IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.23137 of 2023

Sunil Nair ... Petitioner

Vs.

1.Principal Commissioner of Income Tax,
Income Tax Office – BSNL Tower,
No.16, Greams Road,
Chennai – 600 006.

2.Assistant Commissioner of Income Tax,
Non-Corporate Circle 17(1),
Room No.120, Income Tax Office – BSNL Tower,
No.16, Greams Road,
Chennai – 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in the file of the respondents and quash the impugned order passed by the first respondent under Section 119(2)(b) of the Income Tax Act, 1961 in DIN and Order No.ITBA/COM/F/17/2023-24/1053786553(1) dated 19.06.2023 and direct the first respondent to condone the delay in filing revised return of income under Section 139(5) of the Income Tax Act, 1961 and to allow the petitioner to file the revised return under Section 139(5) of the Income Tax Act, 1961 for AY 2022-23 either in the income tax portal or manually.

For Petitioner	:	M/s.N.V.Lakshmi
For Respondents	:	Dr.B.Ramaswamy Senior Standing Counsel

O R D E R

The writ petition has been filed challenging the impugned order passed by the 1st respondent on 19.06.2023 and to direct the 1st respondent to condone the delay in filing the revised return of income under Section 139(5) of the Income Tax Act, 1961, (in short 'The Act') and to allow the petitioner to file the revised return under Section 139(5) of the Act for the Assessment Year 2022-2023 either in the income tax portal or manually.

2. The learned counsel for the petitioner states that the petitioner has filed the original returns for the Assessment Year 2022-2023 in time. However, while filing the returns, the petitioner intended to claim the relief under Section 89 of the Act, but the time limit for filing return of income under Section 139(1) of the Act was about to expire. Therefore, the petitioner filed his return of income without claiming relief under Section 89 of the Act, inadvertently. Thereafter, the petitioner filed an application on 06.02.2023,

seeking to claim the relief under Section 89 of the Act and further to allow the petitioner to file revised return.

3. The learned counsel for the petitioner further submits that the petitioner is a Pilot and his nature of employment is such that he has to travel on a regular basis. Further, as part of his job, he also acts as a trainer, which requires him to stay out of Chennai for long durations. Thus, the petitioner was not able to file the revised return within the specified time under Section 138(5) of the Act. Though the petitioner has stated these reasons in the application, the 1st respondent, who in turn rejected the application on the ground that there was no genuine hardship substantiated by the petitioner to condone the delay. Hence, the petitioner is constrained to move the present writ petition.

4. On the other hand, Dr.B.Ramaswamy, learned Senior Standing Counsel appearing on behalf of the respondents would submit that the reasons provided by the petitioner to condone the delay of 37 days are not genuine one and that is the reason why the 1st respondent rejected the request of the petitioner to condone the delay in filing the revised returns. The 1st

respondent also referred to para 5(i) of the CBDT's circular No.9/2015 (F.No.312/22/2015-01) dated 09.06.2015, the acceptance of any condonation petition is subject to ensuring that the case is of genuine hardship on merits.

5. The learned Senior Standing Counsel appearing on behalf of the respondents further contended that there must be some discipline in filing the returns, otherwise it would be an example of demoralisation of the work done by the Officers, who all are filtering the returns. The learned Senior Standing Counsel relied on the judgment rendered by the Hon'ble Supreme Court of India in the case of ***Wipro Limited Vs. Principal Commissioner of Income-Tax-III, Bangalore and Another*** reported in ***(2022) 142 taxmann.com 562 (SC)***. Therefore, he would submit that since there was no genuinity towards the reasons provided by the petitioner, it was rightly rejected by the 1st respondent. Hence, this writ petition is liable to be dismissed.

6. Heard learned counsel for the petitioner and learned Senior Standing Counsel for the respondents and perused the entire materials on records.

7. In view of the above, it appears that there was a delay of 37 days in filing the revised returns. Initially, the petitioner had filed his Income Tax Returns within the prescribed time limit. However, he has not availed the benefits available under Section 89 of the Income Tax Act. The petitioner is a Pilot, who has been travelling throughout India. That apart, he is also a Trainer for the Pilots. Therefore, by oversight, he had filed his returns without claiming the exemption, which is available under Section 89 of the Income Tax Act and there is no dispute on the aspect that the petitioner's entitlement to claim the said exemption.

8. In the present case, the petitioner should have filed the revised returns within the time limit prescribed under the provisions of the Income Tax Act. However, due to the nature of work, the petitioner was unable to file his revised returns in time. Thus, there was a delay of 37 days in filing the revised returns and the said delay was not condoned by the respondents stating that the reasons assigned by the petitioner is not genuine. The reason provided by the petitioner is that due to the nature of his work, there was a delay of 37 days in filing the revised returns.

9. No doubt, the petitioner is a Pilot, who has to travel throughout India and also he is a trainer of Pilots. As a Pilot, he cannot be excepted to reach home in time everyday. He may be compelled to stay away fom his home town. Further, in this writ petition, the petitioner is asking for condonation of delay of 37 days. Therefore, this Court feels that for the interest of justice, the said delay of 37 days in filing the revised returns has to be condoned, since it is not a tax liability that the petitioner is not going to pay to the respondent, but it is an exemption, which he is entitled to claim under the provisions of Income Tax Act. The said entitlement cannot be deprived by citing the reasons of delay of 37 days in filing the revised returns.

10. As far as the submission made by the learned Senior Standing Counsel for the respondents that there must be some discipline in filing the returns, otherwise it would set an example to demoralise the work done by the Officers, who are in-charge of filing returns is concerned, this Court is of the considered view that the question of demoralisation of work will not come into picture here, since it is the duty of the Officers to scrutinize the returns and in the course of scrutinizing the returns, if anything is found, it is

the duty of the Officers concerned to intimate the same to the Assessees and hence, while performing their duty. In fact, this Court expects that the officials should assist the Assessees and inform the defects in time, if any, noticed in the returns then and there.

11. Therefore, for all these reasons, this Court is inclined to set aside the impugned order passed by the respondent. Accordingly, the impugned order dated 19.06.2023 is set aside and the delay of 37 days in filing the revised returns is hereby condoned.

12. In the result, this Writ Petition stands allowed. No costs.

01.11.2023
(1/2)

Jeni
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

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KRISHNAN RAMASAMY, J.

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