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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.17154 of 2013

R.Balasundaram ... Petitioner

vs.

1)Commissioner of Income Tax-II,
O/o the Commissioner of Income Tax-II,
No.2, V.P.Rathinasamy Road,
Bibikulam,
Madurai-625 002.

2)The Income Tax Officer,
Ward 1(1),
Dindigul. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 03.12.2012 passed by the 1st Respondent in C.No. 109/23/CIT/II/2012-13, quash the same and further direct the 1st respondent to refer the petition filed by the petitioner for condoning the delay in filing return of income for the assessment year 2009-10 to the Central Board of Direct Taxes as contemplated in Circular No.670 dated 26.10.1993.

For Petitioner : Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates

For Respondents : Mrs.S.Srimathy Senior Standing Counsel for Income Tax

ORDER

The present writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 03.12.2012 passed by the 1st Respondent in C.No.109/23/CIT/II/2012-13, quash the same and further direct the 1st respondent to refer the petition filed by the petitioner for condoning the delay in filing return of income for the assessment year 2009-10 to the Central Board of Direct Taxes as contemplated in Circular No.670 dated 26.10.1993.

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2.Learned counsel for the petitioner would submit that for the accounting year 2009-10, the petitioner has filed return of income on 30.01.2012 before the 2nd respondent making refund claim of Rs.1,17,404/-. The income tax return was filed after the due dates for filing return under Sections 139(1) and 139(4) of the Income Tax Act, 1961 (hereinafter referred to as, ''the Act'') and the due date under Section 139(1) of the Act, was 31.07.2009 and due date for filing belated returns under Section 139(4) of the Act, was 31.03.2011. Therefore, an application under Section 119 (2)(b) of the Act, was filed by the petitioner before the 1st respondent on 20.07.2012, to condone the delay in filing the return of income and seeking refund of income. Under Section 119 (2)(b) of the Act, the Central Board of Direct Taxes has powers to, either by general or special order, authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief, after the expiry of the period specified under the Act for making such application or claim and deal with the same on merits and in accordance with law. Such authorisation has been given by the Central Board of Direct Taxes vide instructions No.13/2006, dated 22.12.2006, authorising the Commissioners of Income Tax to admit the application for condoning the delay for claim of refunds not exceeding Rs.10 lakhs. Since in the instant case, the refund claim was Rs.1,17,404/-, an application was made before the 1st respondent under Section 119(2)(b) of the Income Tax Act. The specific averment of the petitioner is that he was not able to file return of income in time due to heavy losses suffered in the business in the subsequent year to the financial year 2008-09 and that new assignments were not forthcoming. The 1st respondent by impugned order dated 03.12.2012, rejected his application to condone the delay in filing income tax return for the assessment year 2009-10, stating that the petitioner has filed return for the subsequent years in time and therefore, he is aware of the statutory obligation to file income tax return within the time limit prescribed under Sections 139(1) and 139(4) of the Act and hence, the reason stated by the petitioner that he was suffering from financial burden in the business, was not convincing. As against the said order, the petitioner has filed this writ petition.

3.Learned Standing Counsel for the respondents would submit that since there is a standing order by the authorities not to consider the application for refund submitted beyond the time limit, learned standing counsel for the respondents would state that such claim of the petitioner made after the prescribed period cannot be considered, for the reason that the petitioner has filed return for the subsequent years in time and therefore, he is aware of the statutory obligation to file the return within the time limit prescribed under Sections 139(1) and 139(4) of the Act. Secondly, the burden will be cast upon the department to pay interest on the refund amount.

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4.At this juncture, learned counsel for the petitioner would state that the petitioner will not claim interest for the refund amount. The said submission is recorded.

5.In my considered opinion, since the petitioner has filed income tax return for the subsequent years in time, that cannot be the reason for rejecting his application to condone the delay in filing income tax return for the assessment year 2009-10, especially when authorisation has been given to the income tax authority to admit the application for condoning the delay for claim of refund in cases like the one in hand and therefore, the impugned order dated 03.12.2012 passed by the 1st respondent in C.No. 109/23/CIT/II/2012-13 is set aside and the 1st respondent is directed to consider the petitioner's application for refund for the assessment year 2009-10 and pass orders within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is not entitled to interest for the refund amount, if any, for the assessment year 2009-10.

With the above direction, this writ petition is ordered. No costs.

Sd/-
Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1)Commissioner of Income Tax-II,
O/o the Commissioner of Income Tax-II,
No.2, V.P.Rathinasamy Road,
Bibikulam,
Madurai-625 002.

2)The Income Tax Officer,
Ward 1(1),
Dindigul.

+1cc to Mrs.S.Srimathy, Advocate Sr.No.78879

BALA

VB/RP/SAR3/06.09.2018/ 3P/ 4C

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