

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 17TH DAY OF NOVEMBER 2022 / 26TH KARTHIKA,

1944

WP(C) NO. 13511 OF 2021

PETITIONER:

K C ANTONY, S/O. LATE SRI. CHACKO
AGED 60 YEARS, CONTRACTOR,
KAITHACKAL HOUSE, CHEMMALAMATTOM P.O.,
ERATTUPETTA-VIA, KOTTAYAM DISTRICT, PIN - 686508

BY ADVS.
ANISH JOSE ANTONY
L. VENKATAPPA

RESPONDENTS:

- 1 THE PRINCIPAL COMMISSIONER
THE PRINCIPAL COMMISSIONER OF INCOME TAX - 1,
KOCHI C.R. BUILDING, I.S. PRESS ROAD KOCHI, PIN - 682018
- 2 COMMISSIONER OF INCOME TAX (CIRCLE I)
PUBLIC LIBRARY BUILDING, LAL BAHADUR SASTRI ROAD,
KOTTAYAM, PIN - 686001
- 3 INCOME TAX OFFICER, PUBLIC LIBRARY BUILDING, LAL
BAHADUR SASTRI ROAD, KOTTAYAM, PIN - 686001
BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17.11.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.
JUDGMENT

The petitioner has approached this Court being aggrieved by the fact that an application filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for condonation of delay in filing returns and claiming refund for the Assessment Year 2010-11 was rejected by the Principal Commissioner of Income Tax through Ext.P6 order dated 12.4.2021. The petitioner seeks a mandamus commanding the respondents to process the return of income filed by the petitioner for the Assessment Year 2010-2011 and grant to the petitioner the refund of Rs.1,33,470/- claimed by him.

2. The brief facts of the case show that the petitioner, who is an assessee under the Act, did not file his return of income for the Assessment Year 2010-11 within the time specified under Section 139 of the Act. The due date for filing of return, as far as the petitioner is concerned, for the Assessment Year 2010-11 was 31.07.2010 and the last date on which he could have filed his return of income for that year was 31.3.2012. The petitioner filed his return of income only on 13.7.2012. It is the case of the petitioner that the delay in filing the return for the Assessment Year 2010-11 was on account of the fact

that the petitioner was suffering from certain ailments and was hospitalized in connection with treatment for a period about four months from 25.2.2012. It is the case of the petitioner that since the return was not processed and refund was not granted for several years, the petitioner made an enquiry in the month of June 2020 and thereafter filed W.P.(C)No.20788/2020 which was disposed of by Ext.P3 judgment dated 14.12.2020 as under:-

“Taking note of the submission of the learned counsel for the petitioner that an application under Section 119 of the Income Tax Act is being filed before the respondent, the Writ Petition is closed without prejudice to the right of the petitioner to pursue the said application.”

Following the disposal of W.P.(C)No.20788/2020, the 3rd respondent required the petitioner to file his application for condonation of delay under Section 119(2)(b) of the Act, through Ext.P4 communication dated 4.2.2021. However, the record indicates that the petitioner had already filed an application for condonation of delay on 20.1.2021. That application of the petitioner has been rejected by Ext.P6 proceedings of the 1st respondent. Ext.P6 reads as under:-

Shri. Antony Kaithackal Chacko, the applicant filed a petition before the Pr. Commissioner of Income Tax, Kochi-I on 20-01-2021 requesting for condonation of delay in filing return of income for the assessment year 2010-11.

2. The report on the condonation petition was submitted by Jurisdictional assessing officer the ITO, Ward-I, Kottayam which

was forwarded by the Joint Commissioner of Income Tax, Range-I Kottayam, along with his remarks.

3. *The application for condonation and report submitted by the jurisdictional Assessing Officer have been perused and found that the assessee has submitted this application for condonation of delay in filing of return for AY 2010-11 after 9 years. As per CBDT Circular No.9/2015, no condonation application for claim of refund can be entertained beyond six years from the end of the relevant assessment year. The conditions specified in the CBDT Circular No.9/2015 are not fulfilled in the instant case and hence, the petition of the applicant is hereby REJECTED.”*

A reading of Ext.P6 order shows that the application of the petitioner was rejected as it was found that the application filed by the petitioner is not within a period of six years from the end of the relevant assessment year. The provisions of a Circular issued by the Central Board of Direct Taxes as Circular No.9/2015 dated 9.6.2015 were relied on by the 1st respondent while issuing Ext.P6 order.

3. The learned counsel for the petitioner refers to the facts and circumstances of the case and states that, in the light of the judgments of this Court in ***Pala Marketing Co-op. Socy. Ltd. v. Union of India & Ors.; 2007 SCC OnLine Ker 159*** and ***M. Rajan v. Principal Commissioner of Income Tax; 2016 SCC OnLine Ker 25855*** and that of the Bombay High Court in ***Yash Society v. The Commissioner of Income Tax (Exemption); 2018 SCC OnLine Bom 4838*** and that of the Madhya Pradesh

High Court in **Colonel Ashwani Kumar Ram Singh (Retd.) v. Principal Commissioner of Income Tax (Judgment in W.P. (C)No.8858/2019)**, Ext.P6 is liable to be quashed and even if the application was filed beyond the period of six years as specified in the Circular issued by the Central Board of Direct Taxes and referred to in Ext.P6 order, it is open to this Court to exercise jurisdiction under Article 226 of the Constitution of India and to condone the delay, in the facts and circumstances of the case.

4. Mr. Christopher Abraham, the learned Standing Counsel appearing for the respondent Department refers to the statement filed in this Court on behalf of the respondents and states that Ext.P6 order is completely justified. It is submitted that Ext.P6 order does not suffer from any illegality, irrationality or procedural impropriety warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.

5. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent Department, I am of the view that the petitioner is entitled to succeed. The Assessment Year in question in this case is 2010-2011. It is not in dispute that the petitioner had filed his return of income for the said Assessment Year on 13.7.2012. The provisions of Section

119(2)(b) of the Act read as under:-

“(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class or cases, by general or special order, authorise [any income-tax authority, not being 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;”

A careful reading of the aforesaid provision indicates that the delay, which can be condoned in exercise of the jurisdiction under the aforesaid Section, is the delay in filing the application “*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*”. The provision, therefore, is clear and unambiguous, in that the delay that is to be condoned is the delay in making the application. In the facts and circumstances of the present case, the petitioner claimed a refund for the Assessment Year 2010-11 by filing belated return of income beyond the period specified in Section 139 of the Act, on 13.7.2012. Ext.P6 proceeds on the basis that the application for condonation of delay ought to be rejected as 'the application' was filed beyond the period of six years from the end of the relevant Assessment Year and, therefore, in terms of the Circular of the Board bearing No.9/2015, the application

cannot be considered.

6. I am of the view that the 1st respondent completely misdirected himself in law while holding that Ext.P5 application of the petitioner for condonation of delay ought to be rejected as it was filed beyond the period specified in the Circular of the Board, referred to above. It cannot be disputed and it is clear from a reading of the provisions of Section 119(2)(b) that the delay to be condoned is the delay in making 'the application' for refund. 'The application for refund', in this case is the return which was not processed as it was filed beyond the time specified in Section 139 of the Act. Therefore, the delay to be condoned was not to be considered with reference to the date on which the application under Section 119(2)(b) was filed, but with reference to the date on which the 'application for refund' (here in this case the return of income) was filed. Section 119(2)(b) does not impose any limitation for the purposes of filing an application for condonation of delay. Therefore, it was completely wrong on the part of the 1st respondent to treat the date of filing of application for condonation of delay as the relevant date for the purpose of considering whether it was filed within 6 years or not. The application for refund, by filing return of income, was admittedly made on 13.7.2012. Therefore, the delay in

filings ought to be with reference to the last date for filing of return of income for the year 2010-11, till 13.7.2012. In this view of the matter, it is not necessary to consider the decisions cited at the bar by the learned counsel for the petitioner.

Therefore, this writ petition is allowed and Ext.P6 is quashed. Ext.P5 application will stand restored to the file of the 1st respondent who will consider the matter afresh, and decide whether the delay from 31.3.2012 (the last date on which return could have been filed for Assessment Year 2010-11) till 13.7.2012 (date of filing of return by the petitioner) can be condoned in exercise of the power conferred under Section 119 (2)(b) of the Act. This shall be done within a period of one month from the date of receipt of a certified copy of this judgment. Needless to say that, if the delay is condoned, the return filed by the petitioner for the Assessment Year 2010-11 on 13.7.2012 shall be processed in accordance with law. In the facts of the present case and considering that after filing his return for the Assessment Year 2010-11, on 13.7.2012, the petitioner made his first request enquiry regarding the status of his application for refund (the return) only in the month of June 2020, I am of the view that if the delay from 1.4.2012 to 13.7.2012 (104 days) is condoned and the petitioner is found eligible for refund, the refund amount will not

carry any interest u/s 244A of the Income Tax Act, 1961 as it is clear that the petitioner did not pursue his application for nearly eight years (on his own showing). However, the Department will pay such interest if the refund is not actually made within six weeks from the date the petitioner is found eligible for the same.

sd/-

**GOPINATH.P
JUDGE**

acd

APPENDIX

EXT.P1: TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT DATED 13.07.2012.

EXT.P2: TRUE COPY OF THE EMAIL COMMUNICSATION DATED 24.06.2020.

EXT.P3: TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT ON 14.12.2020.

EXT.P4: TRUE COPY OF THE DIRECTION ISSUED BY THE 3RD RESPONDENT ON 4.2.2021.

EXT.P5: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER ON 9.2.2021.

EXT.P6: COPY OF THE ORDER PASSED BY THE 1ST ERSPOONDENT ON 12.4.2021.

True copy

sd/-
PS to Judge.