

Delay in claiming refund should be condoned when taxpayer had incurred huge losses over a period of time

Summary – The High Court of Kerala in a recent case of Beta Cashews & Allied Products (P.) Ltd., (the Assessee) held that Delay in application for refund should be condoned where it is demonstrated that assessee incurred huge losses and if amount is not refunded, its losses would be much more than already computed

Facts

- The Commissioner had dismissed the assessee's petition seeking refund of the advance tax paid for the assessment years 2004-05 and 2005-06 on the ground of delay.
- The assessee-company challenged said order contending that it was suffering huge losses over a period of time and was not even in a position to engage a proper accountant for preparing accounts and filing returns in time which resulted in the assessee not approaching the competent authority within time. The assessee contended that the fact that it had suffered losses during the relevant period by itself, ought to have been taken as a reason for condoning delay, as non-payment would create genuine hardship to the assessee.
- The department supported the impugned order contending that assessee had even delayed the returns for the subsequent years.

Held

- When an assessee is suffering huge losses over a period of time, it has to be assumed that they have genuine hardship and that genuine hardship can be redressed or avoided only on payment of the amount which is legally due to him. Of course, the delay is also a matter which is required to be considered by the Commissioner while directing refund of the amount. Section 119 (2) (b) clearly indicates that if it considers desirable or expedient so to do, authorize the Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief, in accordance with law. Therefore, when the Commissioner is given the power to adjudicate all such issues and find out that on account of non-payment, genuine hardship will be caused to a person, the Commissioner will have to condone the delay.
- In the order made by the Commissioner, the reference is made to the returns filed for the assessment years 2006-07 onwards and 2008-09. It is stated that in the subsequent years, returns were filed belatedly. That, by itself, cannot be a reason to arrive at a finding as to whether there is any hardship caused to the assessee or not. In the instant case, it is demonstrated by the material placed that the assessee-company was suffering huge losses. In the said circumstances, if the amount claimed is not refunded, definitely their losses will be much more than what is already

computed. In the said circumstances, it would have been appropriate for the Commissioner to have condoned the delay.

- Sufficient cause had been shown by the assessee for condoning the delay in submitting the application and, accordingly, impugned order is set aside.