BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:11.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
Writ Petition(MD)No.2861 of 2015
and
M.P(MD)No.1 of 2015

V.Ravi ... Petitioner

Vs.

1. The Commissioner of Income Tax, Trichy - I,
   44, Williams Road,
   Cantonment,
   Trichy - 620 001.

2. The Additional Commissioner of Income Tax,
   Range - 1,
   44, Williams Road,
   Cantonment, Trichy - 620 001.

3. The Income Tax Officer,
   Ward 1(1),
   Perambalur.

4. The Branch Manager,
   Life Insurance Corporation of India,
   Thanjavur Division,
   Perambalur Branch,
   Sungu Pettai,
   Perambalur - 621 212. ... Respondents

(fourth respondent is impleaded as party respondent in this writ petition, as per the order made in M.P(MD)No.2 of 2015, dated 11/06/2018)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records comprised in C.No.6135 (15)/CIT/TRY-1/2014-15 dated 23.12.2014 issued by the first respondent and quash the same as being illegal, arbitrary and contrary to provision of the Income Tax Act and consequently direct the respondents to accept the income tax returns filed by the petitioner for the assessment year 2012-13, process the petitioner's claim for refund in a time bound manner.

For Petitioner	:	Mr.K.Prabhakar
For R-1 & R-2	:	Mr.N.Dilipkumar
For R-3	:	Mrs.S.Srimathy
For R-4	:	Mr.C.Godwin

ORDER

The challenge made in this Writ Petition is to an order passed by the first respondent in C.No.6135 (15)/CIT/TRY-1/2014-15 dated 23.12.2014.

2. The Writ Petitioner filed his income tax returns belatedly and claimed refund of Rs.43,830/-. According the Respondents Department, the income tax returns for the assessment year 2012-2013, should have been filed on or before 31.03.2014. But, it was filed belatedly on 22.08.2014. The petitioner filed a petition under Section 119(2)(b) of the Income Tax Act, 1961, requesting to condone the delay in filing the returns. The reason stated therein was that the deductor had given a wrong PAN number to the Income Tax Department. After hearing the petitioner in person, the Department has found that the petitioner has failed to prove that he had given the correct PAN number to the deductor and the mistake is on the part of the fourth respondent L.I.C. On this reason, the said petition was dismissed. As per Section 119 (2)(b) of the Income Tax Act, for avoiding genuine hardship in any case or class of cases, a general or special order, the authority is expected to admit an application and deal with the same on merits and in accordance with law. It is purely a discretionary provision to decide the case on merits depending on the reason adduced therein.

3. In the instant case, the petitioner has stated that he could not file his returns for want of correct PAN number in the TDS Certificate issued by the fourth respondent.

4. When the matter was taken up for hearing, the fourth respondent had not only issued a letter to the Department, but also, reported before this Court that by clerical error, they wrongly typed the PAN number and issued the TDS Certificate, which lead to the delay in filing the income tax returns by the petitioner. It is clearly inferred that the delay in filing the returns was due to the incorrect PAN number noted down by the deductor/4th respondent herein. Other than this, the impugned order does not disclose any other reason.

5. Mr.N.Dilipkumar, learned counsel appearing for the respondents 1 and 2, would vehemently contend that this reason will not give a premium to the petitioner to get refund. He has filed an elaborate counter-affidavit setting out so many other reasons.

6. This Court has considered all the points. However, we restrain ourselves to the reasons given in the impugned order. What is to be decided is the *bonafide* of the petitioner and as to

whether the reason given by him is correct or not to entitle him for the discretionary relief under Section 119(2)(b) of the Income Tax Act.

7. Now that, the fourth respondent himself, who is the deductor issued a certificate of TDS, has come forward to this Court and stated that it is their mistake in furnishing the wrong PAN number. In such circumstances, the reason need to be accepted. Further, the impugned order cannot be improved by filing a counter- affidavit any further as settled by the Honourable Supreme Court in the case of ***Dipak Babaria and another v. State of Gujaraj and others*** reported in ***(2014) 3 Supreme Court Cases 502,*** wherein it has been held as follows:

> *"64.That apart, it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in Commr. Of Police v. Gordhandas Bhanji(28 AIR 1952 SC 16) in the following words:(AIR p.18, para 9)*
>
> > *"9. ..... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
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> *This proposition has been quoted with approval in para 8 by a Constitution Bench in Mohinder Singh Gill v. Chief Election Commr.(29 (1978) 1 SCC 405) wherein Krishna Iyer, J. has stated as follows:(SCC p. 417)*
>
> > *"8.The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a*

challenge, get validated by additional grounds later brought out."

8. In view of the above, this Court is not inclined to accept the explanations given in the counter-affidavit by improving the impugned order. The relief prayed for in the Writ Petition itself, is only to set aside the impugned order and to receive the income tax returns filed by the petitioner and process it for the purpose of refund of Rs.43,830/-. Therefore, this Court is inclined to set aside the impugned order and direct the respondents to process the application filed by the petitioner, on merits and in accordance with law, for the purpose of refund.

9. In the result, the Writ Petition is allowed and the impugned order passed by the first respondent dated 23.12.2014, is set aside. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.K.Prabhakar, Advocate Sr.No.67853
+1cc to Mr.N.Dilipkumar, Advocate Sr.No.67687
+1cc to Mr.C.Godwin, Advocate Sr.No.67727
Pm
MK/SV MMS/SAR 4/28.06.2018/4P/4C

W.P(MD)No.2861 of 2015
11.06.2018