IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.09.2017
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
Writ Petition No.28046 of 2004

T.N.Tiruselvam ... Petitioner

vs

1. The Income Tax Officer - I (2),
Pondicherry.

2. The Chief Commissioner of Income Tax
State of Tamil Nadu & Pondicherry,
Ayakar Bhavan, Nungambakkam High Road,
Chennai - 600 034.

3. Central Board of Direct Taxes,
Department of Revenue
Ministry of Finance,
New Delhi rep. by its Director. ... Respondents

Prayer:-
Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the third respondent dated 31.10.2003 in F.No.212/129/2001-I TAII and quash the same and consequentially direct the respondents to complete the assessment for the Assessment Year 1996 - 97 of the petitioner by accepting the Returns submitted by the Assessee.

For Petitioner : Mr.S.Devanathan

For Respondents : Mr.A.P.Srinivas

O R D E R

Heard Mr.S.Devanathan, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, the learned Senior standing counsel appearing for the respondents.

2. The petitioner in this writ petition as impugned order passed by the third respondent dated 31.10.2003 by which the petitioner's application filed under Section 119(2)(d) of the Income Tax Act, 1961 has been rejected on the ground that the reasons given by the petitioner for belated filing of return -- reasonable offence and does not a case of genuine hardship

and not a fit case to condone the delay under Section 119 (2)(d) of the Act. The petitioner filed his returns for the assessment year 1996 - 97 and 19979 - 98 on 31.03.2001.

3. Admittedly, the returns were belated having been file will be on two years. Therefore, to unable the returns to be accepted and processed the petitioner's filed an application for -- the assessment years for condonation of delay in filing and requesting his charge to exercising his powers under Section 119(2)(b). So far as the return of the assessment year 19997 - 98 is concern the delay was condoned the returns were processed and the petitioner granted a revision of Rs.17,076/-. However, with respect of the application filed for condonation of delay in filing the return for the assessment year 1996 - 97 which appears because the reason claim of Rs.1,63,190/- on account of the jurisdictional hierarchic, the matter have to go before the third respondent. The third respondent rejected the same by an order passed during April 2003, this was put to challenge the petitioner in W.P.No.19449 of 2003 and the said writ petition was allowed and the matter was remanded to the respondents for fresh consideration. With a direction to dispose of the same after affording an opportunity to the petitioner while disposing of the said writ petition by order dated 04.08.2003. The filing has been recorded by the Court

> "3. The case of the petitioner is that he has filed Income Tax Returns for the year 1996 - 1997 and 1997 - 1998 on 30.03.2001 before the first respondent. The first respondent has recommended to condone the delay in filing returns for the period 19997 - 1998 and accordingly the delay was also condoned, assessment order was passed and refund of excess tax paid by the petitioner for the said assessment year was also made. According to the petitioner, in respect of the returns for the assessment year 1996 - 1997 filed along with returns for the period 1997 - 1998 seeking condonation was dismissed by passing the impugned communication without giving opportunityto the petitioner on the ground that the reason was not valid. According the petitioner, the third respondent is not the competent authority to pass the impugned order.
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> 4. In any event, the fact remains that the impugned order has been passed without affording an opportunity to the petitioner. Hence, the impugned order is set aside, the matter is remitted back to the respondents for fresh consideration. The respondents are directed to dispose of the same in accordance with law and on its own merits after affording opportunity to the petitioner within a period of four weeks from the date of receipt of a copy of this order."

4. In terms of the above directions, the third respondent had issue notice to the petitioner to sent a return petition on or before 21.10.2003. This direction was complied with by the petitioner by submitting his returns submits which has been rejected different by the impugned order.

5. Firstly the impugned order, the third respondent is not even adverted to the petitioner belated for the assessment year 1997 - 98 was considered as the relief granted. This so -- of the said year under Section 119(2)(b) should be equally acceptable for the assessment year 1996 - 97 and merely because on account of jurisdiction hierarchic another authorities superior to the authority to decide the matter of the year 1997 - 98 to take a decision, the such decision cannot be contrary to the decision arrived at by another authority exercising analogous powers under the Income Tax Act. Further, more I find that the petitioner is an individual assessee having been granted relief for the assessment year 1997 - 98. No prejudice would be caused to the some yardstick same applicable -- for the assessment year 1997 - 97 also.

6. For all the above reasons the Writ Petition is allowed, the impugned order is set aside and the appeal has to be set aside, namely the first respondent is directed to process the returns for the assessment year 1996 - 97 and in accordance with law. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rna/sd

To

1. The Income Tax Officer - I (2),
   Pondicherry.

2. The Chief Commissioner of Income Tax
   State of Tamil Nadu & Pondicherry,
   Ayakar Bhavan, Nungambakkam High Road,
   Chennai - 600 034.

3. The Director
    Central Board of Direct Taxes,
    Department of Revenue
    Ministry of Finance,
    New Delhi

+1 cc to M/s.Devanathan Advocate sr 64747
+1 cc to M/s.A.P.Srinivas Advocate sr 64995

W.P No.28046 of 2004

mp(co)
aa06/10/2017