IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2018

BEFORE

THE HON'BLE MRS JUSTICE S.SUJATHA

WRIT PETITION NO.27383 OF 2016(T-IT)

BETWEEN:

M/S.SHUBHARAM COMPLEX
NO.144, SHUBHARAM COMPLEX,
M.G.ROAD,
BENGALURU – 560 001
REPRESENTED BY SRI RAMANA GOWDA,
(MANAGING CO-OWNER). ... PETITIONER

(BY SRI ASHOK A.KULKARNI, AND
SRI SIDDAREDDY, ADVOCATES)

AND:

1. THE INCOME TAX OFFICER
WARD-1(1), BENGALURU,
6TH FLOOR, 59, HMT BHAVAN,
BALLARI ROAD,
BENGALURU – 560 032.

2. THE INCOME TAX OFFICER
WARD-1(2)(1), BENGALURU,
6TH FLOOR, 59, HMT BHAVAN,
BALLARI ROAD,
BENGALURU – 560 032.

3. THE PRINCIPAL COMMISSIONER OF INCOME TAX
BENGALURU -1, BENGALURU
5TH FLOOR, INCOME TAX OFFICE,
BMTC BUILDING,
KORAMANGALA,
BENGALURU – 560 095. ... RESPONDENTS

(BY SRI K.V.ARAVIND, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH BY A WRIT OF CERTIORARI, THE COMMUNICATION NO.NIL DATED 15.03.2013 IN ANNEXURE-D WHERE, IT WAS HELD THAT THE RETURN WAS DEFECTIVE AND IT INVOKED THE PROVISIONS OF 139(9) ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has challenged the communication dated 15.03.2013 and 28.10.2015, at Annexure-D and Annexure-G respectively and the order at Annexure-J dated 16.02.2016 to the writ petition, whereby it has been held that the return filed is defective and the aggregate of shares as filed by the petitioner exceeds 100%, *inter alia* seeking a direction to the second respondent to process the return filed by the petitioner and grant of refund due to it.

2. It is the grievance of the petitioner that the returns filed by the petitioner was declared as invalid in terms of Section-139(9) of the I.T. Act 1961; the petitioner was advised to file corrected return of income by 31.03.2013. The petitioner explained that there is no mistake and the return filed shows correct shares aggregating 100%.

3. It is contended that on the letter of the second respondent, advising the petitioner to file a fresh return of income and approach the Principal Commissioner of Income Tax Commissioner for condonation of delay in filing the return of income under Section-119(2)(b) of the Act, the same was acted upon. Surprisingly, the third respondent–Principal Commissioner Of Income Tax rejected the petitioner's

application filed under Section–119(2)(b) of the Act without providing an opportunity of hearing to the petitioner.

4. Sri.K.V.Aravind, learned counsel appearing for the respondents would clearly submit that the return filed depicted correct shares aggregating 100%. However, the third respondent rejected the application filed under Section–119(2)(b) of the Act for the reason that the assessee's case does not fall under the condition prescribed under the Circular-9 of 2015, as the return of income was filed well in time. Hence, if a direction is issued by this Court to respondent No.1 to scrutinize the returns filed by the petitioner, the same shall be complied with, subject to the petitioner undertaking before this Court that no objection will be raised relating to the limitation for issuance of notice under Section-143(2) of the Act and for framing the

consequential assessment in the event if it is found that the petitioner is liable to pay the tax.

5. Heard the learned counsel for the parties and perused the material on record.

6. In view of the submissions made by the learned counsel for the parties as aforesaid, this Court is of the considered opinion that the returns filed by the assessee was wrongly declared by the Income tax Department as invalid return under Section-139(9) of the Act. It is on the advise of the department an application under Section-119(2)(b) was filed to condone the delay in filing the returns. The said application has been rejected by the third respondent without providing an opportunity of hearing to the petitioner, which constrained the petitioner to approach this Court. It was obligatory on the part of the Department to scrutinize whether the returns filed by the petitioner was well

within time. As observed by the third respondent as per Annexure-J to the writ petition, the time now having been lapsed for scrutinizing the returns, this Court deems it proper to direct respondent No.2 to scrutinize the returns and if the petitioner is entitled to a refund, an appropriate order shall be passed accordingly.

7. However, the learned counsel appearing for the petitioner undertakes before this Court that in the event the assessment proceedings has to be completed by issuing notices under the Act, the assessee shall not raise any objection on the aspect of limitation. The said undertaking is placed on record.

8. With the aforesaid observation, the writ petition stands disposed of, by quashing the Annexures-D, G and J. Respondent No.2 shall scrutinize the returns filed by the petitioner relating to the assessment year 2011-2012 within a period of eight weeks from the

date of receipt of certified copy of this order and pass appropriate orders in accordance with law in the light of the observations made above.

Sd/-
JUDGE

JJ