IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10127 of 2024
and
W.M.P.No.11168 of 2024

Seramudali Kabeer Hamidali
No.06, Rajaji School Rod,
Nungambakkam, Chennai 600 034
PAN: AAAPH6489G ... Petitioner

Versus

1.The Additional Commissioner of Income Tax
CIT (ITA Cell)
The Central Board of Direct Taxes
Ministry of Finance
Jeevan Vihar Building, Sansad Marg,
New Delhi 110 001.

2.The Principal Commissioner of Income Tax
Chennai 4
Income Tax Department
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034.

3.The Assistant Commissioner of Income Tax
Non Corporate Circle 3(1), Chennai
Income Tax Department
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the writ petitioner on the file of the first respondent to quash the impugned order F.No.197/285/2023-ITA-1 dated 23.02.2024 passed u/s 119(2)(b) of the Income Tax Act, 1961 pertaining to the Assessment Year: 2020-2021 in condoning the delay in filing the return of income and consequentially in directing the first respondent to enable the income tax web portal for the purpose of uploading of the return of income electronically in terms of section 139 read with section 119(2)(b) of the Act.

For Petitioner : Mr. A. S. Sriraman

For Respondents : Mrs. Premalatha,
Junior Standing Counsel

ORDER

An order rejecting an application under Section 119(2)(b) of the Income Tax Act,1961, (*"I-T-Act"*) is challenged in this writ petition.

2. The petitioner is assessed to tax under PAN AAPH6489G. As regards assessment year 2020-21, the petitioner asserts that he was unable to file the return within time on account of the prolonged illness of his former Chartered Accountant, namely, Mr. U. Mohamed

Sahabdeen and his eventual demise on 07.11.2022. In those circumstances, the petitioner filed an application for condonation of delay for filing the return on 13.07.2023. The present writ petition was filed on account of rejection of such application by order dated 23.02.2024.

3. Learned counsel for the petitioner submitted that the petitioner does not seek a refund or exemption and that the application to condone delay was filed so as to enable the petitioner to file the return of income for assessment year 2020-21 along with applicable taxes and interest. He points out that the petitioner filed returns for preceding assessment years such as 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20. He also points out that the certificate issued by the doctor to the petitioner's erstwhile Chartered Accountant was placed on record as evidence of his prolonged illness on account of the Covid-19 pandemic. By referring to the death certificate, he pointed out that the former Chartered Accountant passed away on 07.11.2022. Learned counsel also submits that the impugned order warrants interference because the application was

rejected in spite of the petitioner establishing that there were *bona fide* reasons for not filing the return in time.

4. Mrs. Premalatha, learned junior standing counsel, accepts notice for the respondents. By inviting my attention to the impugned order at paragraphs 6.1 & 6.6 thereof, she submits that the petitioner failed to explain the delay in filing the return of income. She also points out that there was a delay of 927 days and that there is no infirmity in the impugned order.

5. The petitioner has placed on record the returns filed in respect of preceding assessment years commencing from 2015-16 to 2019-20. In the impugned order, such returns were construed as belated returns because such returns were filed within the extended time under Section 139(4) of the Act. As regards the ill health of the former Chartered Accountant of the petitioner, the explanation was considered as insufficient because the Chartered Accountant died on 07.11.2022, whereas the return was required to be filed on 15.02.2021. The petitioner

has placed on record the medical certificate dated 13.03.2022, which indicates that the Chartered Accountant was under treatment between February and March 2022. This aspect was not taken into consideration in the impugned order. Another material consideration is that the petitioner does not seek any refund or exemption as is evident from the statement of income annexed to the petitioner's return of income. In fact, the petitioner has also computed interest up to the date of filing of the application under Section 119(2)(b) of the I-T-Act.

6. When the above facts and circumstances are considered cumulatively, the petitioner makes out a case to condone delay for genuine hardship. Consequently, the order impugned herein warrants interference.

7. Therefore, the impugned order dated 23.02.2024 is set aside and the delay in filing the return of income of the petitioner for assessment year 2020-21 is condoned. As a corollary, the respondents are directed to receive and process the petitioner's return of income subject to the

petitioner paying interest and late filing fee in accordance with law. In order to facilitate the above, the respondents are directed to provide access to the portal so as to enable the petitioner to upload the return of income.

8. W.P.No.10127 of 2024 is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

17.04.2024

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

klt

To

1.The Additional Commissioner of Income Tax
CIT (ITA Cell)
The Central Board of Direct Taxes
Ministry of Finance
Jeevan Vihar Building, Sansad Marg,
New Delhi 110 001.

2.The Principal Commissioner of Income Tax
Chennai 4
Income Tax Department
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034.

3.The Assistant Commissioner of Income Tax
Non Corporate Circle 3(1), Chennai
Income Tax Department
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034.

SENTHILKUMAR RAMAMOORTHY,J

klt

W.P.No.10127 of 2024
and
W.M.P.No.11168 of 2024

17.04.2024