

Delay in filing ITR to be condoned for HUF if same was allowed to Karta in identical circumstances: HC

Summary – The High Court of Gujarat in a recent case of Sahebsingh Bindrasingh Senagar (HUF)., (the Assessee) held that where explanation rendered for late filing of return in case of petitioner-HUF and Karta of HUF in his individual capacity was identical and application of Karta in his individual capacity under identical circumstances for condonation of delay came to be accepted by revenue, same could not be denied to petitioner- HUF

Facts

- The petitioner, a Hindu undivided family (HUF) and its Karta in its individual capacity were engaged in business of providing buses under contract and were regularly filing return of income. Both the petitioner HUF and the Karta were subjected to the TDS and TDS certificates were issued. There was a mismatch in the TDS actually deducted. They had to have corrections made in the certificates that took their considerable time, due to which return was filed belatedly by two months. The petitioner HUF and the Karta of HUF in its individual capacity filed application seeking condonation of delay.
- The Commissioner allowed the application of the Karta of HUF on ground that delay in filing return of income for the stipulated assessment year, had occurred due to major mismatch in TDS by deductor, claim of refund was genuine and denial of same would lead to hardship to the Karta of HUF.
- In the case of the petitioner HUF, since the proposed return gave rise to the refund of the tax in excess of Rs. 10 lakhs, its application was placed before Chief Commissioner, it rejected same on grounds that even if there was a mismatch of TDS, the petitioner could have filed return within time, the petitioner HUF was all along aware about discrepancies in the TDS certificates, late return was merely filed to avoid scrutiny selection.
- On appeal to the High Court:

Held

- Order of the Chief Commissioner cannot be sustained. Firstly, the observation that the petitioner filed return late possibly to avoid scrutiny assessment is based on conjectures. If the application of the petitioner was decided by the Chief Commissioner and accepted, there was sufficient time to enable the revenue to take such a return in scrutiny if so desired. This by itself therefore, cannot be a ground for rejecting the petitioner's case. The other ground namely, that the petitioner should not have waited for reconciliation of the TDS certificates for filing the return perhaps would have weighted. However, in the present case, it has been noted that in case of Karta of HUF in his individual capacity under identical circumstances, application for condonation of delay based on identical grounds came to be accepted by the revenue. In same set of facts and same situation, there cannot be a differential treatment. Merely because one application was decided by the

Commissioner and another by the Chief Commissioner cannot be a point of distinction, only on this ground, petition is allowed. This would however, be with two riders. Firstly, in case of individual while condoning delay, the Commissioner has provided that he will not be entitled to interest to the extent of period of delay. Same direction will apply in the present case. It is clarified that the petitioner shall not be entitled to any interest on refund even if ultimately allowed by the department till 8-6-2011. Second is that if the delay is condoned and effect of condonation is that the return filed by the petitioner after delay is treated as valid return filed on the date of its submission to the department, the period envisaged in the proviso to sub-section (2) of section 143 of the Act would have lapsed by now. This would mean that even if the department wanted to scrutinise the return, there would be no such facility. To obviate this difficulty, while condoning the delay, it is provided that the petitioner's return shall be treated to have been validly filed from the date of this order, *i.e.*, today for the purpose of scrutiny and completion of assessment, if taken in scrutiny. All consequential provisions for scrutiny, final assessment and limitation would consequently apply.