

## Delay in depositing tax under IDS, 2016 couldn't be condoned on account of personal reasons

**Summary –** The High Court of Bombay in a recent case of Sadhana R. Jain, (the Assessee) held that where pursuant to declaration made under Income Declaration Scheme of 2016, assessee failed to deposit minimum 25 per cent of total amount declared within prescribed time limit due to personal reasons, in view of fact that CBDT took a conscious decision not to grant any extension in case of individual hardship, impugned order rejecting assessee's application for condonation of delay did not require any interference

### Facts

- The assessee was an individual. She had applied to the competent authority on 28-9-2016 by making necessary declaration under the Income Declaration Scheme of 2016 ('IDS'). In terms of such declaration, as per the provisions contained in the scheme, the assessee had to deposit a minimum 25 per cent of the total sums payable pursuant to such declaration, latest by 30-11-2016.
- The assessee could not make the payments. She wrote a letter to CBDT conveying that her daughter was admitted in hospital. She, therefore, requested for condonation of delay.
- The CBDT opined that no relaxation in the payment schedule provided under the IDS could be granted. It was also stated that this would be in consonance with the Circular dated 28-3-2017 in which, delay on account of personal reasons could not be considered the fit case for condonation of delay. Accordingly, assessee's application for condonation of delay was rejected.
- On writ:

### Held

- The IDS was framed by the Legislature by incorporating Chapter IX in Finance Act, 2016. The provisions of this Chapter enabled the assessee who had undisclosed income to make a declaration. Broadly stated, the Scheme provided that upon such a declaration being accepted, the declarant would pay tax with surcharge and penalty at prescribed rates in three instalments. Upon payment of such sums, the assessee would receive certain immunities. In short, scheme invited assessee who may have not disclosed their income previously, to come clean, pay tax along with surcharge and penalty (which was restricted at lower rate) and upon which the assessee would be spared the long drawn procedure of assessment, penalties and prosecution.
- It is true that unlike the earlier Schemes, making similar provisions, section 195 of the Finance Act, 2016 contained a provision, clarifying that, besides others, section 119 would be applicable in relation to the proceedings under the said Scheme. The applicability of section 119, thus, was specifically retained in relation to the provisions of the Scheme.
- It was in this context that the CBDT had issued its Circular dated 28-3-2017. Such Circular aimed to obviate certain difficulties faced by the assessee in depositing first instalment. Circular provided for

accepting late payment of the first instalment in cases where the remittance was made through cheque, RTGS and electronic transfer etc. before 30-11-2016 but the same was credited by the Bank after the said date but before 5-12-2016. Thus, the CBDT recognized the limited area where though the payment was made within time, but the bank had not credited the same in the Government revenue. Under such circumstances, the time would be relaxed in favour of the declarant. While doing so, the CBDT also considered the cases of individual hardship for reasons such as personal reasons or emergency reasons, lack of liquidity etc. The board, however, took a conscious decision not to grant any extension in said situations.

- Reading of the Board Circular, it would clearly emerge that while providing for a limited window, in cases where payments were made through banking channels but the deposit was made by the bank in the Government revenue few days after 30-11-2016 to condone the delay in such circumstances, no relaxation was granted in other cases, particularly involving individual reasons. The board in Circular cited reasons such as personal or emergency reasons, lack of liquidity, rush at banks or any other reasons, which can be attributable to the declarants. In all such cases, it was decided not to extend the time limit.
- The impugned decision of the board, is well within the four corners of the Circular dated 28-3-2017. The IDS itself did not make any provisions for relaxation. The Scheme did retain the power of the board under section 119(2). In exercise of such powers, the board laid down the areas where relaxation would be granted and consciously decided not to grant extension or condone delay in cases where reasons were attributable to the declarants. Under section 119(2), the board can exercise power either in individual case or in case of the assesseees as a class. Once the board decided the entire issue by taking into account declaratory as a class, while applying such decision to individual cases, no further flexibility was left open.
- The CBDT Circular dated 28-3-2017, therefore, cannot be treated as the decision of the board abdicating its power under section 119(2). It is, in fact, in exercise of such powers that the board took certain conscious decisions. It was not argued that the decision of the board was arbitrary or unreasonable so as to be struck down as opposed to Article 14 of the Constitution of India. In any case, when the legislature frames a special Scheme such as the present one, giving certain concession to the assesseees who had till then not declared their incomes truly and fully, legislature can always lay down its limits of the concession to be granted.
- As correctly considered by the CBDT in its impugned order, such concession and excess indulgence in such cases, could have demotivating effect on honest taxpayers making regular and prompt tax deposit.
- In view of above, the Board was correct in holding that the application of the assessee for condonation of delay was not supported by CBDT Circular dated 27-3-2018. In the result, there is no reason to interfere in the petition.
- Petition dismissed.