BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.10.2019**
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD)No.18049 of 2019

Deepak Kesavlal Parmar : Petitioner

vs.

The Principal Commissioner of Income Tax,
Income Tax Office Building,
Central Revenue Building Premises,
Non Corporate Ward 3(1),
No.2,V.P.Rathinasamy Nadar Road,
Bibikulam,Madurai-625 002. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in C.No.109/16/PCIT/MDU-2/ 2016-17, dated 04.06.2019 and quash the same and consequently directing the respondent to condone the delay in filing an application for refund and to order refund of the excess tax amount of Rs.1,89,153/-.

For Petitioner : Mr.S.Seeni
For Respondent : Mrs.Parameswari
For Mrs.S.Srimathy

O R D E R

The petitioner, who is an Income Tax assessee, has filed income tax return for the assessment year 2014-15. Since he is entitled to refund of Rs.1,89,153/- (Rupees One Lakh and Eighty Nine Thousand and One Hundred and Fifty Three only), the amount deducted at source, he filed an application for the same. He should have filed the application on or before 31.03.2016 as per Section 239 (2)(c) of the Income Tax Act, 1961, but, according to the petitioner, his mother was undergoing medical treatment for uncontrolled hypertension and cardio myopathy for a long period and she died on 18.05.2016 and thereafter, he submitted the application, for return of refund of money on 24.08.2016 to the respondent. He has also filed a petition under Section 119(2)(b) of the Income Tax Act, 1961, for condoning the delay in filing the petition for refund of amount, but the same was not considered by the respondent. After sending complaint to the Prime Minister's Cell, the impugned order dated 04.06.2019 came to be issued, refusing to condone the delay. The reason being that the petitioner has submitted the income tax returns for the assessment years 2014-2015 and 2015-2016, showing the income to the tune of Rs.13,83,387/- (Rupees Thirteen Lakhs and

Eighty Three Thousand and Three Hundred and Eighty Seven only) and Rs.15,23,848/- (Rupees Fifteen Lakhs and Twenty Three Thousand and Eight Hundred and Forty Eight only) respectively. These earnings, according to the respondent, will prove that the illness of the petitioner's mother did not hamper his business or profession. If that be so, the same could not be a reason for not filing his return in time. Hence, the reason stated by the petitioner was not accepted and it was observed that the denial of condonation of delay may not cause any genuine hardship to the petitioner. Aggrieved over the same, the petitioner is before this Court.

2. Controverting the grounds raised by the writ petitioner, the learned Standing Counsel appearing for the respondent vehemently contended that the petitioner has not come out with genuine or acceptable reasons for condoning the delay. There is a delay of five months in filing return of income and seven months for refund application. Even though the petitioner stated that his mother has undergone treatment, he has not produced any document in support of the same and in that event, the impugned order is sustainable in the eyes of law and the same does not require any interference.

3. I have considered the submissions.

4. As per Section 119(2) (b) of the Income Tax Act, 1961, the respondent has power to condone the delay and the same is clarified by Circular 9/2015 [F.No.312/22/2015-OT] dated 09.06.2015. When the claim is not more than Rs.10,00,000/- for any one assessment year, the Principal Commissioner of Income Tax has power to condone the delay. In the present case, the authority has failed to pass such orders, within the specified period and only on the complaint made by the petitioner, the order of rejection came to be passed on technical grounds rejecting refund of the amount, instead of deciding the issue on merits. The reason for not condoning delay is not supported by any material and it may not cause any genuine hardship. Insofar as the authorities are concerned, the amount of Rs.1,89,153/- (Rupees One Lakh and Eighty Nine Thousand and One Hundred and Fifty Three only) may be small, on the other hand, it is a big amount, in the view of point of common man. The petitioner has stated that he is precluded from submitting the documents in respect of the medical treatment taken for his mother. Insofar as the petition for condoning the delay is concerned, when reasons are adduced, the authorities should try to consider the same and deal with the case on merits, instead of disposing of the matter on technical grounds. If at all the petitioner has to be refunded as per the claim made based on the documents, the authorities should refund the amount and it cannot be rejected on technicalities.

5. It is well settled law by the Hon'ble Supreme Court that instead of rejecting the matters on technicalities, the Courts shall do substantive justice by deciding the case on merits.

6. In such view of that matter, the respondent ought to have condoned the delay and decided the matter on merits. Considering the same, the impugned order passed by the respondent dated 04.06.2019 is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to consider the case of the petitioner on merits and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

7.The Writ Petition is allowed as indicated above. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

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+1 CC to M/s.S. SRIMATHY, Advocate (SR-90960[F] dated 03/10/2019)

Order made in
W.P.(MD)No.18049 of 2019
Dated:01.10.2019

ls/sml
MK (08.11.2019) 3P 3C