IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.16645 of 2024 and
W.M.P.Nos.18275 & 18277 of 2024

ACRE FEET Trust,
14C colony, Water Tank South Street,
Perumalpuram, Perumalpuram S.O.,
Palayamkottai, Tirunelveli 627 007,
Represented by its Managing Trustee. ... Petitioner

-vs-

1. Commissioner of Income (Exemption),
Aayakar Bhawan – Annexure Building,
No.121, MG Road, Nungambakkam,
Chennai-600 034.

2.National Faceless Assessment Centre,
Room No.401, 2nd floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003,
Represented by Assessment Unit,
Income Tax Department.

3.Income Tax Officer (Exemption),
O/o Income Tax Office,
Tirunelveli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of

India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent herein leading to issuance of Order dated 13.03.2024 (vide DIN ITBA/COM/F/17/2023-24/1062621945(1)) and quash the same and direct the 2nd Respondent to pass assessment order afresh after affording opportunity to the Petitioner.

For Petitioner : Mr.S.Sathyanarayanan

For Respondents : Mrs. S.Premalatha, Junior Standing Counsel

ORDER

The petitioner filed a petition under Section 264 of the Income Tax Act, 1961 on 26.12.2022 in respect of assessment order dated 19.02.2021. Such petition was rejected on the ground that the same was filed beyond the time limit of one year prescribed in sub-section (3) of Section 264. Such order is assailed herein.

2. Learned counsel for the petitioner submits that the assessment order in respect of assessment year 2018-2019 was issued on 19.02.2021, which is during the period of the COVID 19 pandemic. He further submits that such order came to the notice of the petitioner in December 2022 and that the

petitioner filed a revision petition on 26.12.2022. By relying on the order passed by the Hon'ble Supreme Court during the COVID 19 pandemic, he submits that all applicable limitation periods were directed to be computed by excluding the period running from 15.03.2020 to 28.02.2022. If so computed, he contends that the petition under Section 264 was within time. Even otherwise, he submits that the petitioner had placed on record medical certificates to the effect that the Managing Trustee of the petitioner trust was affected by the corona virus in May 2021 and that he also underwent treatment in 2022.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. She submits that the period of limitation under sub-section (3) of Section 264 is a period of one year. She further submits that such one year period should be computed from the date of communication of the relevant order. In this case, she submits that the order was communicated immediately to the petitioner and, therefore, the one year period had lapsed much before the petitioner filed the revision petition on 26.12.2022. She also submits that the order records that the petitioner

participated in assessment proceedings by providing details on 25.01.2021.

4. Although sub-section (3) of Section 264 prescribes a limitation period of one year, the proviso thereto enables the condonation of delay for sufficient cause. The said proviso is as under:

> *"Provided that the [Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or] Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period."*

Thus, the undisputed position is that the power to condone is available to the revisional authority subject to the petitioner showing sufficient cause. In this case, the records reflect that the assessment order was issued during the period impacted by the COVID 19 pandemic. The petitioner appears to have placed on record multiple medical certificates. Reliance is also placed on the order of the Supreme Court directing that the period running from 15.03.2020 to 28.02.2022 should be excluded while computing applicable period of limitation. In these facts and circumstances, a case is made out to condone delay in terms of the proviso to sub-section (3) of Section 264. As a consequence, it is necessary that the revisional authority decides the petition on merits.

5. Therefore, the impugned order dated 13.03.2024 is set aside and the matter is remanded to the 1st respondent for reconsideration. The 1st respondent is directed to consider and dispose of the revision application of the petitioner on merits and in accordance with law.

6. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

09.07.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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To

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