IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24891 of 2022

S.Manonmani ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax-1,
Room No.401, Wanaparthy Block,
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Joint Commissioner of Income Tax,
NCR-7, Wanaparthy Block,
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3.The Income Tax Officer,
NCW 7(3), Wanaparthy Block,
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... 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 19.05.2022 bearing DIN and Order No.ITBA/COM/F/17/2022-2023/1043074366(1) passed by the 1st respondent and quash the same and to direct the 1st respondent to condone the delay for filing a revised return for the Assessment Year 2012-2013 as per CBDT's

Circular No.9/2015 (F.No.312/22/2015-OT) dated 09.06.2015 to claim the balance refund amount as shown in the Form 26 AS in TRACES portal.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents : Mr.Prabhumukunth Arunkumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the Impugned Order dated 19.05.2022 passed by the 1st respondent under Section 119(2)(b) of the Income Tax Act, 1961.

2. By the Impugned Order dated 19.05.2022, the application filed by the petitioner on 01.12.2021 (wrongly mentioned as 30.08.2021) has been rejected with the following observations:-

> "Please refer to the above.
>
> You filed a condonation petition u/s 119(2)(b) for the A.Y. 2012-13 which was received in this office on 02.09.2021. In the petition you had requested to file a revised return as you had filed incorrect particular inadvertently in your original return.
>
> It may be mentioned that you had earlier filed a condonation petition dated 29.09.2019, before the CCIT-2, Chennai. Based on the report of the Assessing Officer it was informed that the eligibility condition under the Circular No.9/2015 was not met by you, since there was no claim refund

/ loss. Hence, your petition was rejected as not maintainable through letter dated 26.11.2021.

Subsequently, you have once again filed the present petition before the CCIT-1, Chennai who transferred the same to this office on 03.12.2021. You have now stated that the TDS shown in the original return filed on 20.11.2012 was claimed at Rs.85,568/- although TDS credit of Rs.2,69,338/- was available to you. Hence, you desire to file a revised return to claim the balance TDS of Rs.1,83,770/- and the refund on its account. You are, therefore, seeking condonation to file such a revised return.

As per CBDT Circular No.9/2015 dated 09.06.2015, no condonation application for claim of refund / loss shall be entertained beyond the period of six years from the end of the relevant assessment year for which such application / claim is made. Your attention is drawn to para 3 of the said Circular which is reproduced below:

> "No condonation application for claim of refund / loss shall be entertained beyond six years from the end of the assessment year for such application / claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board."

Accordingly, in your case, for A.Y 2012-13 the condonation petition which has been filed on 30.08.2021, is not maintainable."

3. Earlier also the petitioner had filed a similar application on 29.03.2019. By an Order dated 05.06.2020, the 1st respondent had rejected the application with the following observations:-

> "2. Now, vide the petition cited under reference, the assessee sought for condonation of delay for filing a revised return. A report was called for and the Assessing Officer submitted a report dated 02.06.2020 as endorsed by the Addl. CIT, NCR-7, Chennai. The assessee's petition as well as the report of the Assessing Officer is examined. After examination, it is seen that the assessee has not reported his income correctly and completely and also per the Para 5(i) of CIRCULAR 9/2015 [F.No.312/22/2015-OT], DATED 9-6-2015 issued by the Central Board of Direct Taxes, New Delhi it shall be ensured that the income / loss declared and / or refund claimed is correct and genuine, the condonation petition filed by the assessee is not acceptable and hence rejected."

4. The applications for condonation of delay was filed by the petitioner purportedly in accordance with the Central Board of Direct Tax (CBDT) Circular No.9 of 2015 dated 09.06.2015, although beyond the period of limitation.

5. As per the above CBDT Circular, an application has to be filed within 6 years. When the earlier application dated 29.03.2019 was rejected, it was stated that the petitioner had not returned the income in the Return of Income correctly on 20.11.2012 and therefore as per Paragraph 5(i) of the above mentioned Circular, it shall be ensured that the income / loss declared and / or refund claim was incorrect and not genuine.

6. By a communication dated 26.11.2011, the petitioner was however directed to file an application for condonation in terms of the above Circular before CBDT. Instead, the petitioner filed 2nd application on 01.12.2021 before the 1st respondent which has culminated in the Impugned Order.

7. Learned counsel for the petitioner would submit that the petitioner is a Government Contractor and that there was an error / delay in remittance of the Tax Deducted at Source (TDS) by the Government.

8. It is submitted that subsequently the Tax Deducted at Source (TDS) Certificate has been issued during the Financial Year 2014-2015 and therefore the return that was filed by the petitioner on 20.11.2012 was to be revised and therefore the petitioner approached the 1st respondent twice, earlier on 29.03.2019 and thereafter on 01.12.2021 for revising the return that was filed on 20.11.2012.

9. On a specific query as to whether the assessment has been completed either under Section 143(1) or under Section 143(3) of the Income Tax Act, 1961, the answer forthcoming is no orders have been passed.

10. Thus, the question is as to whether the petitioner will be entitled to file a revised return beyond the period of limitation prescribed under the Income Tax Act, 1961 and beyond the period of limitation under the above mentioned CBDT Circular.

11. Paragraph 3 of the CBDT Circular reads as under:-

> "3. No condonation application for claim of refund / loss shall be entertained beyond six years from the end of the assessment year for which such application / claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible."

12. As per Paragraph 5 of CBDT Circular, the application before the authorities to whom powers have been delegated will be subject to the following conditions:-

> "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 the 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 of scrutinize the case in accordance with the provisions of the Act to ascertain the corrects of the claim."

13. This is a peculiar case where the petitioner had declared a lower income in the returns filed on 20.11.2012 for a sum of Rs.1,15,09,921/-. This was sought to be enhanced by the petitioner by filing a revised return by seeking condonation of delay in terms of the above Circular of CBDT issued under Section 119 of the Income Tax Act, 1961 by enhancing the taxable income of the petitioner to Rs.2,22,71,210/-. This is the contention of the petitioner in her representation dated 30.08.2021. However, the return that was filed by the petitioner on 20.11.2012 which is available at Page No.17 of the Typed Set of Papers declares the gross total income of the petitioner as Rs.6,01,242/- and after deduction, the total income of the petitioner as Rs.5,01,240/- on which, the net tax payable by the petitioner was Rs.32,185/- taking note of the Tax Deducted at Source (TDS) income for a sum of Rs.85,568/-. The petitioner was given a refund of Rs.53,380/-.

14. It is clear that the petitioner has wrongly declared the gross income as also the taxable income in the return that was filed on 20.11.2012. The necessity for filing a revised return is on account of the subsequent crediting of Tax Deducted at Source (TDS) by the Government who had employed the petitioner for excluding certain works contract as a result of which, the total deduction of tax by the Government for the Assessment Year 2012-2013 would have been Rs.2,69,338/- instead of Rs.85,568/-.

15. The attempt of the petitioner is to get a further refund by enhancing the taxable income of the petitioner by filing a revised return. The Income Tax Department has also not issued any notice under Section 148 of the Income Tax Act, 1961 to revise the assessment as the time for revising the assessment had already expired under Section 148 read with Section 151 of the Income Tax Act, 1961.

16. Thus, the question of condonation of delay in the light of the above CBDT Circular cannot be countenanced. The amount that was credited during the subsequent Assessment Year for the Tax Deducted at Source (TDS) during

the Assessment Year 2012-2013 at best, can be utilized by the petitioner for the succeeding year.

17. Therefore, this Writ Petition is liable to be dismissed and is accordingly dismissed. No costs.

08.01.2025

Neutral Citation : Yes / No

arb

To

1.The Principal Commissioner of Income Tax-1,
Room No.401, Wanaparthy Block,
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Joint Commissioner of Income Tax,
NCR-7, Wanaparthy Block,
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3.The Income Tax Officer,
NCW 7(3), Wanaparthy Block,
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

arb

W.P.No.24891 of 2022

08.01.2025