

5.5.2026
ct no. 10
ADSL. 08
AGM

WPA 29778 of 2025

Padmalochanan Radhakrishnan

-Versus-

Union of India & Ors.

Mr. Pratysh Jhunjhynwala.

Ms. S. Datta.

Mr. Sakshi Singhi.

...for the petitioner.

Mr. Taraknath Jaiswal.

... for the respondents.

- 1.** In the instant case the petitioner challenges inter alia, the legality, validity and the sustainability of the Orders dated 17.10.2025 and 30.10.2025. The said Order reject the claim for carry forward of loss on the ground that the assessee filed a belated return under Section 139(4) of the Income Tax Act, 1961(hereinafter referred to as the said Act). Although the return has been duly processed the assessing Officer declined to entertain the claim for carry forward of loss at the stage, by relying on Circular No. 11 of 2024. It is contended that the said Circular does not empower the Assessing Officer to condone the delay for permit revision of the process return for incorporating the claim for carry forward of loss.
- 2.** The learned counsel appearing for the petitioner submits that due date for filing of the return of income for the Assessment Year 2022-23 has

been 31st July 2022. Due to unavoidable circumstances the return, has been filed beyond 7 days from the due date. On account of such short delay, the system did not allow carry forward of loss under Section 80 of the said Act for the Assessment Year 2023-24. The intimation under Section 143(1) of the said Act has been issued accordingly.

3. The petitioner has filed an application under Section 119(2)(b) of the said Act before the authority concerned seeking condonation of delay in filing the return of income for Assessment Year 2022-23. However, the said application has been rejected in light of CBDT Circular No. 11 of 2024 and the authority declined to accept the application for condonation of delay.
4. The petitioner places reliance on paragraph 8 of the Division Bench Judgement of Madras High Court in **Central Board of Direct Taxes and Anr. Vs. Regan Powertech Private Ltd.** reported in **(2019) 13 ITR-OL 108 (Mad)**, which is reproduced below:

“We have also seen the reasons assigned by the respondent for belatedly filing the return. As rightly pointed out by the learned writ court, no assessee would stand to benefit by filing the return belatedly. Unless the appellants have reason to believe that the assess had wantonly and purposely filed the return belatedly for certain mala fide

reasons, the delay in filing the return under normal circumstances should be condoned. It is true that the Board has power to exercise its discretion. However, exercise of such discretion should be in terms of section 119 (2) 9B) of the Act. While exercising the power, the Board should bear in mind the genuine hardship faced by the assess. More importantly, the hardship faced by the assessee for making an application or claim any exemption/deduction or refund or any other relief under the provisions of the Act has to be the basis for taking a decision as to whether the delay has to be condoned or not.”

5. The petitioner further places reliance upon Section 139(3) and 139(4) of the said Act along with Clause 3 of Circular 11 of 24. Paragraph 3 of the said Circular is reproduced below:-

“3. No condonation application for claim of refund loss shall be entertained beyond five years from the end of the assessment year for which such application/claim is made. The time limit for filing of such application within five years from the end of assessment year will be applicable for applications filed on or after 01.10.2024. this limit of five years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits. A condonation application should be disposed of, as far as possible, within six months from the end of the month in which the application is received by the competent authority.”

6. The Learned counsel for the respondent authorities submits that since the assessee has

filed the return under Section 139(4) instead of 139(1) of the said Act the claim for carry forward of capital loss under Section 80 cannot be allowed. The Section 80 of the said Act does not allow carry forward if the return is filed beyond Section 139(1) of the said Act. Since Section 139(4) permits belated return but does not confer the benefit of carry forward, the authorities has rightly passed the order of rejection as per law.

7. The Learned counsel for the respondents draws the attention of this court to paragraph No. 1 of the Circular No. 11 of 2024 which is reproduced below:

“In supersession of all earlier instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set off thereof under Section 119 (2) (b) of the Income-tax Act, 1961 (the Act), the present Circular is being issued to deal with the applications for condonation of delay in filling returns claiming refund and returns claiming carry forward of loss and set off thereof containing comprehensive guidelines on the conditions for condonation and the procedures to be followed for deciding such matters.”

8. It is submitted that as per the Circular an application for condonation of delay in filing returns claiming refund and returns under

Section 119(2) Clause (b) of the said Act is required to be filed.

9. The assessing officer has no power to override the statutory mandate. The claim has been rightly rejected by the authorities concerned.

10. After hearing the rival contentions of the parties and upon perusing the records this court is prima facie satisfied with the submission made by the petitioners. Accordingly, interference is warranted at this stage. I find that the assessing officer has misconstrued and misconceived the intent and the purport of the relevant statutory provisions read with CBDT Circular No. 11 of 2024 dated 1st October 2024.

11. This court has accepted that the delay of 7 days is negligible and bonafide. In view of the **Regan Powertech Private Ltd. (Supra)** and the principles of proportionality the Assessing Officer is directed to condone the delay and process the return as held in **Collector Land Acquisition Vs. MST Kartiji** reported in **(1987) 2 SCC 107**.

12. The impugned order dated 17.10.2025 and 30.10.2025 are accordingly quashed and set aside. The respondent authorities are directed to process the return filed on 07.08.2022 in accordance with law by condoning the delay of 7 days.

13. In view of the above, the Writ Petition No. **29778 of 2025** stands **disposed of**.

14. Since no affidavit has been called for the allegations contained in the Writ Petition shall not be deemed to have been admitted by the respondent authorities.

15. Urgent photostat certified copy of this order, if applied for, be given to the learned counsel for the parties on usual undertakings.

(Smita Das De, J.)