



2023:KER:63657

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 19TH DAY OF OCTOBER 2023 / 27TH ASWINA, 1945

WP(C) NO. 18868 OF 2023

PETITIONER/S:

M/S. ATNK & K AREA ARMED FORCES VETERANS CANTEEN,
17/727, VAZHAKKADAVU ROAD, MANAPULLIKKAVU, PALAKKAD -
678 013, REPRESENTED BY ITS SENIOR MANAGER, N.
RADHAKRISHNAN

BY ADVS.HARISANKAR V. MENON
MEERA V.MENON; R.SREEJITH
K.KRISHNA; PARVATHY MENON

RESPONDENT/S:

- 1 THE DEPUTY COMMISSIONER OF INCOME TAX,
TDS RECONCILIATION ANALYSIS AND CORRECTION ENABLING
SYSTEM, INCOME TAX DEPARTMENT, TDS CPC, AAYKAR BHAVAN,
SECTOR - 3, VAISHALI, GHAZIABAD, UTTAR PRADESH, PIN - 201010
- 2 THE INCOME TAX OFFICER (TDS), AAYKAAR BHAVAN, ENGLISH
CHURCH ROAD, PALAKKAD, PIN - 678014

BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Heard Ms K Krishna learned Counsel for the petitioner and Mr Christopher Abraham learned Stading Counsel for the Income Tax Department.

2. The present writ petition under Article 226 of the Constitution of India has been filed impugning Ext.P6 order dated 03.03.2023 for the Assessment Year 2018-19 on remand by the Tribunal wherein the demand of late fee under Section 234E of the Income Tax Act has been assessed at Rs.71,067/-, [which includes late fee of Rs.47,000/-, interest of Rs.23,500/- and interest of late payment of Rs.567/-].

3. The petitioner, an Armed Forces Veterans Canteen, was served with a notice under Section 201 for not filing the



quarterly statement for the second quarter of Financial Year 2017-18 in Form 26Q. In fact, the petitioner had deducted and paid the tax but filed Form 24Q instead of Form 26Q. The said Form 24Q was rejected. However, the petitioner filed the correct Form only on 23.06.2018. Therefore, the late fee of Rs.47,000/- and interest on the payment of the late fee of Rs.567/- was levied on the petitioner. The petitioner challenged the said order before the Commissioner of Income Tax (Appeals), which affirmed the order passed by the Assessing Authority.

3.1 Thereafter, the petitioner approached the Income Tax Appellate Tribunal (for short, 'the Tribunal') by filing I.T.A. No.98/Coch/2022. The Tribunal noted that computer-generated Form 24Q was filed on 20.10.2017. This Form was revised and corrected in Form 26Q. Considering the fact that the quarterly TDS returns were filed on time, and only the



Form was incorrectly filed, the Tribunal remanded the matter back to the Assessing Authority to pass fresh orders in the light of the observation made in the Order dated 01.07.2022 passed by the Tribunal (Ext.P4).

4. Learned Counsel for the petitioner submits that on remand, the Assessing Authority, in fact, gave effect to the order of the Tribunal and assessed 'Nil' demand. However, subsequently, *vide* order in Ext.P6, the Assessing Authority has again levied a late fee of Rs.47,000/-, interest of Rs.23,500/- and interest of late payment of Rs.567/-. Learned Counsel for the petitioner submits that the earlier stand of the Assessing Officer was rejected by the Tribunal. The Tribunal found that the return for the second quarter of the Financial Year 2017-18 was filed on time, however, it was in the incorrect Form, and the said Form was revised. Therefore, it cannot be said that the petitioner did not file the return on time and that



there was no question of levying any late fee. She also submits that when the petitioner had deposited the tax deducted as TDS on time, there was no question of levy of any interest.

5. I find substance in the submission of the learned Counsel for the petitioner. It is not in dispute that the petitioner had filed the return on time. However, it was not in the correct Form, and it was revised. Therefore, when the petitioner had filed the return on time, there is no question of levying penalty and interest.

The writ petition stands allowed. The impugned order in Ext.P6 is set aside.

Sd/-

DINESH KUMAR SINGH

JUDGE



APPENDIX OF WP(C) 18868/2023

PETITIONER EXHIBITS

- Exhibit P1 COPY OF COMPUTER GENERATED ACKNOWLEDGEMENT RECEIPT EVIDENCING FILING OF QUARTERLY STATEMENT FILED BY THE PETITIONER DTD. 20-10-2017
- Exhibit P2 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD., 30-06-2018
- Exhibit P3 COPY OF ORDER ISSUED BY THE COMMISSIONER OF INCOME TAX (APPEALS), NATIONAL FACELESS APPEAL CENTRE, DELHI DTD. 06-12-2021
- Exhibit P4 COPY OF ORFDER ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL, KOCHI DTD. 01-07-2022
- Exhibit P5 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD. 07-02-2023
- Exhibit P6 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD. 03-03-2023