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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 13.10.2025

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.10812 of 2023
and
W.M.P.No.10750 of 2023

Suhasini Gudipati ... Petitioner

Vs.

1.The Commissioner of Income Tax (International Taxation),
BSNL Building,
No.16, Greams Road,
Chennai – 600 006.

2.D.Raghurami Reddyy ... 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 pertaining to the impugned order dated 12.12.2022 bearing No.CIT/IT/CHE/123/2022-23 purportedly issued under Section 119(2)(b) for the Assessment Year 2016-17 by the 1st Respondent and quash the same and further direct the 1st Respondent to allow the Petitioner to file the return of income for the Assessment Year 2016-17 and further direct the 1st Respondent to refund the tax eligible for the Petitioner.



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For Petitioner : M/s.T.V.Muthu Abirami

For Respondents : Mr.Ramanakumar
Senior Standing Counsel and
Mr.Avinash Krishnan Ravi
Junior Standing Counsel

**ORDER**

The Petitioner is before this Court against the impugned order dated 12.12.2022, passed by the 1st Respondent / Commissioner of Income Tax (International Taxation), whereby, a petition filed by the Petitioner under Section 119(2)(b) of the Income Tax Act, 1961 on 21.06.2022 for condoning the delay in filing the Return of Income under Section 139 of the Income Tax Act, 1961 for the Assessment Year 2016 – 2017 has been rejected.

2. The brief facts of the case is that the Petitioner an NRI, had sold a property to the 2nd Respondent pursuant to a Joint Development Agreement dated 23.11.2015 entered between the Petitioner and Soma Enterprises Limited. In terms of the said Joint Development Agreement, the Petitioner along with two other co-owners were allotted seven flats.

3. Out of seven flats, one flat, namely Flat No.D3 was common to all the Petitioner and the two other co-owners. The said Flat viz., Flat No.D3



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was sold by all the co-owners during the Financial Year 2015 – 2016 for a total sale consideration of Rs.1,70,00,000/- [UDS of land being Rs.1,17,00,000/- and building being Rs.53,00,000/-] to the 2nd Respondent.

4. The undisputed facts of the case are that the 2nd Respondent had deducted tax at source being Rs.12,84,122/- (Rs.8,83,740/- towards conveyance of UDS in land and Rs.4,00,382/- consideration towards cost of building) as is required at the rate of 22.66% relevant to NRI, in respect of the sale consideration paid to the Petitioner.

5. This aspect has also been captured in the sale deed dated 23.11.2015 executed between the Petitioner and the 2nd Respondent. However, while remitting the amount to the Government, it appears that the 2nd Respondent had indicated that the Petitioner was a resident of India. Thus, only a sum of Rs.56,668/- was reflected in the Petitioner's TDS account which is purportedly 1% of the total sale consideration reported by the Petitioner. The Petitioner had not filed a regular return of Income under Section 139(1) of the Income Tax Act, 1961 for the Assessment Year 2016 – 2017 (previous year 2015 – 2016).



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6. In the meantime, the Petitioner had been issued with a Notice dated 27.03.2022 under Section 148A(b) of the Act for the Assessment Year 2015 – 2016. Under these circumstances, the Petitioner had approached her Power of Attorney, Mr.S.S.Sivakumar to clarify regarding the filing of Return of Income for the relevant Assessment Year.

7. It is the specific case of the Petitioner is that, it is then the Petitioner realized that the Petitioner had not filed Return of Income not only for the Assessment year 2015 – 2016 but also for the Assessment year 2016 – 2017 which is the subject matter of the present Writ Petition and the same would not come under the purview of the Power of Attorney.

8. In this background, the Petitioner was also issued with an order under Section 148A(d) on 30.03.2023 and the consequential Section 148 Notice dated 30.03.2023 for the Assessment Year 2016 – 2017 under the provisions of the Income Tax Act, 1961 under the new regime.

9. This was the subject matter of the challenge before this Court in W.P.No.30622 of 2023, wherein, following orders was passed:-

> "*8.Under the above circumstances, this Court passes the following order:-*



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> *(i)the 4th Respondent is directed to file necessary rectification application physically before the 3rd respondent within one week from the date of receipt of a copy of this order;*
> *(ii) Upon receipt of the above said application, the 3rd respondent shall make necessary rectification within a period of one week from the date of receipt of a copy of the application, as per (I) above."*

10. The said Writ Petition was disposed of recording the submission of the Petitioner that the Petitioner was willing to participate in the assessment proceedings initiated against the Petitioner by issuance of Notice under Section 148 dated 30.03.2023 of the Income Tax Act, 1961 which has later culminated in an Assessment Order dated 29.02.2024 for the Assessment Year 2016 – 2017.

11. In the aforesaid Assessment Order dated 29.02.2024, it has been observed that although the Petitioner may be entitled for a refund under the provisions of the Income Tax Act, 1961, the same cannot be processed in the light of the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax*** Vs. ***Sun Engineering Works (P) Ltd***, [1992] 198 ITR 297 (SC), wherein it was held as under:-

> *11. The Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd had prohibited the raising of fresh claims during reassessment proceedings. It was*



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*pronounced that reassessment proceedings cannot be detrimental to the interests of revenue and hence, the claim of refund of Rs.9,35,040 is rejected.*

12. Since the Petitioner was entitled for a refund and the amount had not been refunded back to the Petitioner in terms of the aforesaid decision confirmed by the said Assessment order, no further penalty proceedings were initiated against the Petitioner under Section 271(1)(c) of the Income Tax Act, 1961 for the Assessment Year 2016 – 2017.

13. Meanwhile, the Petitioner approach the Respondent on 21.06.2022 under Section 119(2)(b) of the Income Tax Act, 1961 to condone the delay in filing Return of Income under Section 139 of the Income Tax Act, 1961.

14. The Central Board of Direct Taxes vide **Circular No.9/2015** dated **09.06.2015** has been clarified as under:-

> *5.The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CcsIT/CcsIT/Pr.CSIT/CsIT in case of such claims will be subject to following conditions:*
>
> *(i)At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and / or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.*
>
> *(ii)The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize*



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*the case in accordance with the provisions of the Act to ascertain the correctness of the claim.*

15. The learned counsel for the Petitioner would submit that the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax*** Vs. ***Sun Engineering Works (P) Ltd***, [1992] 198 ITR 297 (SC), is not an authority for not condoning the delay in filing the Return of Income under Section 119(2) of the Income Tax Act, 1961.

16. That apart, it is submitted even as per Assessment order dated 29.02.2024 passed under Section 143(3) read with Section 147 of the Income Tax Act, the Petitioner is otherwise entitled for a refund but for the above ratio and therefore the Petitioner prayer for condoning the delay in filing the Return of Income under Section 139 as it ought not to have been rejected by the Respondent vide impugned order dated 12.12.2022.

17. On the other hand, the learned Senior Standing Counsel for the Respondent would submit that the Petitioner having suffered an order dated 29.02.2024 under Section 143(3) read with Section 147 cannot now seek to challenge the impugned order dated 12.12.2022 passed by the first Respondent under Section 119(2)(b) of the Act.



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18. It is further submitted by the learned Senior Standing Counsel for the Respondent that aforesaid order dated 29.02.2024 passed under Section 143(3) read with Section 147 is a *fate accompli* and therefore on this count also this Writ Petition is liable to be dismissed.

19. The learned Senior Standing Counsel for the Respondent would further submit that Paragraph No.5 of the aforestated Circular, (the content of which has been extracted above) will not apply to the present case under consideration.

20. It is further submitted that Paragraph No.5 of the aforesaid Circular will not apply to a situation where re-assessment proceedings under Section 148 of the Act has been invoked. In other words, it is submitted that once proceedings under Section 148 has been initiated, it is not open for the Assessee to ask for condonation of delay in filing the Return of Income and that where assessment orders have been passed, such orders attain finality.

21. It is submitted that even if the application is on account of genuine hardship faced by an assessee in filing the Return of Income within the prescribed time, question for condoning the delay does not arise.



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22. I have considered the submissions made by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.

23. The Assessment Order dated 29.02.2024 which has been passed under Section 143(3) read with Section 147 pursuant to the order under Section 148A(d) passed on 30.03.2023 and the consequential Section 148 Notice dated 30.03.2023, was the subject matter of challenge in W.P.No.30622 of 2023 wherein certain directions were issued.

24. The facts on record reveals that the Petitioner had delegated the power to file the Return of Income of the Petitioner to the Power of Attorney namely Mr.S.S.Sivakumar strictly the Petitioner is bound by the acts of the agent applying the principle under the Indian Contract Act, 1872.

25. However, this is a genuine case, where an assessee who is otherwise entitled for refund has been denied only on the ground that the Return of Income was not filed within time under Section 139 of the Act for the Assessment Year 2016 – 2017.



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26. There is no dispute that the Petitioner is otherwise entitled for adjustment of such amount and the consequential refund of the amounts that was deducted at source for the relevant Assessment Year.

27. The facts on record also reveal that the Petitioner had slept over the rights by not filing the Return of Income in time and had approached the first Respondent only on 21.06.2022 long after the limitation for filing the Return of Income expired on 21.07.2017 under Section 139(1) and on 31.03.2018 under Section 139(4) of the Income Tax Act, 1961.

28. The fact remains that the Petitioner is aged about 61 years and is not a Resident of India for the last 30 years. The Petitioner is liable to tax only on account of the transactions in India from the sale of the UDS and from receipt of sale consideration pursuant to the Joint Development Agreement with Soma Enterprises Limited and thereafter on account of sale of Flat to the second respondent on 23.11.2015. There is no dispute on this aspect.



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29. If the Petitioner is entitled to any benefit such benefit could not be denied. In this connection, if an assessee is liable to pay tax such tax has to be determined justly with all powers under the provisions of the Act, similarly even if there is a failure on the part of the assessee in either claiming the benefit which an assessee would be otherwise entitled to, such benefit has to be extended to an assessee.

30. Since the assessment order dated 29.02.2024 itself records that since no tax is due from the Petitioner, no penalty notice under Section 271(1)(c) was issued to the Petitioner indicates that the Petitioner was to be given the benefit of condonation.of delay in filing the Return of Income.

31. Therefore, the benefit of adjustment of tax deducted at source on the consideration that was paid by the second respondent at the time of sale of a flat by the Petitioner cannot denied to the Petitioner.

32. The purpose of delegating the powers to the authorities under Section 119(2) of the Income Tax Act, 1961 is only to ensure that frivolous application are not filed with a view to defeat the payment of tax. The



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Department is expected to have a balanced approach to ensure that no assessee suffers. If there were genuine hardships in complying with the limitation prescribed under the provisions of the Act, delay should be condoned.

33. Under similar circumstances, the impugned order have been set aside with consequential relief to the assessee.

34. The Petitioner to take steps to undo the restrictions that has been imposed on the Petitioner under the assessment order dated 29.02.2024 as much as it rejects the grant for refund to the Petitioner.

35. The Petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand Only) as cost to the credit of **Tamil Nadu Advocate's Clerk's Association bearing Account No.484026006; Branch: Indian Bank High Court; IFSC No.IDIB000M157** within a period of 30 days from the date of receipt of a copy of this order.



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36. This Writ Petition is allowed with the above liberty. No costs. Connected, Writ Miscellaneous Petitions is closed.

**13.10.2025**

Neutral Citation : Yes / No
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To:

The Commissioner of Income Tax (International Taxation),
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**C.SARAVANAN, J.**

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