IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(Sr. No.207) **CWP No.18800 of 2023 (O&M)**

Date of decision : 23.09.2026

Rajbir Singh

.....Petitioner

Versus

Principal Commissioner of Income Tax, Panchkula and others

.....Respondents

WITH

CWP-18817-2023	**CWP-18873-2023**
CWP-18857-2023	**CWP-18851-2023**
CWP-18881-2023	**CWP-3683-2024**
CWP-18809-2023	**CWP-3689-2024**
CWP-18810-2023	**CWP-3690-2024**
CWP-18814-2023	**CWP-3691-2024**
CWP-18832-2023	**CWP-3692-2024**
CWP-18854-2023	**CWP-3693-2024**
CWP-18858-2023	**CWP-3697-2024**
CWP-18859-2023	**CWP-3709-2024**

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE SUNISH BINDLISH

Present **:** Mr. Nikhil Goyal, Advocate (through VC) and
Ms. Shweta, Advocate for the petitioner.

Mr. Sourabh Kapoor, Senior Standing Counsel
(through VC) with
Ms. Muskaan Gupta, Advocate and
Mr. Vivek Sharma, Advocate
for the respondent(s)-Income Tax Department.

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DEEPAK SIBAL, J. *(Oral)*

(1) These are 21 petitions through which former employees of HMT Limited's Tractor division at Pinjore, Haryana have challenged the order dated 19.01.2022, passed by the Principal Commissioner of Income Tax, Panchkula (for short - the 'PCIT'), rejecting the petitioners' prayer for condoning the delay in the filing of revised returns of their income, for the assessment year 2017-18, enabling them, through their revised returns, to seek refund of excess income tax paid by them.

(2) For the sake of convenience, facts are being extracted from CWP No.18800 of 2023 – *Rajbir Singh Vs. Principal Commissioner of Income Tax, Panchkula and others*.

(3) In the year 1953, HMT Limited was set up as a Central Public Sector Enterprise under the Ministry of Heavy Industries and Public Enterprises, Government of India. The main objective behind setting up HMT Limited was to produce machine tools required for building an industrial edifice for our country. Keeping in view the afore objective, in the year 1971, HMT Limited established its Tractor Division at Pinjore, Haryana. The petitioner was employed by HMT Limited and posted in its Tractor Division at Pinjore, Haryana.

(4) Due to several factors, in the 1990s, the performance of HMT Limited started to decline. Several efforts were made to arrest the declining trend but to no avail. The Tractor Division set up at Pinjore became financially inviable. Its employees including the petitioner, were not paid salaries since July, 2014. Their other statutory dues were also pending since November, 2013. On 27.10.2016, the Union Cabinet decided to close HMT

Limited's Tractor Division at Pinjore and also granted approval to the proposal for budgetary support to HMT Limited for payment of outstanding salaries and wages etc. to employees of the HMT Ltd.'s Tractor Division at Pinjore by offering payment under the Voluntary Retirement Scheme (VRS) /Voluntary Separation Scheme (VSS).

(5) In terms of the decision of the Union Cabinet dated 27.10.2016, an office order dated 04.11.2016 was issued by HMT Limited as per which the employees of its Tractor Division at Pinjore were put to notice that VRS/VSS was being offered as a one-time benefit to permanent employees and that in case the employees did not opt for VRS, they would be retrenched under applicable provisions of the Industrial Disputes Act, 1947 because the Tractor Division was proposed to be shut down.

(6) In the afore circumstances, the petitioner, who in the year 2016, was serving in the Tractor Division of HMT Limited at Pinjore as a Senior Office Assistant and had not received his salary since July, 2014, opted for VRS like many other similarly situated employees. However, some of his colleagues did not opt for VRS and preferred to be retrenched.

(7) After having opted for VRS, the petitioner received the amount payable thereunder. Along with the said amount, the petitioner also was in receipt of Form-16, issued in terms of Section 203 of the Income Tax Act, 1961 (for short – the Act) read with Rule 31(1A) of the Income Tax Rules, 1962. Form-16 was issued by HMT Limited as per which, the amount received by the petitioner under the VRS was Rs.29,14,500/-, out of which, Rs.24,14,500/- was computed as taxable after granting to the petitioner exemption of Rs.5 lakhs in terms of Section 10(10C) of the Act.

(8) Relying on the figures mentioned in Form-16, on 03.08.2017, the petitioner filed his income tax return for the assessment year 2017-18 which was processed and accepted.

(9) In the meanwhile, another similarly placed employee like the petitioner, namely Prempal, who was also in receipt of VRS amount like the petitioner, filed its income tax return, also for the assessment year 2017-18, claiming exemption under Section 10(10C) of the Act and after being assessed, he filed a revised income tax return now seeking therein exemption under Section 10(10B) instead of Section 10(10C) of the Act. The Assessing Officer denied the exemption sought by Prempal. The assessment order passed in Prempal's case was challenged by him through filing of an appeal under Section 246(A) of the Act which was accepted through order dated 30.01.2020 passed by CIT(A), Panchkula. Prempal's appeal was allowed by CIT(A) primarily relying on a judgment of the Madras High Court in Hindustan Photo Film Workers' Welfare Centre (CITU) Vs. Government of India, New Delhi, (2018) 400 ITR 299 (Madras), against which decision, the Supreme Court had also dismissed the SLP filed by the revenue.

(10) Though in Prempal's case, CIT(A) decided in favour of the assessee but in the case of many other employees, who were similarly situated as Prempal and the petitioner, CIT(A), through several orders dated 12.07.2022, 19.07.2022, 30.11.2022, 06.12.2022 and 30.12.2022 decided in the revenue's favour which orders were challenged by those employees before the ITAT. All those appeals were clubbed and allowed in the assessees' favour by the ITAT through its order dated 20.09.2023.

(11) The order of CIT(A) dated 30.01.2020 in the case of Prempal and the order of the ITAT dated 20.09.2023, in the case of other similarly situated employees like the petitioner attained finality.

(12) In the meanwhile, the petitioner, on having come to know of the decision by the CIT(A) dated 30.01.2020, in the case of Prempal, filed an application dated 10.08.2020 before the PCIT, Panchkula seeking therein condonation of delay to file a revised income tax return for the assessment year 2017-18 to enable him to seek exemption under Section 10(10B) instead of Section 10(10C) of the Act because such claim would entitle him to a refund of Rs.7,19,819/-. Through an order dated 19.01.2022, PCIT rejected the petitioner's application on the ground that the petitioner's case was not covered by the circular issued by the Central Board of Direct Taxes (for short – 'CBDT') bearing No.9/2015 dated 09.06.2015 because the petitioner sought to rely on the order of CIT(A) dated 30.01.2020 which had not been accepted by the Income Tax Department but had not been appealed against only on account of low tax effect. The PCIT also did not find the petitioner's case to be that of genuine hardship for being eligible to be considered for the grant of benefit of CBDT's circular No.9/2025 dated 09.06.2015. The order of the PCIT dated 19.01.2022 is the subject matter of challenge through the instant petition at the petitioner's behest.

SUBMISSIONS

(13) Learned counsel for the petitioner submitted that the petitioner's case for condonation of delay for filing of his revised income tax return for the assessment year 2017-18 should have been accepted by the PCIT because not only was the petitioner's case is correct and genuine but also of "genuine hardship"; thus, the petitioner's case was fully covered by the CBDT's circular No.9/2015 dated 09.06.2015; the petitioner, being identically situated, is entitled to the same relief as has been granted through order of the CIT(A) dated 30.11.2020, passed in the case of Prempal and the order of the ITAT dated 20.09.2023 and that the petitioner's case is also of genuine hardship because the petitioner is out of job since the year 2016 and is someone who accepted VRS in the year 2016.

(14) Per contra, learned counsel for the revenue submitted that the petitioner's case was not covered under the CBDT's circular No.9/2025 dated 09.06.2015 as it was not genuine because the petitioner had voluntarily accepted payments of huge amounts under the VRS; he is not entitled to the benefit of exemption under Section 10(10B) of the Act and that he has rightly been assessed for the grant of exemption under Section 10(10C) of the Act; the petitioner having filed its income tax return claiming therein exemption under Section 10(10C) of the Act without any protest, cannot now be allowed to revise his return simply because in the case of other vigilant employees, some orders have been passed in their favour; there are no reasons forthcoming in the petitioner's application, filed before the PCIT, explaining therein the delay on the petitioner's part in claiming exemption under Section 10(10B) of the Act and that in the absence of any reasons, the PCIT has rightly rejected the petitioner's application for condonation of delay for filing a revised income tax return.

(15) Learned counsel for the parties have been heard.

ANALYSIS AND CONCLUSION

(16) As per Section 237 of the Act, if any person satisfies the Assessing Officer that the amount of income tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under the Act for that year, he shall be entitled to refund of the excess. Under Section 239 of the Act every claim for refund is required to be made through furnishing of a return in accordance with Section 139. Income Tax Returns are filed before the due date by an assessee under Section 139(1) of the Act. Revised Income Tax Returns can be filed under Section 139(5) of the Act but such returns are required to be furnished before three months prior to the end of the relevant assessment year or before completion of the assessment, whichever is earlier.

(17) For condoning delay in the filing of revised returns claiming therein refund and returns claiming carry forward of loss and set off thereof, in exercise of powers conferred under Section 119(2)(b) of the Act, the CBDT has issued circular No.09/2015 dated 09.06.2015.

At this stage reference is required to be made to Section 119(2)(b) of the Act and to the CBDT's circular issued thereunder bearing No.9/2015 dated 09.06.2015. The said provision and the circular are reproduced below:-

Instructions to subordinate authorities

Section 119.

"(2)(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Joint Commissioner (Appeals) or a Commissioner (Appeals) to admit an

application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;"

Circular No.09/2015 dated 09.06.2015

"SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES - CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF CARRY FORWARD LOSSES UNDER SECTION 119(2)(b)

CIRCULAR 9/2015 [F.NO.312/22/2015-OT], DATED 9-6-2015

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, (the Act) the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

2. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

4. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to Following conditions:

i. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

ii The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

6. A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsJT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

i. The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

ii. No interest will be admissible on belated claim of refunds.

iii. The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

7. In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

8. This circular will cover all such applications/claims for condonation of delay under section 119(2xb) which are pending as on the date of issue of the Circular.

9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board."

(18) Section 119(2)(b) of the Act empowers the CBDT to issue instructions or orders to authorize income tax authorities referred therein to admit and decide applications for claims for exemptions, deduction or refund made by the assessees after the expiry of the period specified by or under the Act. The underlining purpose behind issuance of circulars or orders by the CBDT, under Section 119(2)(b) of the Act, is for avoidance of "genuine hardship" in a particular case or in a class of cases.

(19) Circular No.9/2015 dated 09.06.2015 has been issued by the CBDT in exercise of powers conferred upon it under Section 119(2)(b) of the Act. The circular applies to applications made by assessees seeking therein condonation of delay in the filing of income tax returns claiming therein refund and returns claiming carry forward of loss and set off thereof. As per the circular no application beyond the period of six years from the end of the assessment year in question can be entertained and that while considering an application made under the said circular the competent income tax authority is to ensure that only that claim is entertained which is "correct and genuine" and which is based on "genuine hardship". Thus, the competent income tax authority is required to examine as to whether the applicant's claim is *bona fide,* genuine and worthy of consideration as also if the claimant/ assessee would undergo avoidable suffering if not allowed to file a revised return claiming therein a refund or for claiming carry forward of losses and set off thereof. No order under the circular is to be passed in a routine manner because grant of extension in the period of limitation provided under the Act tinkers with the timelines of processing of assessment and consequent recovery/ refund. Orders under the circular should be passed after considering desirability and expedience to avoid "genuine hardship" and only after carefully considering the facts of each case.

(20) A perusal of the impugned order does not show application of mind by its author which Circular No.9/2015 requires. With regard to examining of the correctness and genuineness of the claim, the PCIT relied wholly on the reports of the Additional CIT and the Assessing Officer. Those reports only said that the application "does not fulfill any of the conditions laid down in the Income Tax Act" and that order of the CIT(A) passed in favour of Prempal had not been accepted by the Revenue on merits and that such order had not been appealed against only because of low tax effect. A reading of the impugned order does not reveal any independent finding by the PCIT as to whether the petitioner's claim under Section 10(10B) was correct or genuine. Non-acceptance of an order on merits, coupled with non-filing of an appeal owing to the prescribed monetary limit, are not the reasons on which correctness or genuineness of the petitioner's claim was required to be considered.

(21) Even the finding returned by the PCIT on "genuine hardship" is through a single unreasoned sentence – "no case is made out for hardship". The PCIT does not deal with the fact that the petitioner lost his employment on the closure of the Tractor Division; that the refund claimed is substantial and is of fundamental importance to the petitioner's sustenance. Nor does it consider the fact that the appellate authorities had, in a large number of similar cases, taken the view, which view had attained finality, that VRS was a special package on closure of the undertaking offered in lieu of retrenchment attracting thereto applicability of exemption under Section 10(10B) instead of Section 10(10C) of the Act.

(22) The impugned order also observes that "no order has been passed by the CIT (A) in the case of the assessee" and treats this as a reason for rejection. Such an observation was irrelevant. The petitioner's claim was that the CIT(A) had decided an identical issue in favour of similarly situated employees. He never said that any order had been passed in his own case. Rejecting the application on this ground shows that the application was not even read properly and that the order was passed mechanically.

(23) The argument raised by learned counsel for the respondent-department that the writ petition deserves to be dismissed because the petitioner did not explain the delay or show sufficient cause for it in his application dated 10.08.2020 cannot be accepted for the following reasons :-

Firstly, the impugned order of the PCIT dated 19.01.2022 does not reject the application on this ground. The PCIT, after recording the facts and the report of the Additional CIT, which was based on the report of the jurisdictional Assessing Officer, considered the case with regard to the Board's Circular No. 09/2015 and rejected the application on three grounds :

(a) the CIT(A) order relied upon by the assessee had not been "found acceptable on merits" and no appeal was filed against such order only because of low tax effect;

(b) no order had been passed by the CIT(A) in the assessee's own case; and

(c) "no case is made out for hardship".

Nowhere does the impugned order say that the assessee failed to explain the delay or show sufficient cause for it. It is well settled that an order must be judged on the reasons it records. The department cannot support it in court with a ground the authority never invoked. In this regard reliance can usefully be made to the following observations of the Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405*** :-

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."*

Secondly, the objection taken by the department before this court wrongly imports the test of Section 5 of the Limitation Act, 1963 into proceedings under Circulars issued under Section 119(2)(b) of the Act.

The two provisions serve different purposes and call for different inquiries. Section 5 of the Limitation Act, 1963 governs belated appeals and applications. It has a limitation-oriented focus. The court asks whether the applicant was prevented by "sufficient cause" from filing in time and explanation for the delay, day by day, if needed, is central to that inquiry. On the other hand, Section 119(2)(b) is a power of relaxation given to the Board and its delegates. It allows a claim for refund, made after the statutory period, to be admitted and dealt with on merits where this is considered desirable "to avoid genuine hardship". Para 5 of Circular No. 9/2015 dated 09.06.2015, on which the department itself relies, prescribes what the authority must examine. Under para 5(i) it must ensure that (a) the income or loss declared or refund claimed is correct and genuine and (b) the case is one of genuine hardship on merits. Under para 5(ii) it may also direct the jurisdictional Assessing Officer to make inquiries or scrutinise the claim to ascertain its correctness.

The controlling questions under Section 119(2)(b) are therefore, the correctness and genuineness of the claim and the existence of genuine hardship. The other mandate under this circular is that the application for condonation of delay should be within 6 years from the end of the assessment year for which such application is made. A detailed explanation of the delay is not the test. The delay is relevant as part of the circumstances, but it is not a stand-alone precondition in the way it is while considering an application filed under Section 5 of the Limitation Act, 1963.

Thirdly, even if an explanation for the delay was required, the objection raised by the revenue is contrary to the record. The petitioner's application for condonation of delay states as follows:

(i) The petitioner was an employee of HMT Ltd., Tractor Division, Pinjore and received payment under the Voluntary Retirement Scheme.

(ii) The employer, in the Form 16 it issued, granted the benefit after allowing exemption under Section 10(10C) and deducting tax on the balance.

(iii) The return was filed on that basis, that is, claiming exemption under Section 10(10C).

(iv) Thereafter the Commissioner (Appeals) allowed exemption under Section 10(10B), instead of Section 10(10C), in the cases of similarly situated HMT employees, holding that the VRS taken by them was forced VRS. Two such orders, in the cases of Prem Pal and Karam Pal, were specifically cited.

(v) Because of this, the petitioner "could not" claim Section 10(10B) when filing the return. He then sought to revise the return after those decisions and stated that making the claim within the prescribed time was "genuinely out of my control".

The petitioner had thus explained that he filed his original return on the basis of the employer's Form 16 and that the legal position on which the Section 10(10B) claim rests only became known to him through later decisions in the cases of similarly situated employees. That is an explanation of why the claim was not made earlier. Thus, explanation for the delay was offered by the petitioner. This is contrary to the department's assertion that no reason was given by him. Whether the explanation is ultimately accepted is a separate question. The department's plea that "no reasons were mentioned" is not borne out from the record.

(24) In view of the above discussion, the impugned order dated 19.01.2022 rests on considerations that are irrelevant or unreasoned and while passing the same, the PCIT did not apply the tests laid down in Circular No. 9/2015.

(25) Accordingly, the writ petition is allowed. The order dated 19.01.2022 (Annexure P-9) is quashed and set aside. The matter is remitted to the PCIT, who shall consider afresh the petitioner's application for condonation of delay for permission to file revised returns for the assessment year 2017-18, after affording him an opportunity of hearing and considering the material on record. We express no opinion on the merits of the petitioner's claim. That claim is required to be decided by the competent authority in accordance with law. The PCIT shall pass a reasoned order within three months from the date of receipt of a copy of this order, uninfluenced by any observation made in the impugned order.

(DEEPAK SIBAL)
JUDGE

23.09.2026
gk/sunil yadav

(SUNISH BINDLISH)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No