- As the filing of the return of income was one day late, the return of income would not be examined for granting carry forward of loss.
- The petitioner approached the CBDT for condonation of delay in filing the return of income. In the application, the petitioner stated that on 15-10-2010, they had been trying to upload their returns on the online website of the Income Tax Department since 7.00 p.m. However, due to the last hour rush and due to technical snags in the website of the Income Tax Department, the said return could not be uploaded on 15-10-2010 but only in the midnight of 15-10-2010 and, hence, the date of filing had been reckoned by the Income Tax Department as 16-10-2010.
- . The CBDT declined to condone the delay.
- On writ petition:

Held

- The petitioner has satisfactorily explained the delay in filing the return on 16-10-2010 instead of 15-10-2010. Further, it is not the case of the respondents that the petitioner is not entitled to claim the carry forward loss under section 139(3). When the petitioner is entitled to claim the carry forward loss under section 139(3), it cannot be stated that the delay in filing the return had occurred deliberately or on account of culpable negligence or on account of *mala fides*. Further, the petitioner did not stand to benefit by resorting to delay as held by the High Court of Bombay. In fact, they runs a serious risk. Moreover, when the petitioner had satisfactorily explained the delay in filing the said return, the approach of the first respondent should be justice oriented so as to advance the cause of justice. In this case, when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner. The judgments relied on by the petitioner squarely applies to the facts and circumstances of the present case. In these

circumstances, the first respondent should have condoned the delay of one day in filing the return by the petitioner.

- For the reasons stated above, the impugned order passed by the first respondent dated 5-5-2014 is liable to be set aside. Accordingly, the same is set-aside. Resultantly, the writ petition stands allowed. The first respondent is directed to accept the return filed by the petitioner company for the assessment year 2010-11 under section 139(1) after affording due opportunity of personal hearing to the petitioner. Consequently, connected miscellaneous petition is also closed.