IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.16748 of 2018

N.Annamalai ... Petitioner

vs.

1.The Principal Chief Commissioner of Income Tax,
Aayakar Bhawan, Office of the Chief Commissioner of Income Tax,
M.G.Road, 121, Nungambakkam,
Chennai-34

2.The Income Tax Officer,
Non Corporate Ward 21(1),
Wanaparthy Block, 4th Floor,
Room No.419,
Aayakar Bhawan,
Office of the Income Tax Officer,
M.G.Road,
121, Nungambakkam,
Chennai-34 ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus, calling for the records from the 2nd respondent in connection with the impugned order NCW 21(1)/2018-19, dated 03.05.2018 and quash the same and further direct the respondents to refund his dues of Rs.2,19,399/- together with interest.

For Petitioner : Mr.K.Krishnamoorthy
For Respondents : Ms.Hema Muralikrishnan and Mr.Naveen Duraibabu

ORDER

Heard Mr.K.Krishnamoorthy, the learned counsel for the petitioner and Ms.Hema Muralikrishnan, who accepts notice on behalf of the respondents.

2.The petitioner has filed this writ petition praying for issuance of a writ of certiorarified mandamus to quash the order passed by the second respondent dated 03.05.2018 and refund the dues of Rs.2,19,399.00 with interest.

3.The learned counsel for the petitioner submitted that an identical issue was considered by this Court in respect of a similarly placed retired employee of ICICI bank in W.P.No.42385 of 2016 filed by Thiru S.Sevugan Chettiar. The said writ petition was partly allowed by order dated 02.12.2016 and prays that similar directions may be issued in this writ petition as well.

4.The learned Standing counsel appearing for the respondents, by referring to the counter affidavit filed by the second respondent, vehemently contended that the petitioner ought to have filed a revised return for the assessment year 2004-05, as per Sec.139(5) of the Income Tax Act, on or before 31.03.2006. But the return was filed on 30.01.2018. The assessing officer has no power under the Income Tax Act to process a belated revised return. The only remedy available to the petitioner is to file a condonation petition before the Principal Chief Commissioner of Income Tax, Chennai, as provided under Section 119(2)(b) of the Act, for condoning the delay in filing the return. The petitioner has filed the present writ petition before this Court, without exhausting the avenue available under the Income Tax Act. It is also submitted that the assessee should have followed the correct procedure available under the Income Tax Act for claiming refund of the amount, i.e. by way of filing the petition before the Principal Chief Commissioner of Income Tax, Chennai, for condoning the delay along with the belated revised return.

5.After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, I find that whatever points argued by the learned Standing Counsel for the respondents and stated by the second respondent in the counter affidavit, have been considered by this Court in the case of S.Sevugan Chettiar. For better appreciation, the operative portion of the said order dated 02.12.2016, is extracted hereunder:

> "8. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court is of the view that the technicality should not stand in the way while giving effect to the order passed by the Hon'ble Supreme Court. The Board also issued a circular on 13.4.2016 with a view to grant relief to the retirees of the ICICI Bank under the Early

Retirement Option Scheme. Several persons, who had filed writ petitions before the Madurai Bench of this Court, have been granted the relief. In fact, in those orders, the Court took into consideration the decision of the Hon'ble Supreme Court and granted the relief.

9. The circular issued by the Central Board of Direct Taxes is in exercise of the powers conferred under Section 119 of the Act. The said provision deals with instructions to Subordinate Authorities. Sub-Section (1) of Section 119 of the Act states that the Board may, from time to time, issue such orders, instructions and directions to other Income Tax Authorities, as it may deem fit, for the proper administration of the provisions of the Act and such Authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. The Proviso carves out certain exceptions, under which circumstances, the Board will not issue instructions.

10. Clause (a) to Sub-Section (2) of Section 119 of the Act states that without prejudice to the generality of the power under Section 119(1), the the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of the Act as mentioned therein, general or special orders in respect of any class of income or fringe benefits or class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by other Income-Tax Authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may be made if the Board is of opinion that it is necessary in the public interest. It is relevant to point out that one of the provisions, which are listed out under Clause (a) to Sub-Section (2) of Section 119 of the Act is Section 139 of the Act.

11. Admittedly, the case, which was considered by the Hon'ble Supreme Court related to an individual employee namely S.Palaniappan, who was also a similarly placed person as that of the

petitioner. Thus, the Board, in its wisdom, while implementing the judgement in the case of S.Palaniappan, took a decision that such a benefit should be extended to the similarly placed persons treating them as class of cases. Therefore, the Board observed that the order should be communicated to all the Commissioners, so that relief can be granted to such retirees of the ICICI Bank. Thus, the petitioner cannot be non-suited solely on the ground that he had filed a revised return well beyond the period stipulated under Section 139(5) of the Act.

12. Furthermore, it is relevant to point out that Clause (c) to Sub-Section (2) of Section 119 of the Act states that 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, relax any requirement contained in any of the provisions contained in Chapter IV or Chapter VI-A of the Act, which deal with computation of total income and deductions to be made in computing the total income and such power is exercisable where the petitioner failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the conditions that (i) the default is due to circumstances beyond the control of the assessee and (ii) the assessee has complied with the requirement before the assessment in relation to previous year, in which, such deduction is claimed.

13. Thus, if the default in complying with the requirement was due to circumstances beyond the control of the assessee, the Board is entitled to exercise its power and relax the requirement contained in Chapter IV or Chapter VI-A. If such a power is conferred upon the Board, this Court, while exercising jurisdiction under Article 226 of The Constitution of India, would also be entitled to consider as to whether the petitioner's case would fall within one of the conditions stipulated under Section 119(2)(c).

14. Considering the hard facts, the petitioner, being a senior citizen, cannot be denied of the benefit of exemption under Section 10(10C) of the Act and the financial benefit that had accrued to the petitioner, which would be more

> than a lakh of rupees. Therefore, this Court is of the view that the third respondent should grant the benefit of exemption to the petitioner.
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> 15. Accordingly, the writ petition is partly allowed, the impugned order is set aside and the third respondent is directed to grant the benefit of exemption under Section 10(10C) of the Act and refund the appropriate amount to the petitioner, within a period of three months from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, the prayer for interest is rejected. No costs."

6.A reading of the above paragraphs will clearly show that all the contentions which were advanced by the second respondent in the counter affidavit have been dealt with by this Court and thereafter, the writ petition has been allowed. I find that there is absolutely no ground made out by the respondents to distinguish the decision rendered in the case of S.Sevugan Chettiar.

7.Accordingly, following the said decision, the writ petition is partly allowed and the impugned order is set side and the second respondent is directed to grant the benefit of exemption under Section 10(10C) of the Income Tax Act, 1961, and refund the appropriate amount to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. This time limit is fixed on the ground that the petitioner is aged 61 years and has a rare cardiac problem and a pacemaker is installed in his heart. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Principal Chief Commissioner of Income Tax,
Aayakar Bhawan, Office of the
Chief Commissioner of Income Tax,
M.G.Road, 121, Nungambakkam,
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2.The Income Tax Officer,
Non Corporate Ward 21(1),
Wanaparthy Block, 4th Floor,
Room No.419,
Aayakar Bhawan,
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M.G.Road,
121, Nungambakkam,
Chennai-34

+1cc to Mr.HEMA KURALIKRISHNAN, Advocate, S.R.No.45529
+1cc to Mr.K.KRISHNAMOORTHY, Advocate, S.R.No.45165

W.P.No.16748 of 2018

VD(CO)
TR(16/07/2018)