

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 28TH DAY OF JANUARY 2020 / 8TH MAGHA, 1941

WP(C).No.1503 OF 2020(K)

PETITIONER/S:

DAISON JOSEPH
AGED 41 YEARS
PULLATTU HOUSE, POONJAR P.O., KOTTAYAM DISTRICT, PIN-
686 581

BY ADV. SRI.BOBBOY JOHN

RESPONDENT/S:

- 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX
KOTTAYAM, 1ST FLOOR, PUBLIC LIBRARY BUILDING,
KOTTAYAM, PIN-686 001
- 2 THE INCOME TAX OFFICER WARD-I,
KOTTAYAM, PUBLIC LIBRARY BUILDING, KOTTAYAM, PIN 686018
- 3 THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
KERALA, CENTRAL REVENUE BUILDING, I.S.PRESS ROAD,
ERNAKULAM, PIN-682 018
- 4 THE UNION OF INDIA,
REPRESENTED BY TS SECRETARY TO GOVERNMENT, FINANCE
DEPARTMENT, RAJPATH MARG, CENTRAL SECRETARIAT, NEW
DELHI, PIN-110 001

R1-4 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX
R4 BY ADV. SRI.K.SUDHINKUMAR

OTHER PRESENT:

SRI.P.VIJAYAKUMAR, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C.) No. 1503 of 2020

Dated this the 28th day of January, 2020

JUDGMENT

The case projected in the W.P.(C.) is as follows :

That the petitioner is running a franchise of M/s.Karvy Stock Broking Ltd. at Erattupuetta near Pala in Kottayam District and that he is now aggrieved by the impugned Ext.P4 order dated 30.07.2019 issued by the 1st respondent, under Sec.119(2)(b) of the Income Tax Act, whereby the plea of the petitioner for condoning delay in filing returns of the income tax for the assessment years 2012-13, 2013-14 and 2014-15 has been rejected. According to the petitioner, the said rejection order cannot be said to be reasonable and that the impugned order has not taken into consideration all the relevant aspects of the matter and that the petitioner has indeed got his genuine hardships and realties as contemplated in Ext.P5, Central Board of Direct Taxes Circular No.9/2015 dated 9.6.2015. The factual details are as follows :

2. In the year 2010, the petitioner's child was diagnosed as a cancer patient during 2010. thereafter, the petitioner has been running from hospital to hospital in connection with the treatment of his daughter until 2017 when the patient completed the treatment and advised for

further follow up action. On 20.06.2016, the petitioner has filed Ext.P2A and Ext.P2B returns for the assessment year 2013-14 and 2014-15 before the 2nd respondent. On 29.11.2017, the Regional Cancer Centre, Thiruvananthapuram issued Ext.P5 certificate stating completion of treatment. On 11.12.2017, the petitioner has filed Ext.P2 return for the assessment year 2012-13 before the 2nd respondent and also filed Ext.P3 application under Sec.119(2)(b) of the Income Tax Act, 1961 for condonation of delay in filing returns for the abovesaid periods. On 05.10.2018, the matter was posted for hearing and the petitioner appeared before the 1st respondent and explained the circumstances for the delay in filing returns. On 30.07.2019, the 1st respondent passed Ext.P4 order rejecting Ext.P3 application for condonation of delay.

3. The main contentions urged by the petitioner are as follows :

(a) The case of the petitioner qualifies every condition specified in Ext.P5 circular. Therefore, the 1st respondent ought to have allowed the application considering the genuine hardship which caused the delay in filing returns.

(b) The only reason stated in Ext.P4 order for rejecting the application for condonation of delay is that the petitioner was running the franchisee during the relevant period though he could not file income tax returns. The said reason stated for rejecting the application is hyper technical and imaginary in nature, and contrary to the purpose and object

of Sec.119(2)(b) of the Income Tax Act, 1961 and also Ext.P5 circular issued by the CBDT.

(c) The impugned order militates against the dictum laid down in this regard by various decisions of the Hon'ble Courts.

(d) The impugned order is perverse in nature.

In the light of these averments and contentions, the petitioner has filed the instant W.P.(C.) with the following prayers.

(i) to issue a writ in the nature of certiorari or any other appropriate order quashing Exhibit-P4 order passed by the 1st respondent.

(ii) to issue a writ in the nature of mandamus or any other appropriate order directing the 1st and 2nd respondents to treat Exhibit P2, Exhibit P2A and Exhibit P2B returns filed by the petitioner as returns within the statutory time limit, and to consider the claim of refund pursuant to the same expeditiously.

(iii) to issue a writ in the nature of mandamus or any other appropriate order directing the 2nd respondent to refund the amount claimed in Exhibit P2, Exhibit P2A and Exhibit P2B returns, after due verification of the relevant records, expeditiously.

(iv) to issue a writ in the nature of mandamus or any other appropriate order directing the 2nd respondent to adjust the amount claimed as refund in Exhibit P2, Exhibit P2A and Exhibit P2B returns towards the future liabilities of the petitioner under the Income Tax Act, 1961 after due verification of the relevant records.

(v) to pass such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;
and

(v) to award the cost of the proceeding to the petitioner.”

4. Heard Sri.Bobby John Pulickaparambil, learned counsel appearing for the petitioner and Sri.Jose Joseph, learned standing counsel appearing for respondents 1 to 3- Income Tax Department, Government of India, Sri.K.Sudeep Kumar, learned Central Government Counsel appearing for R4- Union of India.

5. The relevant portion of clause (b) of sub-section (2) of Section 119 of the Income Tax Act, 1961 provides as follows :

(b) the Board may, if it considers it desirable or expedient so to be for

avoiding genuine hardship in any case or class of cases, by general or special order, authorise (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.”

6. The Central Board of Direct Taxes has issued Ext.P5 circular No.9/2015 dated 9.6.2015 and para 5 thereof reads as follows :

“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/loos 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 the case in accordance with the provisions of the Act to ascertain the correctness of the claim.”*

7. Sri.Bobby John Pulickaparambil, learned counsel appearing for the petitioner would contend that the impugned Ext.P4 rejection order dated 30.7.2019 has been rendered by the 1st respondent without taking into consideration the relevant aspects of the matter and the same cannot be said to be reasonable and proper exercise of power in this regard. The learned counsel for the petitioner would place reliance on various judgments which are as follows. That in **Sudha Krishnaswamy v.Chief Commissioner of Income Tax** [(2019) 414 ITR 144 (KAR)], the issue that is considered as regarding the correctness of an order rejecting the application for condonation of delay under Sec. 119(2)(b) of the Income Tax Act on the ground that assessee sustained injuries in an accident and also he is facing stringent financial crisis. Therein the Karnataka High Court deprecated the practice of rejecting the said application on hyper

technicalities and it was held as follows :

“It is trite law that rendering substantial justice shall be paramount consideration of the Courts as well as the Authorities rather than rejecting on hyper-technicalities. It may be true that there is some lapse on the part of the petitioner, that itself would not be a factor to turn out the plea for filing of the return, when the explanation offered was acceptable and genuine hardship is established. Sufficient cause shown by the petitioner for condoning the delay in acceptable and the same cannot be rejected out-rightly technicalities.”

8. Further that in the decision in **Artist Tree Pvt. Ltd.v. Central Board of Direct Taxes**, (2014) 369 ITR 691 (Bom) considered a case regarding the correctness of an order rejecting application for delay condonation under Sec.119 (2)(b) and the records including the TDS certificate was misplaced during shifting of the office of the company and therein the Bombay High Court cautioned against adopting a restrictive approach in such matters particularly when there is no malafide or culpable negligence on the part of the assessee and wherein, it has been held in para 23 thereof as follows :

“In the light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner and a case of genuine hardship was made out. The refusal by the CBDT to condone the delay was a result of adoption of an unduly restrictive approach. The CBDT appears to have proceeded on the basis that the delay was deliberate, when from explanation offered by the petitioner, it is clear that the delay was neither deliberate, nor on account of culpable negligence or any malefides. Therefore, the imputed order dated 16 May 2006 made by the CBDT refusing to condone the delay in filing the return of Income for the assessment year 1997-1998 is liable to be set aside. Consistent with the provisions of Section 119(2)(b) of the said Act, the concerned ITO or the assessing officer would have to consider the return of income and deal with the same on merits and in accordance with law.”

9. The petitioner would point out that the Accounts Department has no case that the IT returns of the petitioner is factually wrong or that claim for refund is said to be inadmissible and thus the petitioner would

urge that there is no dispute regarding the entitlement of the petitioner and that the only hurdle is the delay secured in filing of the return which according to the petitioner has been caused due to reasons beyond his control and the authority should have adopted a pragmatic, fair and just approach rendering substantial justice to the petitioner, particularly, when there is no loss of revenue and also when there is absolutely no case of culpable negligence of any malafides on the part of the petitioner in regard to the late submission of the returns.

10. It is urged by Sri.Bobby John Pulickaparambil, learned counsel appearing for the petitioner that the incidents in the petitioner's family is a great tragedy inasmuch as his daughter who was then only 2 years old, was diagnosed with a serious cancerous ailment and he had to run from hospitals to hospitals for treatment of his child and that it is only in view of the extreme mental strain and the circumstances under which the petitioner was forced to divert his energies solely for the purpose of treatment of his child, that the delay has occurred. True, that the petitioner could not concentrate on his business activities, which resulted in the delay in submissions of the returns, but the same occurred only due to these circumstances and that the department has no case that there is any element of culpable negligence or any malafides or there was any deliberate delay on the part of the petitioner in delaying the submission of his returns. Hence, it is urged by the counsel for the petitioner that the impugned order

is vitiated and that this Court may grant the reliefs sought for by the petitioner.

11. Sri. Jose Joseph, learned standing counsel appearing for the respondents 1 to 3 has opposed the pleas in the abovesaid petition. After hearing both sides and after careful evaluation of the facts and circumstances of this case, the petitioner has not placed material particulars regarding the treatment of the child and it is seen that the petitioner has mainly placed reliance on Ext.P1 certificate issued by the Regional Cancer Centre, Thiruvananthapuram. During the course of the hearing, the learned counsel for the petitioner has also made available a copy of the medical certificate/medical records issued by the Amrita Institute of Medical Sciences and Research Centre, Edappally which deals with the treatment given to the child etc. The petitioner should have given more comprehensive details of the treatment of the child and should also has to sworn to an affidavit regarding the various aspects which compelled him to divert his energies to the business affairs, in view of his pressing compulsions to give more devoted attention to the treatment of his infant daughter. In the absence of such materials, the 1st respondent cannot be blamed for taking an approach of this nature in the impugned order. If the petitioner had placed all the relevant materials, the 1st respondent could have considered all the same and render a considered decision thereon and after adverting to all such relevant aspects. Prima facie, this Court finds force in

the abovesaid contention raised by the petitioner on the basis of the dictum laid down by the Bombay High Court in the aforesaid judgment in Para No.23 of **Artist Tree Pvt.Ltd** case (Supra), where it has been held that so long as the delay cannot be said to be deliberate or cannot be said to be on account of culpable negligence or malafides, then the respondent authority concerned would take a fair and liberal approach in the matter, in order to ensure substantial justice be meted out.

12. Taking note of the overall facts of this case and more particularly, taking into account the tragic circumstances, under which the petitioner was forced to undergo in view of the serious cancer ailments, that had affected his young and infant daughter, this Court is of the considered view that the matter could be given a second look by the 1st respondent after considering all the matters afresh. Accordingly, It is ordered that the matter will stand remitted to the 1st respondent for consideration of all the matters afresh and after taking into account the additional materials that being produced by the petitioner without any further delay. For effectuating such a remit, the impugned Ext.P4 order will stand quashed and Ext.P3 application will stand remitted to the 1st respondent for consideration and decision afresh. The petitioner will immediately give all relevant details of the treatment of his infant daughter and should also given additional medical certificates of the hospitals concerned wherein she was hospitalised or treated either as a inpatient or

outpatient showing the details in connection with the disease and various periods in question. Such additional materials by way of medical records of the hospitals concerned may be made available by the petitioner to the 1st respondent along with the affidavit of the petitioner, without much delay, preferably within a period of one month from the date of production of a certified copy of this judgment. In the said affidavit, the petitioner should also meticulously and precisely deals with the factual particulars regarding the treatment of his child and the periods in question.

13. After submission of the said additional materials, the 1st respondent may give notice of hearing to the petitioner and thereafter, the 1st respondent will afford reasonable opportunity of being heard to the petitioner through the authorised representative/counsel, if any and then will render a considered decision on the plea made by the petitioner for the condonation of delay subject to the delay in the returns as made out in Ext.P3 application and after duly taking into consideration various contentions of the petitioner and also in the light of the dictum laid down by the various courts including the aforestated judgments mentioned hereinabove. Considered decision on all affected matters may be taken by the 1st respondent, without much delay, preferably within a period of 2-3 months from the date of submission of the additional materials given by the petitioner. However, it is made clear that in case the petitioner does not give the additional materials, within the abovesaid time limit of one month

as aforestated, then the 1st respondent may proceed with the proceedings herein and then take a considered decision in the matter on the basis of available materials etc. This Court would only observe that the 1st respondent would anxiously bestow his consideration to various aspects of the matter and may also consider the applicability of the dictum laid down by the Bombay High Court in the aforesaid **Artist Tree Pvt. Ltd.'s** case (supra) and the various other rulings.

With these observations and directions, the above W.P.(C.) will stand disposed of.

sd/-

**ALEXANDER THOMAS,
JUDGE**

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE TREATMENT CERTIFICATE
NO.RCC/2017/TC/9462,DAED 29.11.2017 ISSUED
FROM REGIONAL CANCER CENTRE,
THIRUVANANTHAPURAM
- EXHIBIT P2 TRUE COPY OF THE RETURN FOR THE ASSESSMENT
YEAR 2012-13, FILED BY THE PETITIONER ON
11.12.2017 BEFORE THE 2ND RESPONDENT
- EXHIBIT-P2A TRUE COPY OF THE RETURN FOR THE ASSESSMENT
YEAR 2013-14, FILED BY THE PETITIONER ON
20.06.2016 BEFORE THE 2ND RESPONDENT
- EXHIBIT P2 B TRUE COPY OF THE RETURN FOR THE ASSESSMENT
YEAR 2014-15, FILED BY THE PETITIONER ON
20.06.2016 BEFORE THE 2ND RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE APPLICATION FOR
CONDONATION OF DELAY IN FILING RETURN ,
DATED 11.12.2017 SUBMITTED BY THE
PETITIONER, BEFORE THE 1ST RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 320.07.20198
PASSED BY THE 1ST RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE CBDT CIRCULAR NO.9/20-15
DATED 09.06.2015