IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 3RD DAY OF DECEMBER 2024 / 12TH AGRAHAYANA, 1946

WA NO. 1931 OF 2022

AGAINST THE JUDGMENT DATED 17.11.2022 IN W.P.(C) NO.13511 OF 2021 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS :

1 THE PRINCIPAL COMMISSIONER OF INCOME TAX -1 , KOCHI, C.R. BUILDING, I.S.PRESS ROAD, KOCHI-682018

2 COMMISSIONER OF INCOME TAX, (CIRCLE-1), PUBLIC LIBRARY BUILDING, LAL BAHADUR SASTRI ROAD, KOTTAYAM-686001

3 INCOME TAX OFFICER , PUBLIC LIBRARY BUILDING, LAL BAHADUR SASTRI ROAD, KOTTAYAM-686001

BY ADV. CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

RESPONDENT/PETITIONER :

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

BY ADV ANISH JOSE ANTONY

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 03.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K. Jayasankaran Nambiar, J.

This is an appeal preferred by the Income Tax Department against the judgment dated 17.11.2022 of the learned Single Judge in W.P.(C) No.13511 of 2021.

2. The brief facts necessary for disposal of the writ appeal are as follows:

The respondent/writ petitioner had approached the writ court impugning Ext.P6 order dated 12.4.2021 that was passed by the Principal Commissioner, Income Tax rejecting the application filed by the respondent under Section 119(2)(b) of the Income Tax Act, 1961 (for short, 'the Act'). In the said application that was filed in 2020, the respondent had sought to invoke the discretionary power of the Principal Commissioner of Income Tax under Section 119(2)(b) of the Act for the purposes of condoning a delay of three months that had been occasioned by him in filing a return for the assessment year 2010-2011 that would have enabled him to claim refund of tax that was lying to his credit with the Income Tax Department. In Ext.P6 order, the Principal Commissioner relied upon a report submitted by the jurisdictional assessing officer and found that the respondent/assessee had submitted the application under Section 119(2)(b) of the Act after almost nine years. He also found that in

as much as the purpose for filing the belated return in 2012 was for claiming refund of tax, even if that delay of three months was condoned, the period prescribed by the Central Board of Direct Taxes (C.B.D.T.) Circular No.9/2015 for condoning a delay in respect of an application seeking claim of refund being six years from the end of the relevant assessment year, the application preferred by the respondent/assessee could not be entertained. The application put in by the respondent/assessee under Section 119(2)(b) of the Act was therefore rejected.

3. The learned Single Judge who considered the challenge to Ext.P6 order in the writ petition, took the view that the appellants herein had misdirected themselves in law while holding that the application of the petitioner for condonation of delay was filed beyond the period specified in the Board Circular referred above. According to the learned Judge, the delay, the condonation of which was contemplated under Section 119(2)(b) of the Act, was the delay in filing the return, namely, the delay of three months in the instant case, and could not be seen as a reference to the delay of almost nine years in preferring the application under Section 119(2)(b) of the Act. The writ petition was therefore allowed by quashing Ext.P6, restoring Ext.P5 application and directing the appellant to consider the matter afresh and decide on the aspect as to

whether the delay of three months in preferring the return in 2012 could be condoned. The learned Judge further directed that if, in the exercise carried out by the appellants, the respondent/assessee was found entitled to the refund, then, the refund would not carry any interest under Section 244A of the Act for the period of nearly eight years that the petitioner did not pursue his application under Section 119(2)(b) of the Act. The appellants were however directed to pay interest if the refund, on being eventually sanctioned was not actually paid within six weeks from the date of the assessee being found eligible for the same.

4. In the appeal before us, it is submission of Sri. Christopher Abraham, the learned Standing Counsel appearing for the Income Tax Department, that the learned Single Judge erred in assuming that the Principal Commissioner of Income Tax did not have the power to reject a belated application filed under Section 119(2)(b) of the Act. It is pointed out that although the application referred to a situation where a belated return that had been filed by the assessee, with a delay of three months, had not been acted upon by the department, the said application was preferred almost eight years after the end of the assessment year. He refers to the provisions of Section 119(2)(b) of the Act which clearly indicates that the power of the Board (or the Principal Commissioner) under Section 119(2)(b) of the Act is a discretionary power which the

Board or the Principal Commissioner may exercise if they consider it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases. It is contended therefore that, read with the Board Circular No.9/2015 where the Board had chosen to limit the consideration of such applications, *inter alia* for refund, only if they were filed within six years from the end of the assessment year concerned, the action of the Principal Commissioner in rejecting an application under Section 119(2)(b) of the Act that was preferred after eight years could not have been faulted.

5. Per contra, it is the submission of Sri. Anish Jose Antony, the learned counsel for the respondent/assessee that the impugned judgment of the learned Single Judge does not call for any interference since the learned Judge has correctly appreciated the statutory provision while holding that the application referred to under Section 119(2)(b) of the Act is the application for refund, which in turn is a reference to the belated return filed.

6. On a consideration of the rival submissions, we are of the view that, for the reasons that are to follow, this appeal must necessarily succeed. It is not in dispute that the return that was filed by the respondent/assessee claiming refund was belated by three months from

the due date. Under the Income Tax Law, a belated return, except those that are specifically covered under the provisions of Section 139 or filed in response to permissions granted by the statutory authorities within the time limit specified in the notices issued by them, cannot be seen as valid returns for the purposes of the Act. It was on realising that the return filed by it in 2012 was belated, and would not be acted upon by the department, that the assessee had chosen to approach the Principal Commissioner with an application under Section 119(2)(b) of the Act.

7. The use of the word “application” under Section 119(2)(b) of the Act has necessarily to be a reference to the application invoking the discretionary jurisdiction of the Principal Commissioner, who has been conferred with the power under Section 119(2)(b) of the Act. It is in that sense that the word “application” is used in Ext.P6 order that was impugned by the respondent/assessee in the writ petition. In fact the reference to the period of nine years in Ext.P6 is a clear indication that the term “application” used in the impugned order was a reference to the application filed under Section 119(2)(b) of the Act and not the belated return that was filed in 2012. If that be the case, we cannot find fault with the order of the Principal Commissioner which essentially says that the Principal Commissioner has not considered it desirable or expedient to exercise the discretion on the facts of the instant case. The view taken by

the Principal Commissioner cannot be said to be unreasonable when viewed against the statutory framework, where, an assessee seeking condonation of a three month delay that occurred in 2012, had chosen to approach the Principal Commissioner for a condonation of that delay only after eight years. Thus, we find that the impugned judgment of the learned Singe Judge cannot be legally sustained. The appeal is therefore allowed by setting aside the impugned judgment of the learned Single Judge and dismissing the writ petition in its challenge against Ext.P6 order.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

EASWARAN S.
JUDGE

NS

APPENDIX OF WA 1931/2022

PETITIONER ANNEXURES

Annexure-A	**CERTIFIED COPY OF THE JUDGMENT DATED 17.11.2022 IN W. P.(C). NO.13511 OF 2021**