THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

W.P.No.34881 & 34900 OF 2023

COMMON ORDER: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. A.V.Siva Kartikeya, learned counsel for the petitioner and Ms. B.Sapna Reddy, learned Junior Standing Counsel representing Mr.J.V.Prasad, learned Senior Standing Counsel for the Income Tax Department. Perused the record.

2. Since the issue in both the writ petitions is common, we intend to dispose of both the writ petitions by a common order and the lead case is being treated as W.P.No.34881 of 2023.

3. The instant writ petition has been filed seeking for a direction to the respondents to consider and decide the application filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961 (for short 'the Act') dated 10.04.2021.

4. The contention of the petitioner was that the return was to be filed within the extended period of time i.e., 31.10.2019. However,

because of the fact that the petitioner was not provided with the State audit report by the Auditors, the return could not be filed and the return was filed only on 06.01.2020 after the audit report was received by the petitioner on 07.11.2019. The petitioner had filed a petition under Section 119(2)(b) of the Act before respondent No.4. Even as on date, the said condone delay petition dated 10.04.2021 stands undecided and is still pending consideration before the authorities concerned. Meanwhile, however, the Government of India, Ministry of Finance, Department of Revenue i.e., Central Board of Direct Taxes has issued Circular No.13 of 2023 dated 26.07.2023 in respect of the circumstances under which the delay in submission of return could be condoned. The relevant portion of that Circular, for ready reference, is being reproduced herein as under:

> 3. Applications have been received in the Central Board of Direct Taxes (hereafter referred to as 'the Board') from co-operative societies claiming deduction u/s 80P of the Act for various assessment years from A Y 2018-19 to A Y 2022-23, regarding condonation of delay in furnishing return of income and to treat such returns as 'returns furnished within the due date under sub-section (1) of section 139 of the Act stating that delay in furnishing return

of income was caused due to delay in getting the accounts audited under respective State Laws.

4. In order to mitigate genuine hardship in cases referred to in para 3, the Board, in exercise of the powers conferred under section 119 of the Act, hereby directs that the Chief Commissioners of Income-tax (CCsIT)/Directors General of Income tax (DGsIT) are authorised to deal with such applications of condonation of delay pending before the Board, upon transfer of such applications by the Board, and decide such applications on merits, in accordance with the law.

5. The Board hereby further directs that the CCsIT/DGsIT, henceforth, shall admit all pending as well as new applications for condonation of delay in furnishing returns of income claiming deduction u/s 80P of the Act, filed either in the Board or in field formation for the assessment years 2018-19 to 2022-23 and decide such applications on merits in accordance with the law where such person is required to get his accounts audited under respective State Laws.

6. In the context of para-5 above, the CCsIT/DGsIT while deciding such applications for condonation of delay in furnishing return of income, shall satisfy themselves that the applicant's case is a fit case for condonation under the existing provisions of the Act. The CCsIT/DGsIT shall examine the following while deciding such applications –

> (i) the delay in furnishing the return of income within the due date under sub-section (1) of section 139 of the Act was caused due to circumstances beyond the control of the

assessee with appropriate documentary evidence/s;

(ii) where delay in furnishing return of income was caused due to delay in getting the accounts audited by statutory auditors appointed under the respective State Law under which such person is required to get his accounts audited, the date of completion of audit vis-à-vis the due date of furnishing the return of income under sub-section (1) of section 139 of the Act; and

(iii) any other issue indicating towards tax avoidance or tax evasion specific to the case, which comes into the light in the course of verification and having bearing either in the relevant assessment year or establishing connection of relevant assessment year with other assessment year/s.

6.1 The cases falling under para 6(iii) above, would require further necessary action as per law.

7. The CCsIT/DGsIT shall preferably dispose the application within three months from the end of the month in which such application is received from the applicant or transferred by the Board. No order rejecting the application under section 119(2)(b) of the Act shall be passed without providing the applicant an opportunity of being heard.

5. Today, when the matter is taken up for hearing, we find that neither was the application dated 10.04.2021 decided earlier nor

has it been decided subsequent to the issuance of the aforesaid circular dated 26.07.2023. In the given circumstances, now that the Government of India, vide the aforesaid Circular dated 26.07.2023, has laid down the guidelines under which the condonation of delay can be allowed and one such ground being in circumstances where the delay was caused due to the delay in the receiving of audit report from the State Auditors, we are of the considered opinion that the ends of justice would be met if the writ petition, at this juncture, is disposed of directing respondent No.4 to take up the application filed by the petitioner under Section 119(2)(b) of the Act dated 10.04.2021 and decide the same keeping in view Circular No.13 of 2023. In addition to the submissions made on 10.04.2021, if the petitioner wants to file any additional submissions before respondent No.4, it may also be considered before passing of the order.

6. Since this application under Section 119(2)(b) is pending since 10.04.2021, we deem it proper to direct respondent No.4 to consider and decide the said application in accordance with the guidelines reflected in Circular No.13 of 2023 at the

earliest, preferably within a period of eight weeks from today. The petitioner, in the instant case, has been enjoying an interim protection from the time of filing of the writ petition till now. Therefore, the respondent's counsel is instructed to inform the authorities concerned of the department not to precipitate the matter or take coercive steps meanwhile, till a decision is taken on the application dated 10.04.2021. Since we are directing respondent No.4 to decide the application under Section 119(2)(b) of the Act fresh, let the petitioner, if they want to avail the benefit of any personal hearing, may avail the same by appearing before the authority on 15.05.2025 and for which there will no necessity of issuing separate notice. Upon hearing the petitioner on 15.05.2025, respondent No.4 may pass appropriate orders.

The writ petitions, accordingly, stand disposed of. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

P.SAM KOSHY, J

NARSING RAO NANDIKONDA, J

29.04.2025
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