IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM

**THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.2687 & 3690 of 2024
and
W.M.P.Nos.2964 & 3989 of 2024

Shri Nivas ... Petitioner
(in both cases)

Versus

The Commissioner of
Income Tax (International Taxation),
BSNL Building,
16, Greams Road,
Chennai – 600 006. ... Respondents
(in both cases)

**PRAYER in W.P.No.2687 of 2024**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent and quash the impugned order passed by the respondent under Section 119(2) (b) of the Income - Tax Act, 1961 (Act) in PAN.BMEPN8862N, DIN and Letter No.ITBA/ COM/F/17/2023-24/1053200430(1) dated 26.05.2023 for the AY 2021-22, and to direct the respondent to accept the condonation petition of the petitioner for condoning the delay in filing return of income for the AY 2021-22.

**PRAYER in W.P.No.3690 of 2024**: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent and quash the impugned order passed by the respondent under Section 119(2)(b) of the Income Tax Act 1961 (Act) in PAN: BMEPN8862N, DIN and Letter No.ITBA/COM/F/17/2023-24/1053200430(1) dated 26.05.2023 for the AY 2020-21 and to direct the respondent to accept the condonation petition of the petitioner for condoning the delay in filing return of income for the AY 2020-21.

**In both W.Ps.:**

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| For Petitioner | : | Mr. J. Saravanan |
| For Respondents | : | Mr. D. Prabhu Mukunth Arunkumar,<br>Junior Standing Counsel. |

**ORDER**

These writ petitions challenge the orders rejecting applications under Section 119(2)(b) of the Income Tax Act, 1961 (the Income Tax Act).

2. The petitioner is a resident of the United States of America. He is assessed to tax in India and filed his return of income in India. In the financial year 2018-2019, the petitioner sold a residential property in India

and claimed exemption under Section 54 of the Income Tax Act by depositing the entire sale consideration of Rs.1.35 crores under the Capital Gains Accounts Scheme. After leaving to the United States of America on 16.03.2019, he came back to India only during the financial year 2021 - 2022. According to the petitioner, he was unable to travel to India during the interregnum on account of the onset of the Covid-19 pandemic which affected his parents and his in-laws. He also submits that his father-in-law passed away in the year 2021. In those circumstances, it is stated that the petitioner failed to file the return of income for assessment years 2020-21 and 2021-2022.

3. Upon returning to India subsequently, the petitioner realized that a large amount was deducted at sources for the relevant assessment years and that he was entitled to refund. Therefore, applications were filed before the Commissioner of Income Tax under Section 119(2)(b) of the Income Tax Act seeking condonation of delay. The said applications were dismissed by orders impugned herein.

4. Learned counsel for the petitioner submits that the Commissioner of Income Tax failed to take into consideration the genuine hardship caused to the petitioner while rejecting the applications. By referring to the orders impugned herein, he points out that applications for condonation of delay were rejected entirely on the basis that such returns of income could have been filed through the e-filing portal.

5. Mr. D. Prabhu Mukunth Arunkumar, learned junior standing counsel, appears on behalf of the respondent. He submits that the petitioner failed to establish that the non-filing of returns of income was due to reasons beyond his control. Therefore, he submits that no interference is warranted with the impugned orders.

6. Section 119(2)(b) of the Income Tax Act enables the Central Board of Direct Taxes to condone delay in cases of genuine hardship. The said provision has been interpreted in several judgments, including of this Court, and it has been held that the provision should receive a liberal construction. The primary consideration in such applications is whether genuine hardship would be caused to the applicant. In this case, the

applicant is an individual assessee. He resides in the United States of America. The two relevant assessment years were years when normal life was affected worldwide by the Covid-19 pandemic. The petitioner has placed on record a complaint filed by him with the Alameda County Sheriff's Office with regard to a theft from his car in which several items, including his passport, were lost. In the applications filed before the Commissioner of Income Tax, he has referred to his parents and in-laws being affected by the Covid-19 pandemic and the death of his father-in-law in the year 2021.

7. Upon taking into account all the aforesaid facts and circumstances, in my view, these are appropriate cases to condone the delay in filing the returns of income. Therefore, the orders impugned herein are quashed and it is directed that the returns of income filing by the petitioner for assessment years 2020-2021 and 2021-2022 be processed in accordance with law.

8. The writ petitions are allowed on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

**01.03.2024**

Index : Yes
Speaking Order : Yes
Neutral Case Citation: Yes

klt

To

The Commissioner of
Income Tax (International Taxation),
BSNL Building,
16, Greams Road,
Chennai – 600 006.

**SENTHILKUMAR RAMAMOORTHY, J.**

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