THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.4863 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court be pleased to issue a Writ, Order or Direction one in the nature of Mandamus declaring the order dated 28.09.2017 passed by the 1st Respondent rejecting the Petitioner's application filed u/s 264 of the Income Tax Act, 1961 for the Assessment Year 2012-13, as bad in law, arbitrary, mechanical, violative of principles of natural justice, without jurisdiction and bereft of any valid reasons, consequently set aside the same and to pass such other order or orders as this Hon'ble Court may deem fit just and proper in the circumstances of the case."

By order dated 15.02.2018, this Court found, *prima facie*, that the revisionary authority did not even consider the plea of the petitioner to condone the delay in filing the application under Section 264 of the Income-tax Act, 1961 (for short, 'the Act of 1961'), and directed the authorities not to take any coercive steps.

Perusal of the revision petition dated 08.05.2017 filed by the petitioner under Section 264 of the Act of 1961 reflects that he raised the issue of limitation under para 6 thereof. In sub-para 6.1, he stated that there was a delay of 413 days in filing the said petition and prayed for condonation of the delay by the Principal Commissioner of Income-tax, in exercise of power under Section 264(3) of the Act of 1961. Despite the same, the Principal Commissioner of Income-tax-2, Visakhapatnam, straight away rejected the revision petition observing that the assessee had not filed the petition within the stipulated time under Section 264 of the Act of 1961.

Having received instructions, Sri K.Raji Reddy, learned senior standing counsel for the Revenue, would fairly state that the revisionary authority failed to take note of the plea of the petitioner for condonation of the delay and concede that the order under challenge cannot be sustained.

In that view of the matter, the writ petition is allowed setting aside the impugned order dated 28.09.2017 passed by the revisionary authority, the Principal Commissioner of Income-tax-2, Visakhapatnam. The matter shall stand remitted to the said revisionary authority for consideration afresh of the petitioner's revision petition and his plea for condonation of the delay in the presentation thereof, on merits and in accordance with law. The revisionary authority shall afford an opportunity of hearing to the petitioner before taking a reasoned decision in the matter.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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P. KESHAVA RAO,J

Date: 20.02.2018
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