



2024:KER:75912

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 14TH DAY OF OCTOBER 2024 / 22ND ASWINA, 1946

WP(C) NO. 26159 OF 2024

PETITIONER:

MOHAN POOVAMPALLY GOPAL,
AGED 76 YEARS
23/39(41), 'ANASWARA', ANJALI GARDENS,
PALLIPURAM P.O., PALAKKAD, PIN - 678 006.

BY ADVS.

PADMANATHAN K.V.
R.SREEJITH

RESPONDENTS:

- 1 PRINCIPAL COMMISSIONER OF INCOME TAX,
AAYKAR BHAVAN, NORTH BLOCK, NEW ANNEXE BUILDING,
MANANCHIRA, KOZHIKODE, PIN - 673 001.
- 2 INCOME TAX OFFICER,
WARD 2, PALAKKAD, AAYKAR BHAVAN, PALAKKAD,
PIN - 678 014.

BY ADVS.

P.G.JAYASHANKAR (Sr.SC)
G.KEERTHIVAS (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14.10.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

The petitioner has approached this Court challenging Ext.P6 order issued under the provisions of Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as the '1961 Act'), refusing to extend the time for filing revised return of income for assessment years 2007-2028 to 2018-2019.

2. It is the case of the petitioner that in the peculiar facts and circumstances of the case and considering the circumstances under which an application under Section 119(2)(b) of the 1961 Act was filed, the competent authority ought to have permitted the filing of revised returns for the assessment years noticed above. It is submitted that instead of considering the merits of the application for condonation of delay, the competent authority considered the merits of the claim raised by the petitioner and concluded that the petitioner is not entitled to any relief under Section 119(2)(b) of the 1961 Act. It is submitted that it is directly contrary towards the law laid down by the Division Bench of this Court in ***Daisy v. The Principal Commissioner of Income Tax, Trivandrum*** in W.A.No.1420 of 2023.

3. Heard the learned Senior Standing Counsel appearing for the respondents also. The learned Senior Standing Counsel



would submit that the impugned order is a detailed and speaking order. It is submitted that the power under Section 119(2)(b) of the 1961 Act can be exercised only in exceptional circumstances and not as a matter of course. It is submitted that though reference has been made to the merits of the matter, the competent authority has found no reason for extending the time for filing revised returns for the assessment years in question and therefore, the petitioner has not made out any case for grant of relief under Article 226 of the Constitution of India.

4. Having heard the learned counsel for the petitioner and the learned Senior Standing Counsel appearing for the respondents, I am of the view that the petitioner is right in contending that the application for condonation of delay should be considered not on the merits of the claim put forth by the petitioner, but on the question as to whether there was sufficient reason for condoning the delay in terms of the provisions contained in Section 119(2)(b) of the 1961 Act. A reading of Ext.P6 indicates that the Principal Commissioner of Income tax (1st respondent) had considered the merits of the claims raised by the petitioner instead of considering the question as to whether there was sufficient reason to condone the delay/extent time in



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terms of the provisions contained in Section 119(2)(b) of the 1961 of the Act read with the provisions of the Circular No.9/2015 dated 09.06.2015 (Circular issued by the Central Board of Direct Taxes in the matter of consideration of claims for condonation of delay under Section 119(2)(b) of the 1961 Act).

Accordingly, this writ petition is allowed. Ext.P6 is quashed. The application filed by the petitioner is restored to the file of the 1st respondent, who shall pass fresh orders, after considering the observations in this judgment and after affording an opportunity of hearing to the petitioner.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 26159/2024

PETITIONER'S EXHIBITS

- Exhibit P1** TRUE COPY OF THE MEDICAL BOARD PROCEEDINGS INVALIDATING ALL RANKS DTD. 20-05-1994 ISSUED BY THE RELEASE MEDICAL BOARD
- Exhibit P2** TRUE COPY OF THE LETTER DTD. 02-04-2019 ISSUED BY THE ADDL. DIRECTORATE GENERAL OF PERSONNEL SERVICES, INTEGRATED HQ OF MINISTRY OF DEFENSE (ARMY)
- Exhibit P3** TRUE COPY OF THE APPLICATION DTD. 09-04-2021 FILED BY THE PETITIONER BEFORE 1ST RESPONDENT
- Exhibit P4** TRUE COPY OF THIS LETTER DTD. 17-01-2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P5** TRUE COPY OF THIS NOTE DTD. 03-03-2022 SUBMITTED BY THE PETITIONER BEFORE 2ND RESPONDENT
- Exhibit P6** TRUE COPY OF THIS REJECTION ORDER DTD. 15-02-2024 PASSED BY THE 1ST RESPONDENT
- Exhibit P7** TRUE COPY OF THIS CIRCULAR DTD. 09-06-2015 ISSUED BY THE BOARD
- Exhibit P8** TRUE COPY OF THE JUDGEMENT DATED 24/11/2023 IN W.P.(C) NO. 37648 /2023 OF THIS HON'BLE COURT.
- Exhibit P9** TRUE COPY OF THE CIRCULAR NO. 13/2019 DTD. 24-06-2019 ISSUED BY THE BOARD