IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 4TH DAY OF OCTOBER 2016/12TH ASWINA, 1938

WP(C).No. 14424 of 2016 (C)

PETITIONER:

M.RAJAN,
ALANKAR TEXTILES,
CHALAD, KANNUR-670 014.

BY ADVS.SRI.S.ARUN RAJ
SMT.C.T.SUJA

RESPONDENT(S):

----

1. PRINCIPAL COMMISSIONER OF INCOME TAX,
   MANACHIRA, CALICUT-673 001.

2. INCOME TAX OFFICER
   WARD-1, KANNUR-670 006.

3. CENTRAL BOARD OF DIRECT TAXES,
   NORTH BLOCK, DEPARTMENT OF REVENUE,
   NEW DELHI-110 001.

BY ADV. SRI.CHRISTOPHER ABRAHAM,CG
BY ADV. SRI.K.M.V.PANDALAI,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-10-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.V.

WP(C).No. 14424 of 2016 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

P1	COPY OF THE ACKNOWLEDGMENT OF THE RETURN FILED FOR THE AY 2007-08 AND 2008-09.
P2	COPY OF THE PETITION DATED.26.9.2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT SEEKING TO GET CONDONATION FROM THE COMMISSIONER OF INCOME TAX, OF THE DELAY IN FILING THE RETURN AND REFUND CLAIM.
P3	COPY OF THE PETITION DATED.5.11.2014 SUBMITTED BY THE PETITIONER TO THE COMMISSIONER OF INCOME TAX, KOZHIKODE UNDER SECTION 119(2)(B) OF THE ACT SEEKING TO CONDONE THE DELAY IN FILING THE RETURN AND REFUND CLAIM.
P4	COPY OF THE LETTER DATED.20.10.2015 SUBMITTED TO THE COMMISSIONER OF INCOME TAX, KOZHIKODE BY THE PETITIONER.
P5	COPY OF THE PROCEEDINGS INITIATED BY THE FEDERAL BANK AGAINST THE PETITIONER UNDER THE SARFAESI ACT IN THE YEAR 2008.
P6	COPY OF THE ORDER DATED.5.2.2009 ISSUED BY THE COMMERCIAL TAX OFFICER, FIRST CIRCLE, KANNUR CANCELLING THE SALES TAX REGISTRATION.
P7	COPY OF THE ORDER DATED.29.7.2011 PASSED BY THE MAGISTRATE COURT IN STC 108/2010 AGAINST THE PETITIONER.
P7(A)	COPY OF THE ORDER DATED.22.9.2011 PASSED BY THE MAGISTRATE COURT IN STC 108/2010 AGAINST THE PETITIONER.
P8	COPY OF THE TREATMENT RECORDS OF THE PETITIONER ISSUED BY THE HOSPITAL.
P9	COPY OF THE CIRCULAR NO.670 DATED.26.10.1993 AND CIRCULAR NO.8/2001 DATED.16.5.2001, CIRCULAR 12 OF 2003 DTD.30.10.2003 AND INSTRUCTION NO.13/2006 DATED.22.12.2006, ISSUED BY THE CBDT IN EXERCISE OF THE POWERS UNDER SECTION 119(2) OF THE ACT ON THE ISSUE OF CONDONATION OF DELAY IN BELATED RETURNS AND CLAIMS OF REFUNDS.
P10	COPY OF THE ORDER DATED.30.11.2015 PASSED BY THE 1ST RESPONDENT UNDER SECTION 119(2)(B) OF THE ACT REJECTING THE APPLICATION FOR CONDONATION OF DELAY IN FILING RETURN AND REFUND CLAIM FOR AY'S 2007-08 AND 2008-09.

RESPONDENT(S)' EXHIBITS NIL

/TRUE COPY/

P.A.TO JUDGE

K.V.

A.M. SHAFFIQUE, J.

W.P.(C) No. 14424 of 2016

Dated this the 4th day of October, 2016

JUDGMENT

Petitioner challenges Ext.P10 order, by which the Commissioner of Income had rejected an application filed under Section 119 (2) (b) of the Income Tax Act, 1961, *inter alia* observing that the assessee does not have any genuine financial hardship and he could justify or produce any evidence for the delay in filing the return of income.

2. The main contention urged by the petitioner is that the delay in filing return for the assessment year 2007-08 and 2008-09 was due to the fact that the petitioner had to close down his business. Thereafter, he was faced with several litigations and proceedings initiated by the financial institution and other creditors. As a result of which, the petitioner was not in a position to file the return and seek refund of the TDS. It is also contended that his health condition was so poor that he

was unable to make necessary arrangements for initiating the process of filing the return.

3. Perusal of Ext.P10 order would show that the Commissioner having taking note of the factual circumstances, observed that no satisfactory evidence or explanation was offered to substantiate the claim.

4. Ext. P5 is a notice issued by the Federal Bank on 16.2.2008 calling upon the petitioner to pay an amount of Rs.6,48,704/- being the amount due to the Bank, failing which he was threatened with SARFAESI proceedings. By Ext.P6, the Commercial Tax Officer had cancelled the registration of the petitioner as per order dated 5.2.2009 under the Kerala Value Added Tax Act. Exts. P7 and P7 (a) are the judgments issued by the Judicial First Class Magistrate-I, Kannur, convicting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The common judgment was dated 24.3.2011. Petitioner had also produced some medical records to indicate that he was suffering from certain illness.

5. On the basis of the aforesaid factual circumstances, the learned counsel for the petitioner submits that if the returns are not accepted, the petitioner will be at a great loss as he is entitled to get refund of tax and on account of which, genuine hardship will be caused to him.

6. On the other hand, the learned counsel appearing for the Department supports the stand taken by the Commissioner. It is stated that though several documents have been produced, there is no material to justify the gross delay in filing the return.

7. The issue that arises for consideration is whether the Commissioner was justified in denying an application to condone the delay in accepting the returns. Section 119 (2) (b) reads as under:-

> "**119.(2): Without prejudice to the generality of the foregoing power: -**
>
> (b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order,

authorize [any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law."

8. I had the occasion to consider almost a similar issue in **M/s.Beta Cashews and Allied Products Pvt. Ltd v. The Commissioner of Income Tax**. After referring to the judgments in **Sitaldas K. Motwani v. Director General of Income Tax (International Taxation) & Ors**. **[2010 (323) ITR 223] and Pala Marketing Co-operative Society Ltd v. Union of India [2009 (311) ITR 177]**, it was held that when an assessee is suffering huge losses for over a period of time, it has to be assumed that they have genuine hardship and the genuine hardship can be redressed or avoided only on payment of the amount which is legally due to them.

9. In the case on hand as well, there are some

materials to indicate that the assessee was under severe financial crises. He had to close down his business, his registration under the Kerala Value Added Tax Act has been cancelled, he was involved in cases for dishonour of cheques. These are all materials which ought to have been considered for the purpose of arriving at a conclusion as to whether the delay is condonable or not.

10. It is fairly submitted by the learned counsel for the petitioner that as per the circulars issued by the Board, the Commissioner gets jurisdiction to condone delay, only if the application for condonation of delay is filed within the six years from the last date of the end of the assessment year.

11. Having regard to the aforesaid factual situation, it is apparent that the application for condoning the delay in respect of assessment year 2008-09, is alone within the six years period. Under such circumstances, it will only be appropriate to condone delay for filing return as far as the assessment year 2008-09 are concerned. Therefore, taking

into account the over all factual circumstances involved in the matter, this writ petition is disposed of as under.

(i) Ext.P10 order to the extent that the delay is not condoned for the assessment year 2008-09 is set aside.

(ii) The delay in filing the return for the year 2008-09 is condoned.

(iii) The assessing officer shall consider the return filed by the petitioner for the assessment year 2008-09 and finalise the assessment, as expeditiously as possible and not later than three months from the date of receipt of a copy of this judgment.

A.M. SHAFFIQUE
JUDGE

Scl/04.10.2016