IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.18538 of 2021 and
W.M.P. Nos. 19778 of 2021 and 175 of 2022

M/s.Pudupet Cooperative Society Limited
Represented by its President
Mr.T.Nithyanandham,
No.29/15, Thulasingam Street,
Pudupet, Chennai - 600 002.

.. Petitioner

Vs.

1. The Chief Commissioner of Income Tax (OSD)
   Wanaparthy Block, No.121 Mahatma Gandhi Road,
   Nungambakkam, Chennai.
   Tamil Nadu - 600 034.

2. The Central Board of Direct Taxes
   Represented by its Chairperson
   Department of Revenue - Ministry of Finance
   Government of India
   New Delhi.

3. The Additional / Joint / Deputy / Assistant Commissioner
   of Income Tax,
   Income Tax Officer,
   National E-Assessment Centre,
   Delhi.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st Respondent in ITBA/COM/F/17/2020-21/1030883278(1) in passing the impugned order under Section 119(2)(b) of the Income Tax Act, 1961 dated 23.02.2021 and quash the same as illegal, arbitrary and devoid of merit and consequently direct the 1st Respondent to condone the delay in filing the return for the Assessment Year 2018-19 by the Petitioner.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel

ORDER

The writ petition is filed challenging the impugned order made under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on the premise that it is non-speaking. Reliance was sought to be placed on the judgment of this Court to support the view that an order under Section 119(2)(b) of the Act is quasi-judicial in nature and therefore ought to be supported by a reason.

2. On the other hand, it is submitted by the learned counsel for the Respondent that the application is filed before the Commissioner who does not have the authority to entertain an application under Section 119(2)(b) of the Act.

3. The learned counsel for the Respondent would support his contention by placing reliance upon the counter wherein at paragraph 5, it has been reiterated that the 1st Respondent is not the competent authority to deal with application under Section 119(2)(b) of the Act.

4. The learned counsel for the petitioner would submit that they may be granted the liberty to approach the appropriate authority in terms of Circular No.13 of 2023 dated 26.07.2023 wherein the Central Board of Direct Taxes issued a circular taking into account the difficulties faced by the Co-operative Societies across various States and has clarified that with a view to mitigate genuine hardship, the Board in exercise of its powers under Section 119(2)(b) of the Act, hereby directs the Chief Commissioner / Director General of Income Tax are authorized to deal with the applications of condonation of delay pending before the Board, upon transfer of such applications by the Board, and decide such applications on merits, in accordance with the law. It was thus submitted that they may be granted liberty to approach the appropriate authority in terms of the above Circular.

5. As a matter of fact, paragraph 5 of the said circular also contemplates /

provides for filing a fresh application for the period / assessment years 2018-19 to 2020-23. Considering the fact that the petitioner had filed the Original Application before an incompetent authority and the prayer being limited to grant leave to file an application under Section 119 of the Act before the appropriate authority, this Court is inclined to grant the petitioner liberty to approach the appropriate authority in terms of the provisions and the relevant Circulars, in particular, Circular No.13 of 2023 dated 26.07.2023 within a period of 4 weeks from the date of receipt of copy of this order. If such application is filed, the appropriate authority shall dispose of the application within a period of 6 weeks from the date of receipt of such application.

6. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:

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MOHAMMED SHAFFIQ, J.

Spp

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