

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 04TH DAY OF JANUARY, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MRS. JUSTICE M.G. UMA

WRIT APPEAL No.4019/2019 (T-IT)

BETWEEN:

1. PRL. COMMISSIONER OF INCOME TAX
AAYAKAR BHAVAN,
C.R. BUILDING, N.G. ROAD,
ATTAVARA, MANGALURU - 575 001.
2. DEPUTY COMMISSIONER OF INCOME TAX,
CENTRALIZED PROCESSING CENTRE,
BENGALURU - 560 500.
3. INCOME-TAX OFFICER,
WARD-2, AAYAKAR BHAVAN,
ADI-UDUPI MALPE ROAD,
UDUPI - 576 103.

... APPELLANTS

(BY SMT. SANMATHI E.I., ADVOCATE)

AND:

M/S. KERADI MILK PRODUCERS' WOMEN
CO-OPERATIVE SOCIETY LTD.,
KERADI VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT - 576 233.
REP. BY ITS SECRETARY-
SMT. ROOPA SHEDTHI.

... RESPONDENT

(BY SRI MAHESH R. UPPIN, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER DATED 19/09/2019 IN WRIT PETITION NO.28872/2019
(T-IT) PASSED BY THE HON'BLE LEARNED SINGLE JUDGE.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, **NAGARATHNA J.**, DELIVERED THE FOLLOWING:-

J U D G M E N T

Though there is a delay of forty seven days in filing this appeal, we have, nevertheless, heard Sri Sanmathi E.I., learned counsel for the appellants on the merits of the matter.

2. The legality and correctness of the order passed by the learned single Judge in W.P.No.28872/2019, dated 19/09/2019 is called in question in this intra-Court appeal.

3. Briefly stated the facts are that, the respondent herein had filed the writ petition seeking a writ in the nature of certiorari by quashing order dated 17/06/2019, bearing No.124/119(2)(b)/Pr.CIT/MNG/2019-20, passed by respondent No.1 in the writ petition/appellant No.1 herein namely, Principal Commissioner of Income Tax, Mangaluru. By the said order, appellant No.1 herein refused to condone the delay and rejected the application filed under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for the sake of brevity). Consequently, the delay

in filing the return of income for the relevant assessment year (2018-19) was not taken into consideration for being processed. Being aggrieved by the order dated 17/06/2019, appellant No.1 preferred the writ petition.

4. Learned single Judge, who heard the writ petition along with other similar matters, has referred to the decision of the Delhi High Court, passed in ***Fibrefill Engineers vs. CIT [(2017) 177 TTJ 556 (Del.)***, wherein it has been held that on the aspect of delay, genuine hardship would have to be considered before condoning the delay and discretion has to be exercised in genuine cases of hardship and accordingly, exercising his discretion, learned single Judge held that application seeking condonation of delay in filing the returns has to be reconsidered.

5. Learned counsel for the appellants contended that the learned single Judge was not right in exercising discretion in favour of the respondent herein. That for the assessment year 2018-19, there was a delay in filing the returns. Therefore, the respondent could not also claim the deduction under Section 80P of the Act. Appellant No.1 herein has rightly rejected the application filed under

Section 119(2)(b) of the Act, but the learned single Judge has set aside the said order and has remanded the matter to respondent No.3 for re-examination of the said application pertaining to condonation of delay in filing the returns for the assessment year 2018-19. Learned counsel for the appellants further contended that if at all the matter was to be remanded, it ought to have been remanded to appellant No.1 herein, who was respondent No.1 in the writ petition and not to respondent No.3 in the writ petition. Therefore, this appeal would call for interference even though there is a delay of forty-seven days in filing the appeal.

6. Learned counsel for the respondent supported the order impugned in this appeal.

7. Having heard learned counsel for the appellants and on perusal of the impugned order of the learned single Judge as well as the order of appellant No.1/respondent No.1 in the writ petition passed under Section 119(2)(b) of the Act, we find that the learned single Judge was right in setting aside the said order and remanding the matter. However, while remanding the matter, the same ought to have been remanded to

respondent No.1 in the writ petition i.e., appellant No.1 herein. Therefore, with the aforesaid modification of the impugned order, the appeal stands **disposed**.

8. Since a time frame of three months from the date of receipt of the certified copy of the impugned order was granted by the learned single Judge to complete the reconsideration of the application filed by the respondent herein seeking condonation of delay in filing the returns, we now extend the said time by three months from the date of receipt of certified copy of this judgment.

In view of disposal of the appeal in the aforesaid terms, the delay of forty-seven days in filing the appeal is ignored. I.A.No.2/2020 is **disposed**.

Consequently, I.A.No.1/2020 also stands disposed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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