IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

&

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 19TH DAY OF DECEMBER 2018 / 28TH AGRAHAYANA, 1940

<u>WP(C).No. 35382 of 2018</u>

<u>PETITIONER</u>:

ALWAYE CHARTERED ACCOUNTANTS ASSOCIATION,
(REG. NO. -ER555/85, DATED 04-12-1985), 2ND FLOOR,
VIP PANORAMA ARCADE, ATHANI PO, ALWAYE, PIN 683 585,
REPRESENTED BY ITS TREASURER.

BY ADVS.
SRI.SUKUMAR NAINAN OOMMEN
SRI.RAHUL IPE PRASAD
SRI.SHERRY SAMUEL OOMMEN

<u>RESPONDENTS</u>:

1 UNION OF INDIA
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, ROOM NO. 46, NORTH BLOCK,
NEW DELHI 110 001.

2 CHAIRMAN
CENTRAL BOARD OF DIRECT TAXES, NORTH BLOCK,
NEW DELHI-110 003.

R1 BY SMT.C.G.PREETHA, CGC
R2 BY SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19.12.2018 ALONG WITH WP(C)Nos.32954, 33135 & 37052 of 2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

A.K.Jayasankaran Nambiar, J.

As all these Writ Petitions involve a common issue and are filed in the nature of Public Interest Litigations, they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and exhibits is from W.P.(C)No.35382 of 2018, filed by the Alwaye Chartered Accountants' Association.

2. The grievance of the petitioners as projected in these Writ Petitions is essentially against the announcement by the Income Tax Department, that the last date for filing returns for the assessment year 2018-2019, in the case of Kerala based assessees, who have to comply with the requirements of statutory audit in terms of Section 44AB of the Income Tax Act, 1961 ('the Act' for short), is 31.10.2018. It is stated that, although the due date for filing of returns for such assessees under Section 139(1) of the Act is 30.9.2018, the Department had, taking note of the flood situation that affected the State in August 2018, suo motu extended the last date for filing the returns to 31.10.2018. The case of the petitioners, however, is that the mere extension by one month of the due date under Section 139(1) would not suffice, and insofar as assessees had encountered difficulties in the matter of finalising the audit of accounts under Section 44AB, and incorporation of those audited accounts in the return that had to be filed, the Department ought to have extended the time for filing returns in terms of Section 139(1) of the Act at least till 31.12.2018. In the Writ Petition, there is also a challenge to Ext.P11 order dated 26.10.2018 of the

Government of India, Ministry of Finance, Department of Revenue (CBDT), which refused to extend the time for filing of returns to 31.12.2018, as sought for by the All Kerala Chartered Accountants Association, Thrissur. The said order passed under Section 119 of the Act is impugned by the petitioners herein, inter alia, on the contention that the Central Board of Direct Taxes ('CBDT' for short) had, under similar circumstances, extended the time limit for filing returns in terms of Section 139(1) of the Act for larger periods in the State of Jammu & Kashmir, and hence there was no justification for not extending the time for filing return for a like period for the benefit of the assessees in the State of Kerala.

3. A counter affidavit has been filed on behalf of the respondent Income Tax Department wherein, after refuting the various averments in the Writ Petition and referring to the provisions of the Act, the order dated 26.10.2018 of the CBDT in the case of All Kerala Chartered Accountants Association, Thrissur is sought to be justified for the reasons stated therein. A rejoinder affidavit has been filed by the petitioners in W.P.(C)No.35382 of 2018, controverting the averments in the counter affidavit.

4. We have heard Sri.Sukumar Nainan Oommen and Sri.Sherry Samuel Oommen, the learned counsel appearing for the petitioners in W.P.(C)No.35382 of 2018, Sri.Deepu Thankan, the learned counsel appearing for the petitioners in W.P.(C)Nos.32954 and 33135 of 2018 as also Sri.K.L.Shyam, the learned counsel appearing for the petitioner in W.P.(C)No.37052 of 2018. We have also heard Sri.Christopher Abraham, the learned counsel appearing for the Income Tax Department and Smt.C.G.Preetha, the learned Central Government Counsel appearing for the Union of India.

5. On a consideration of the facts and circumstances and the submissions made across the Bar, we find from a perusal of the Act that, the due date for filing returns in the case of all assessees is as provided for under Section 139(1) of the Act. It is not in dispute that, for the particular class of assessees with which we are concerned, namely, those who are obliged to file audited statement of accounts along with their returns, the due date under Section 139(1) of the Act is 30th September of the assessment year. The assessment year in these cases is 2018-2019. As already noticed, the CBDT had suo motu extended the last date for filing returns under Section 139(1) of the Act, in the case of the said assessees, to 31.10.2018. The provisions of Section 139(4) of the Act also permit any assessee, who has not furnished a return within the time allowed under Section 139(1) of the Act or within the time allowed, under a notice issued under Section 142(1) of the Act, to furnish a return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Under Section 139(4), therefore, those assessees, who have not been able to file a return within the due date prescribed under Section 139(1) of the Act, can still file a belated return before the end of the assessment year i.e. before 31.3.2019. Thus, merely on account of the delay that occurred in the filing of a return under Section 139(1) of the Act, the assessees cannot be said to be prejudiced for they can file a belated return in terms of Section 139(4) of the Act. The case projected before us, however, is that many of the provisions under the Act which provide for deductions, exemptions or refunds of amounts due to the assessee, make it obligatory for the assessee to file the return within the due date specified under Section 139(1) of the Act, in order to get the benefit of the deduction, exemption, etc. claimed in their return. It is in this context that the petitioners before us vehemently contend, that the due date fixed under Section 139(1) of the Act, for them, must be extended by the

CBDT so that they do not lose the benefit of any deduction, exemption or refund as the case may be. The question that arises, however, is whether there can be any direction issued to the CBDT to issue a blanket order extending the time limit for filing returns under Section 139(1) of the Act, in all cases and in respect of all assessees within the State of Kerala. We might refer, in this connection, to the provisions of Section 119 of the Act, which deal with the power of the CBDT to issue instructions to its subordinate authorities. The relevant portions of Section 119 of the Act reads as follows:

> **119.**(1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :
>
> **Provided** that no such orders, instructions or directions shall be issued—
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> (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
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> (b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.
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> (2) Without prejudice to the generality of the foregoing power,—
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> (a) …………… ………………. ………………. …………… ……………….
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> (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, 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;
>
> (c) …………… ………………. …………… ………………. ……………….

6. It will be seen from a perusal of Section 119(2)(b) of the Act that the Board may, if it considers it desirable or expedient to do so, for avoiding genuine hardship in any case or class of cases, by general or special order, authorise the income-tax authority to admit an application or claim for exemption, deduction, refund or other relief after the expiry of the period specified under the Act for making such a claim and deal with the same on merits in accordance with law. In the case of the petitioners

before us, we would think that, inasmuch as they are prejudiced in their claim for deduction, by the flood situation that affected the State in August 2018, their remedy would lie in approaching the CBDT through an application under Section 119(2)(b), stating the circumstances which led to the delay in filing the return (which includes the claim for deduction, exemption, refund, etc.) within the time stipulated under Section 139(1) or the extended time fixed by the Department for the same. In the event of an application being preferred by the petitioners, giving details of the difficulties faced by them in making a claim for the benefit of deduction, exemption or refund within time, we have no reason to think that the CBDT would not consider their applications in accordance with law and taking note of the peculiar difficulties faced by them on account of the devastating flood that affected the State of Kerala in August 2018.

7. As regards those assessees who have filed their returns within the extended time granted under Section 139(1) of the Act namely 31.10.2018, any interest that might have accrued on delayed payment of taxes under the Act can be condoned by the CBDT on an application preferred by the assessee under Section 119(2)(a) of the Act. As mentioned in the case of the applications preferred under Section 119(2)(b), we have no reason to believe that, if an application seeking waiver of interest is preferred by the assessees citing the difficulties faced by them, which led to the delayed payment of taxes, the CBDT will not consider the same in accordance with law and taking note of the flood that affected Kerala.

8. We are of the view that while the specific grievances of the assessees in individual cases can be dealt with by the CBDT through a consideration of the applications filed by the assessees concerned in terms of Section 119(2)(a)/119(2)(b) of the Act, a general direction for extending the due date for filing returns under

Section 139(1) of the Act cannot be issued to the Income Tax Department by entertaining these Public Interest Litigations. To issue such directions would be contrary to the scheme of the Act. For the same reason, and in the absence of any material to indicate the nature of applications that were considered by the CBDT, we are not persuaded to think that there has been any discrimination meted out to the assessees in Kerala merely on account of the fact that in Jammu & Kashmir, there was an exercise of power by the CBDT, which led to the extension of last date for filing returns for a longer duration. Thus, we dispose these Writ Petitions with the following directions:

I) In respect of those assessees who, on account of the difficulties faced by them, have not been able to file a return making a claim for deductions, exemptions or refunds, they shall be permitted to make an application under Section 119(2)(b) before the CBDT outlining the difficulties faced by them and making a prayer for extension of time for making the claim for deduction. The application shall be preferred within two weeks from the date of receipt of a copy of this judgment. This would effectively be an application seeking extension of time for filing the return itself since it is the return that would contain the claim for deduction, exemption or refund. The applications received by the CBDT shall be considered by the CBDT, taking note of the flood situation that affected the State of Kerala, and orders shall be passed thereon within an outer time limit of two months from the date of receipt of the applications by the CBDT, after affording an opportunity of hearing to the assessee concerned.

II) In the case of those assessees, who are aggrieved by the interest accrued on delayed payment of tax under the Act and who have already filed their returns either before 31.10.2018 or belatedly thereafter, such assessees are permitted to prefer applications in terms of Section 119(2)(a) before the CBDT within two weeks from the date of receipt of a copy of this judgment and on such applications being received from the assessees, they shall be considered by the CBDT for waiver of interest/penalty, taking note of the flood situation in Kerala and appropriate orders shall be passed thereon in accordance with law after hearing the assessees, within two months from the date of receipt of the applications from the assessees.

III) Taking note of the fact that the assessees who file applications pursuant to this judgment, will likely be residents in Kerala State, the CBDT may consider holding a camp sitting in Kerala for the purposes of considering the aforesaid applications of the assessees, in the peculiar factual circumstances that obtain in these Writ Petitions.

Sd/-

Hrishikesh Roy,
Chief Justice

Sd/-

A.K.Jayasankaran Nambiar,
Judge

vpv

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE PETITIONER'S CERTIFICATE OF REGISTRATION DATED 04/12/1985 ALONG WITH THE TRANSLATED COPY.

EXHIBIT P2 TRUE COPY OF THE RESOLUTION APPOINTING THE TREASURER TO ACT ON BEHALF OF THE PETITIONER.

EXHIBIT P3 TRUE COPY OF THE PETITIONER'S BYE LAWS.

EXHIBIT P4 TRUE COPY OF ORDER (F.NO.225/286/2014/ITA.II) DATED 16/09/2014 AND ORDER (F.NO.225/268/2014/ITA.II) DATED 28/11/2014, ORDER (F.NO.220/1/2005-IT(A-II)) DATED 24/08/2005, ORDER (F.NO.225/94/2005-IT(AII)) DATED 17.11.2005, ORDER (F.NO.220/04/2007-IT(A-II)) DATED 08/10/2007, PRESS RELEASE NO.402/92/2006-MC(45 OF 2008) DATED 29/09/2008, ORDER (F.NO.225/117/2013-IT(A-II)) DATED 23/07/2013.

EXHIBIT P5 TRUE COPY OF ORDER (F.NO.225/242/2018/ITA.II) DATED 28/08/2018.

EXHIBIT P6 TRUE COPY OF PRESS RELEASE DATED 08/10/2018.

EXHIBIT P7 TRUE COPY OF THE CIRCULAR 09/2018 DATED 05/10/2018.

EXHIBIT P8 TRUE COPY OF REPRESENTATION DATED 04/09/2018.

EXHIBIT P9 TRUE COPY OF REPRESENTATION DATED 30/08/2018.

EXHIBIT P10 TRUE COPY OF THE ARTICLE APPEARING IN MATHRUBHUMI NEWSPAPER ON 22/09/2018 ALONG WITH ITS TRANSLATED COPY.

EXHIBIT P11 TRUE COPY OF ORDER F.NO.225/358/2018/ITA.II DATED 26/10/2018.

EXHIBIT P12 TRUE COPY OF THE ORDER IN WP(C)31520/2018 & W.P.(C)31751/2018 DATED 28/09/2018.

EXHIBIT P13 TRUE COPY OF THE INFORMATION OBTAINED FROM THE WEBSITE OF THE INCOME TAX DEPARTMENT.

EXHIBIT P14 TRUE COPY OF THE SCREEN SHOT OF THE WEBSITE OF THE INCOME TAX DEPARTMENT.

EXHIBIT P15 TRUE COPY OF THE CITIZENS CHARTER OF THE BOARD.

RESPONDENTS' EXHIBITS:

EXHIBIT R2(a) ORDER U/S119 OF THE C.B.D.T. DATED 26TH OCTOBER 2018.

EXHIBIT R2(b) DIRECTORATE OF SYSTEMS'S E-MAIL DATED 6TH NOVEMBER, 2018 WITH REGARD TO THE FILING OF INCOME TAX RETURNS AND TAX AUDIT REPORTS.

/true copy/

P.A. to JUDGE