

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2019

DATE OF DECISION : 28.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.7630 of 2019
and
W.M.P.Nos.8269, 8272 and 11243 of 2019

Ramupillai Kuppuraj

..Petitioner

Vs.

1.The Income Tax Officer,
International Taxation – 1(2),
Chennai-6.

2.The Assistant Commissioner of Income Tax,
Central Processing Centre,
Bangalore-560 100.

3.The Commissioner of Income Tax,
International Taxation,
BSNL Building,
Greens Road, Chennai-6.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus or any other appropriate writ or order or direction calling for the records on the file of the third respondent in F.No.CIT /IT / CHE / 113(264) / 2018-19 dated 17.01.2019 and quash the same as being invalid and illegal and further directing the third respondent to pass orders on merits after grant of opportunity to the petitioner and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.V.Srikanth
For Respondents : Ms.Hema Muralikrishnan
Senior Standing Counsel (IT)

ORDER

Mr.V.Srikanth, learned counsel on record for writ petitioner and Ms.Hema Muralikrishnan, learned Senior Standing Counsel for all three respondents were before this Court.

2 Though this matter was listed under the caption 'ADJOURNED ADMISSION', respondents had filed a counter affidavit and pleadings were complete. In this scenario, with the consent of learned counsel on both sides, i.e., learned counsel on record for writ petitioner and learned Revenue Counsel, the main writ petition itself was taken up and heard out.

3 A petition under section 264 of 'Income Tax Act, 1961' ('IT Act' for brevity) filed by the writ petitioner before third respondent, admittedly beyond a period of one year from the date of assessment was dismissed by the third respondent, refusing to condone the delay. The undisputed position before this Court is that this order of third respondent dated 17.01.2019 bearing reference F.No.CIT /IT / CHE / 113(264) / 2018-19 (hereinafter referred to as 'impugned order' for brevity, clarity and convenience) does not deal with the merits of the matter. (To be noted, in the writ petition and affidavit in the prayer portion, the date of impugned order has been

mentioned as 17.02.2019. This court is informed that this is a typographical error and that the correct date of the impugned order is 17.01.2019). It is also not in dispute that third respondent has powers to condone the delay under proviso to sub-section (3) of section 264 of IT Act and that there is no cap in this regard. In other words, there is no restriction regarding the length of delay that can be condoned by the third respondent. As third respondent has not said anything in the impugned order on the merits of Section 264 petition / application filed by the writ petitioner, the entire writ petition assailing the impugned order made by the third respondent now turns on condonation of delay aspect of the matter.

4 Further undisputed dates and events which admittedly form part of records before third respondent (which are necessary for the disposal of the instant writ petition) are as follows :

(a) Writ petitioner is a non resident seafarer serving outside India;

(b) Relevant assessment year is 2009-10 (hereinafter 'said AY' for brevity);

(c) Writ petitioner was employed in a foreign ship which goes by the name 'Bow Kiso' flying Panamanian Flag and was under contract of employment through a company which goes by the name 'Ships India Private Limited' which is an agent of said Vessel.

(d) Undisputedly, writ petitioner was a non resident seafarer prior to said AY as well as in the subsequent assessment years. Writ petitioner's income returns excluding the income received as non resident seafarer were accepted by respondent for assessment years other than said AY and tax due thereon has also been duly paid without any delay or default.

(e) For said AY, writ petitioner filed returns reporting an income of Rs.20,24,000.00 (Rs.20.24 lakhs for brevity). This included the income received from abroad and according to writ petitioner, this is to the tune of Rs.19,84,000.00 (Rs.19.84 lakhs). It is also the case of writ petitioner that this was owing to wrong advice of the auditor.

(f) The aforesaid return for the said AY was accepted and intimation dated 23.10.2010 under Section 143(1) of IT Act was sent. (To be noted, one year from this date is the time limit of filing application / petition under section 264 of IT Act and the same elapsed on 22.10.2011). However, before expiry of this one year, to be precise, on 05.08.2011, writ petitioner filed a revised return, revising his return with regard to aforesaid Rs.19.84 lakhs which was erroneously included in said AY return though according to writ petition, it is the income received from abroad.

(g) Aforesaid revised return dated 05.08.2011 was rejected by the 'Income Tax Department' ('IT Department' for brevity) on 24.08.2011 inter-alia under Section 139(5) of IT Act solely on the ground that the original return itself was not filed in time. To be noted, original return for said AY ought to have been filed on or before 31.07.2009, but the same had been filed with a delay of 23 days on 23.08.2010. This order under section 139(5) came to be passed by IT department placing reliance on sub-section (1) of Section 139 of IT Act. Thereafter, on 10.10.2011, writ petitioner filed a rectification qua return for said AY and this rectification was filed under section 154 of IT Act. Vide this rectification, writ petitioner sought exclusion of aforesaid income of Rs.19.84 lakhs.

(h) Aforesaid rectification application / petition dated 10.10.2011 is pending and undisputedly, no orders have been passed on the same until today.

(i) Be that as it may, while rectification application / petition was pending, IT department issued a demand notice dated 31.01.2018. The demand notice dated 31.01.2018 acting as trigger, writ petitioner filed a second rectification application / petition. The second rectification request is dated 25.02.2018.

(j) This second rectification request was rejected by IT department on 02.07.2018 primarily on the ground that there was no mistake as per section 154 of IT Act and therefore, the application cannot be entertained under section 154 of IT Act. Owing to the rejection of this rectification application / petition on 02.07.2018, writ petitioner filed an application under section 264 of IT Act with third respondent on 24.10.2018. Aforesaid application / petition dated 24.10.2018 came to be dismissed by third respondent solely on the ground of delay, i.e., under proviso to sub-section (3) of section 264 without going into merits. This order came to be passed on 17.01.2019 and as mentioned supra, this is the impugned order. Assailing the impugned order, the instant writ petition has been filed.

5 In the backdrop of the aforesaid undisputed factual matrix and chronicle of events which in otherwise is the trajectory which writ petitioner's effort to seek exclusion of the income which according to writ petitioner is income received from abroad (as seafarer) qua said AY took, instant writ petition was heard out.

6 Learned counsel for writ petitioner submitted that aforesaid Rs.19.84 lakhs of income qua said AY is exempt under relevant sub-sections / sub clauses / proviso thereto of section 5 of the IT Act and that there is more

than one judgment of different High Courts in support of writ petitioner's plea that said income qua said AY is exempt. In other words, it is the specific submission of learned counsel for writ petitioner that writ petitioner has a good case on merits.

7 This takes us to the writ petitioner's application / petition under section 264 of IT Act and reasons for delay. Learned counsel for writ petitioner very fairly submitted that reasons for delay should have been articulated with clarity and specificity in writ petitioner's petition before third respondent. After making this fair submission, learned counsel for writ petitioner submitted that aforesaid undisputed chronicle of events which is the trajectory which the writ petitioner's campaign took qua getting Rs.19.84 lakhs income excluded from the return already filed albeit erroneously qua said AY admittedly form part of the records before third respondent. In other words, filing of the revised return on 05.08.2011, rejection of the same on 24.08.2011, filing of first rectification application / petition on 10.10.2011, no orders being passed on the same, filing of second rectification application / petition on 25.02.2018 owing to demand issued on 31.01.2018, rejection of second rectification application / petition on 02.07.2018 are all undisputed matters of record which were before the third respondent when impugned order came to be passed by third respondent.

8 On the aforesaid basis, learned counsel for writ petitioner contended that impugned order has proceeded on the basis that writ petitioner has been extremely lethargic resulting in a delay of nearly nine (9)

years. It was emphasised that writ petitioner was not lethargic and on the contrary, had been actively pursuing his effort to get the overseas income excluded from returns for said AY and therefore, it cannot be gainsaid that writ petitioner had been lethargic. It was also contended by learned counsel for writ petitioner that various case laws that have been relied on by third respondent to dismiss writ petitioner's application / petition vide impugned order are not applicable to facts of the instant case. To be noted, this court shall allude to the same infra after referring to the submissions of Revenue counsel as submissions of revenue counsel turn heavily on case laws which were relied on by third respondent in passing the impugned order.

9 In response to aforesaid submission of writ petitioner, learned Revenue counsel adverting to counter affidavit filed by IT department, supported the impugned order and submitted that third respondent was correct in dismissing the application / petition of writ petitioner under section 264 of IT Act on the ground of delay. In this regard, it is to be noted that learned Revenue counsel also very fairly submitted that third respondent has not said anything on the merits of the matter and that application / petition under section 264 of IT Act has been dismissed solely on the ground of delay. In other words, there is no dispute that the lone core issue in instant writ petition is whether third respondent should have condoned the delay in filing petition under section 264 of IT Act in exercise of third respondent's powers under proviso to section 264(3) of IT Act.

10 Learned Revenue Counsel adverted to the counter affidavit of IT department and laid great emphasis on paragraph 8 of the counter affidavit. Considering the emphasis laid on paragraph 8 of counter affidavit, this Court deems it appropriate to extract paragraph 8 of the counter affidavit, which reads as follows :

“8.I state that so far as the averments in Para No.10 of the affidavit are concerned, the 3rd respondent herein has rejected the petition of the petitioner after examining the case in light of the decisions of the Hon'ble Supreme Court In case of MST Katiji reported in [1987] 167 ITR 471 (SC), & H.Dohil Construction Company Pvt. Ltd V. Nahar Exports Limited and Another, reported in 2015 (1) Supreme Court, decisions of this Court in case of Rane Madras Ltd Vs. ITO reported in [TS-5309-HC-2016(Madras) in the Tax Case (Appeal) No.91371 of 2010 and CMP No.8351 of 2016 in order dated 10.06.2016 and in case of Viswanathan Silk Centre Vs. CIT reported in 203 ITR 131, decisions Hon'ble High Court of Gujarat and decision of Hon'ble High Court of Bombay, Hence the averment of the petitioner that the order of the 3rd respondent is invalid & illegal is totally incorrect. As regards the petitioner's contention that a liberal view has to be taken, it is submitted that in the present case the 3rd respondent has passed a detailed order as to why the inordinate delay of 7 years cannot be considered and that there is no sufficient cause to condone the same.”

11 A perusal of paragraph 8 of the counter affidavit will reveal that it refers to case laws which third respondent has referred to in the impugned order for dismissing the petition / application under section 264 of IT Act on the ground of delay.

12 Therefore, case laws which fall for consideration are :

(i)Katiji case

(ii)Viswanathan Silk Centre case;

(iii)Vinay Extraction Pvt. Ltd. case;

(iv)Nahar Exports Limited case; and

(v)Rane Madras case.

13 This court deems it appropriate to make an adumbration of these case laws based on the dates on which they were rendered by Hon'ble Supreme Court and respective Hon'ble High Courts and the same reads as follows :

Sl.No.	Date of Judgment / Order	Name of the case
1	19.02.1987	Collector, Land Acquisition, Anantnag and another Vs. Mst Katiji and others [(1987) 2 SCC 107]
2	30.10.1991	Viswanathan Silk Centre Vs. Commissioner of Income Tax [1993] 203 ITR 131 (Mad)
3	24.06.2004	Vinay Extraction Pvt. Limited Vs. Vijay Khanna [2004] 271 ITR 450 (Guj)
4	20.08.2014	H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited [(2015) 1 SCC 680]
5	10.06.2016	Rane (Madras) Ltd. Vs. The Income Tax Officer [Tax Case (Appeal) SR.No.91371 of 2010 and CMP No.8551 of 2016, dated 10.6.2016]

14 This straightaway takes this discussion to aforesaid case laws.

15 **Katiji** case is the one where the State of Jammu and Kashmir was on appeal before Hon'ble Supreme Court qua four days delay and said matter pertain to enhancement of compensation to be paid by State pursuant to acquisition of land for a public purpose. In this factual background, while the High Court had dismissed the State appeal as time barred, Hon'ble Supreme Court condoned the delay and remitted the matter back to High Court. Though this is a case where delay condonation prayer was acceded to and answered in the affirmative, as pointed out by learned counsel for writ petitioner, factual matrix of the case set out herein will reveal that it is so different that it certainly does not apply to the case on hand. Be that as it may, this **Katiji** case is an authority for the proposition that every day's delay must be explained does not mean that a pedantic approach should be taken or in other words, for the principle that the doctrine must be applied in a rational common sense / pragmatic manner. **Katiji** case is also an authority for the principle that State cannot be placed in a different footing in delay condonation applications, because of an impersonal machinery and inherited bureaucratic methodology imbued with the note-making, file-pushing and passing on the buck ethos and that it should be borne in mind that State represents the collective cause of the community and therefore, does not deserve a litigant-non-grata status.

16 With regard to **Viswanathan Silk Centre** case, which was rendered by a Hon'ble Division Bench of this Court, it no doubt arises out of a

petition / application under section 264 of IT Act. This is a case where a learned Single Judge upheld the IT Commissioner's order rejecting a Section 264 application / petition filed with delay. This order of learned Single Judge was upheld by Hon'ble Division Bench vide **Viswanathan Silk Centre** case. A careful perusal of the factual matrix of **Viswanathan Silk Centre** case reveals that the same is clearly distinguishable as rightly pointed out by learned counsel for writ petitioner. **Viswanathan Silk Centre** case pertains to nine assessment years and the delay was of different periods qua each assessment year. It was a case where assesseees were buying and selling yarn and it was a case where assessee said that it did not claim benefit under section 80HH of IT Act at the time of filing returns. A closer perusal of **Viswanathan Silk Centre** case reveals that Commissioner of IT Department in that case while dismissing section 264 petition / application had clearly held on the basis of material before him that there was no evidence to show that assesseees were carrying on any manufacturing activity during the relevant assessment years / periods, i.e., 1975-76 to 1983-84. A finding was returned on facts to the effect that assesseees were only buying yarn, selling the same to weavers, purchasing the finished products and there was no manufacturing activity carried on by assesseees during relevant assessment years. After saying so, Commissioner of IT department had categorically returned a finding that assesseees were not entitled to any relief under section 80HH of IT Act. Therefore, it is clear that Commissioner of IT Department had decided section 264 application / petition on merits. Apart from recording

findings on merits, Commissioner also found that no proper explanation was given for the delay. Therefore, **Viswanathan Silk Centre** case is not one where Commissioner of IT Department dismissed the section 264 petition / application solely on the ground of delay without examining the matter on merits. This aspect of the matter has been very clearly articulated in paragraph 3 of **Viswanathan Silk Centre** case and the most relevant portion of paragraph 3 reads as follows :

“3.The Commissioner of Income Tax, Madras, by his order dated December 9, 1986, dismissed the petition filed under section 264 of the Act. While dismissing the petition, the Commissioner recorded, on the basis of the materials before him, that there was no evidence to show that the appellants/assesseees were carrying on any manufacturing activity during the periods 1975-76 to 1983-84. It was found on facts that the assesseees were only buying yarn, selling the same to weavers and purchasing the finished products and that no manufacturing activity was carried on by the assesseees at all during the relevant period, and, therefore, the assesseees were not entitled to any relief under section 80HH of the Act. Apart from recording this finding on merits, the Commissioner also found that no proper explanation has been given for the delay in preferring the application under section 264 of the Act and that no case has been made out for condonation of the delay. The application under section 264 of the Act was, therefore, dismissed on both these counts.....”

17 In the instant case, as already alluded to supra, there is no dispute or disagreement before this Court that vide impugned order, third respondent has not said anything about merits and that section 264 petition /

application of writ petitioner has been dismissed solely on the ground of delay. Therefore, this court has no difficulty in accepting the submission of learned counsel for writ petitioner that **Viswanathan Silk Centre** case is clearly distinguishable on facts and therefore, does not advance the case of Revenue in the instant case.

18 In this regard, before moving to the next case law, this court is clear that whether sufficient cause has been made out or not is always a question which depends on facts and circumstances of each case and it has to be established based on records of that case.

19 This takes the discussion in this order to the next case law, namely, **Vinay Extraction Pvt. Limited** case, which is a judgment rendered by a Hon'ble Division Bench of High Court of Gujarat at Ahmedabad. This is also a case arising out of a petition under section 264 of IT Act. In this case, the order of Commissioner was assailed in a writ petition which was heard by a Division Bench of Gujarat High Court. A careful perusal of the factual matrix of **Vinay Extraction Pvt. Limited** case reveals that it is a case where the assessee relied on the principle that Government subsidy is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as a percentage of such cost and that the subsidy does not partake the character of a payment intended either directly or indirectly to meet the actual cost of the assets. More importantly, in this case, there has been no

action on the part of the assessee between the date of assessment and the date of filing of a petition / application under section 264 of IT Act unlike the instant case where the assessee has been relentlessly pursuing his effort. In the considered opinion of this court, in the case on hand, the writ petitioner has not only been relentlessly pursuing his case, but has even been pursuing in a manner which can be described as tenacious. More importantly, the first step in this relentless effort was taken well within the prescribed limitation period, i.e., on 05.08.2011 when a revised return was filed before one year elapsed on 22.10.2011.

20 Be that as it may, further perusal of ***Vinay Extraction Pvt. Limited*** case reveals that a judgment rendered by another Hon'ble Division Bench of Gujarat High Court in ***Karamchand Premchand Pvt. Ltd. Vs. Commissioner of Income Tax, Gujarat [(1975) 101 ITR 46 (Guj)]*** was distinguished. While distinguishing ***Karamchand Premchand*** case, the Division Bench of Gujarat High Court had also reiterated that whether sufficient cause is made out or not is always a question of fact depending upon the facts and circumstances of each case and has to be established based on records of that case. This is articulated in paragraph 6 of the order and the most relevant portion of paragraph 6 reads as follows :

“6.....However, it is equally well settled that a person invoking the decision of the appellate or revisional authority beyond the prescribed period of limitation is required to show sufficient cause which would include showing that the petitioner/appellant was either bona fide pursuing his remedies or was prevented

by sufficient cause from pursuing his remedies. Whether sufficient cause is made out or not is always a question of fact depending upon the facts and circumstances of each case and has to be established on record.“

21 In this case, Division Bench of Gujarat High Court had gone a step further and held that the judgments of Courts are not to be read as Euclid's theorems nor the observations therein as provisions of Statutes. The Division Bench has held that observations in a judgment must be read in the context in which they appear and that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. The Division Bench of Gujarat High Court had quoted Cardozo and held that matching the colour of one case against the colour of another cannot be the basis for precedents. This is articulated in paragraph 9 of ***Vinay Extraction Pvt. Limited*** case and this Court deems it appropriate to extract the entire paragraph 9 which reads as follows :

“9.The decision in Karamchand Premchand's case is, however, required to be read in light of the facts of that case and the reasons given by this Court for holding that the petitioner had shown sufficient cause for condonation of delay. As per the settled legal position, the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Judgments of Courts are not to be read as Euclid's theorems nor the observations therein as provisions of a statute. The observations in a judgment must be read in the context in which they appear. Each case depends on its own

facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not decisive."

22 Therefore, this court has no difficulty in accepting the submission of learned counsel for writ petitioner that ***Vinay Extraction Pvt. Limited*** case is clearly distinguishable.

23 In this regard, this Court deems it appropriate to also refer to the celebrated ***Padma Sundara Rao*** case being ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in **(2002) 3 SCC 533** with regard to precedents and the most relevant paragraph is paragraph 9 and the same reads as follows :

"9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

24 Drawing inspiration from ***Vinay Extraction Pvt. Limited*** case and ***Padma Sundara Rao*** case, this Court is of the considered view that such an exercise of applying precedents is neither an algorithms nor an alchemy qua factual matrix and legal principles.

25 This takes us to the next case law, namely, ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another*** reported in (2015) 1 SCC 680. ***Nahar Exports Limited*** case is a case wherein there was nine days delay in filing, but there was 1727 days in refiling. In this context, the issue of deficit court fee was also inextricably dovetailed and an argument was projected that section 149 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) provides for deficit court fee to be paid. It is in this context that Hon'ble Supreme Court held that condonation of delay is impermissible obviously on the factual matrix of that case. Therefore, in the considered opinion of this Court, ***Nahar Exports Limited*** case is clearly distinguishable on facts and is therefore, not applicable to the instant case.

26 This takes us to ***Rane (Madras)*** case rendered by Hon'ble Division Bench of this Court in Tax Case (Appeal) SR.No.91371 of 2010 dated 10.06.2016. This is a case of delay in filing a tax case before Division Bench of this Court. General principles have been adverted to and on the facts of that case, delay was not condoned. This Court has no difficulty in

accepting the submission of learned counsel for writ petitioner that even broad similarities referred to in ***Vinay Extraction Pvt. Limited*** case is not there between the case on hand and ***Nahar Exports Limited*** case. This is more so as ***Rane (Madras)*** case (as placed before this Court, i.e., ***MANU/TN/1936/2016***), does not give elaboration of facts. More importantly, it is pointed out by learned counsel for writ petitioner that personal hearing was held on 27.12.2018 and in the personal hearing, the chronicle of events and papers / documents forming part of records were highlighted to explain the delay and the bona fides of writ petitioner in taking diligent and relentless efforts qua exclusion / exemption.

27 This takes us to one other aspect of the matter. ***Esha Bhattacharjee*** case being ***Esha Bhattacharjee Vs. Raghunathpur Nafar Academy*** reported in (2013) 12 SCC 649 has been referred to in more than one case law in the aforesaid case laws which have been discussed thus far. ***Esha Bhattacharjee*** case is an authority for the principle that when there is delay condonation application, facts have to be articulated in detail and that delay condonation application cannot be filed casually in generic terms. There can be no disagreement on this principle and there is none before this Court.

28 As already alluded to supra, learned counsel for writ petitioner at the very outset very fairly submitted that writ petitioner should have stated and articulated the reasons for delay with specificity and clarity. Having said

that, learned counsel for writ petitioner predicated his case on the ground that the entire chronicle of events alluded to supra bring into sharp focus trajectory of the consistent, relentless and recurrent efforts that were taken by writ petitioner with regard to getting Rs.19.84 lakhs income excluded / exempted qua returns erroneously filed for said AY.

29 Therefore, while there is no disagreement with regard to **Esha Bhattacharjee** case principle, this is a case where the facts and chronicle of the same were undisputably available as part of records before third respondent who passed the impugned order. This is not a case where records did not speak for themselves with regard to relentless efforts taken by writ petitioner which in turn explained what is being construed as delay.

30 Besides the aforementioned five case laws set out supra, impugned order also refers to a Bombay High Court judgment being **Manoj Kumar Kedia Vs. Pr. Commissioner of Income Tax [2016-LL-0811-29] in W.P.No.1616 of 2016**. However, Revenue counsel fairly submitted that it is not traceable. Learned counsel for writ petitioner submitted that his position is no different. This Court was unable to find it in its research also and therefore, this Court has not embarked upon discussion on **Manoj Kumar Kedia** case as the entire case law should be before this Court for any discussion on the same. Be that as it may, to be noted, being a Bombay High Court citation with regard to precedents, it would be of persuasive value.

31 In the light of the discussion thus far, there is one important factor which has been noticed by this Court.

32 As would be evident from the chronicle of events which have been alluded to supra with specificity, it will be clear that one year time frame for filing application / petition under section 264 of IT Act expired on 22.10.2011, as the order of assessment under section 143(1) of IT Act came to be passed on 23.10.2010. Within this one year, i.e., on 05.08.2011 itself, writ petitioner had taken the first step to have his Rs.19.84 lakhs excluded / exempted qua said AY by filing a revised return. This revised return was rejected under section 139 (5) of IT Act on the technical ground that original return was not filed in time. Therefore, this brings to light that writ petitioner has taken his first step qua section 264 application / petition well within the one year time frame. Thereafter, post rejection of revised return, writ petitioner did not go into slumber. As would be evident from undisputed chronicle of events alluded to supra, writ petitioner filed rectification, on which no orders were passed. Without passing orders on rectification, a demand notice was issued triggering a second rectification from writ petitioner which came to be dismissed. To be noted, a demand was made on 31.1.2018, second rectification request was filed by writ petitioner on 25.2.2018, second rectification having been dismissed / rejected on 2.7.2018, writ petitioner ultimately filed a petition / application under section 264 of IT Act. Therefore, this is not a case where writ petitioner had gone into slumber. There is one

other aspect which has weighed in the mind of this Court for acceding to the prayer of writ petitioner unlike other cases / case laws, particularly **Viswanathan Silk Centre** case, as third respondent has said nothing on merits of the matter in case on hand. As section 264 petition / application has not been examined on merits, in the considered opinion of this court, by acceding to the prayer in the instant writ petition and directing third respondent to consider section 264 petition / application on merits, ends of justice would be met as it will ensure that writ petitioner's case is tested on merits. To be noted, the submission of writ petitioner that there are judgments (supporting writ petitioner's exemption plea) rendered by more than one Hon'ble High Court with regard to exemption under section 5 of the IT Act, which is the crux and gravamen of petitioner's section 264 petition / application in instant case, buttresses and bolsters writ petitioner's plea to have section 264 petition / application tested on merits.

33 In the light of the narrative supra as well as discussion thus far, this Court is convinced that this is a case where the prayer of writ petitioner deserves to be acceded to.

34 Resultantly, impugned order of third respondent dated 17.01.2019 bearing reference No.F.No.CIT /IT / CHE / 113(264) / 2018-19 is set aside and delay on the part of writ petitioner in filing petition under section 264 of IT Act (on 24.10.2018) is condoned. The matter is remitted back to third respondent to decide the writ petitioner's application / petition under section 264 of IT Act dated 24.10.2018 on merits after affording an

opportunity of personal hearing to writ petitioner. Third respondent is directed to dispose of the petition / application of writ petitioner under section 264 of IT Act within a period of three months from the date of receipt of a copy of this order. The decision of third respondent shall be communicated to writ petitioner under due acknowledgment within one week from the date of decision.

35 This writ petition is allowed with above directions. No costs. Consequently connected miscellaneous petitions are closed.

28.06.2019

vvk

Index:Yes

Speaking order

To

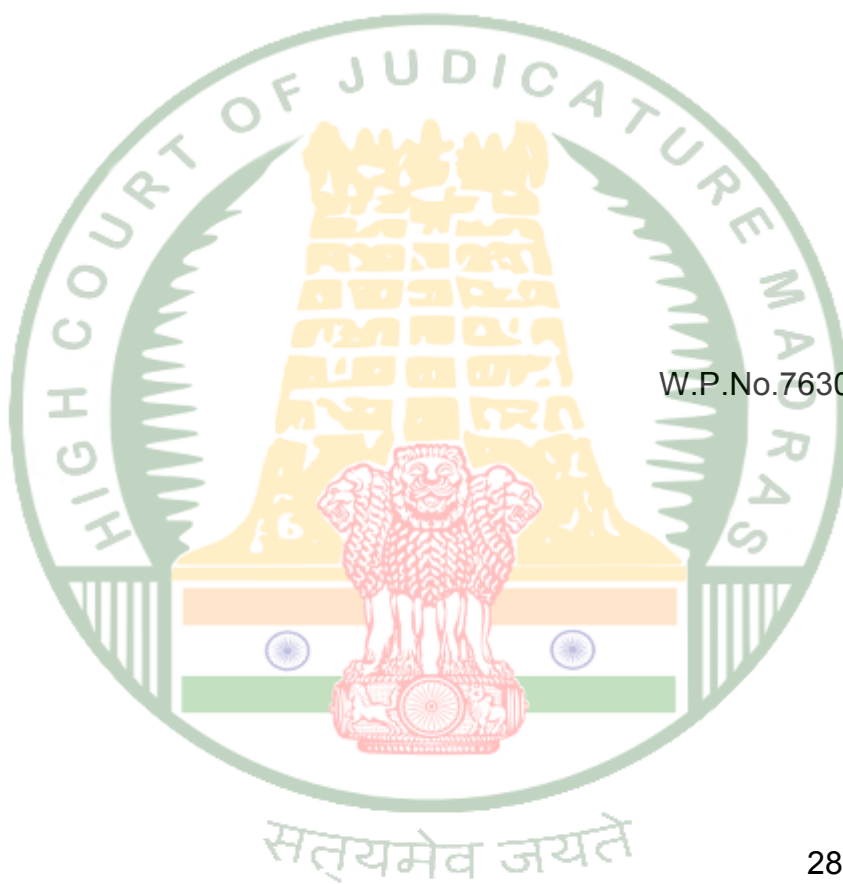
1.The Income Tax Officer,
International Taxation – 1(2),
Chennai-6.

2.The Assistant Commissioner of Income Tax,
Central Processing Centre,
Bangalore-560 100.

3.The Commissioner of Income Tax,
International Taxation,
BSNL Building,
Greens Road, Chennai-6.

M.SUNDAR, J.

vvk



order in
W.P.No.7630 of 2019

28.06.2019

WEB COPY