***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

*** HON'BLE MS. JUSTICE J. UMA DEVI**

+W.P.No.43675 of 2017

#**Between**:

Smt. Shantipriya Punukollu, 4213, 194th Place
Ne Sammamish WA 98074 USA, represented
By G.P.A. (father), Sri P. Satyanarayana,
Plot No.1172, Road No.56, Jubilee Hills,
Hyderabad

… Petitioner

And

The Chief Commissioner of Income Tax,
International Taxation, South Zone, Bengaluru
and 2 others

… Respondents

! Counsel for the Petitioner : Mr. K. Vasantkumar

^ Counsel for Respondents : Smt. K. Mamatha, standing counsel

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

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ORDER: *(per V. Ramasubramanian,J)*

Aggrieved by the order passed by the Chief Commissioner of Income Tax (International Taxation) under Section 119 (2)(b) of the Income Tax Act, 1961, refusing to condone the delay in filing the return of income for the Assessment Year 2014-2015, the petitioner has come up with the above writ petition.

2. Heard Mr. K. Vasanth Kumar, learned counsel for the petitioner and Mr. K. Mamatha Chowdary, learned senior standing counsel for the respondents.

3. The petitioner, who claims to be a resident of U.S.A., admittedly disposed of a landed property at Hyderabad on 22-11-2013. The property belonged to the petitioner and her brother and the sale was jointly made for a total consideration of Rs.5,60,00,000/-. The share of the petitioner in the sale proceeds was Rs.2,80,00,000/-.

4. The vendee deducted tax at 20.75%, which amounted to Rs.58,11,671/-. Using the sale proceeds, the petitioner claims to have purchased a residential property at Madhapur on 24-04-2014 for a sale consideration of Rs.63,60,000/-. The petitioner claims to have further spent an amount of Rs.35,31,800/- towards

improvements and another sum of Rs.3,81,700/- towards stamp duty.

5. Upon coming to know of the transaction, the Department issued a letter dated 03-03-2016. It is the claim of the petitioner that she filed a return of income online, on 02-09-2016, treating the letter received from the department as a notice calling upon for return of income. In the return of income, the petitioner made a claim for deduction for the investment made in the new house under Section 54F, which resulted in a refund to the tune of Rs.17,35,820/-

6. But since the return was filed beyond the time limit prescribed, the petitioner filed an application under Section 119 (2) (b) seeking condonation of the delay in filing the return. The time stipulated under Section 139 for filing the return was 31-03-2016 and the return was filed on 02-09-2016.

7. The application was forwarded to the Chief Commissioner of Income Tax (International Taxation), on the ground that the claim for refund was more than Rs.10,00,000/-.

8. The petitioner was called upon to produce proof of copies of Non-resident, copies of sale deed, purchase deed etc., and the justification for the claim of deduction. It appears that the petitioner's father aged about 80 years fell ill and this was cited as a reason for the delay in filing of the return.

9. However, the 1st respondent rejected the application, on the ground (i) that the petitioner, who could file the return electronically, need not have come to India and need not have relied upon her

father, (ii) that her own brother was able to file the return before due date for the Assessment Year 2014-2015 and (iii) that the medical certificate produced by the petitioner in respect of her father's ailment, was not sufficient. The 1st respondent also held that the document such as driving licence produced by the petitioner was not adequate.

10. Therefore, challenging the said order of the 1st respondent, the petitioner is before this Court.

11. It is seen from the proceedings of the 1st respondent that the 1st respondent called upon a report from the 3rd respondent. In response, the Deputy Commissioner of Income Tax-II, International Taxation at Hyderabad sent a report. In the report dated 03-08-2017, the Deputy Commissioner of Income Tax stated (i) that as per the passport produced by the petitioner, the petitioner was a citizen and a resident of U.S.A. during the period under consideration, holding an American Passport; (ii) that the assessee never had any income in India prior to Assessment Year 2014-2015; (iii) that a verification of the copies of the sale/purchase deeds indicate that the petitioner is eligible for deduction under Section 54F, and (iv) that the claim of the petitioner was in accordance with law.

12. The said report of the Deputy Commissioner was forwarded by the Additional Commissioner to the 3rd respondent herein by his communication dated 08-08-2017. It appears that the Commissioner of Income Tax also recommended the condonation of delay and the same was communicated by the Income Tax Office

Head Quarters by his letter dated 24-08-2017 to the 1st respondent. In the said communication also, the 3rd respondent recorded that the claim of the assessee was correct and that her request for condonation should be considered favourably.

13. But unfortunately, ignoring the report of the authority at the ground level, the 1st respondent in Bangalore rejected the application under Section 119(2)(b). All the five grounds enumerated by the 1st respondent in the last portion of the impugned order, are answered by the recommendations made by the Deputy Commissioner in his report dated 03-08-2017. Therefore, we are of the considered view that the impugned order deserves to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. The application filed under Section 119 (2) (b) of the Income Tax Act shall stand allowed and the case may be processed further. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 19-04-2018

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