



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 28TH DAY OF NOVEMBER 2023 / 7TH AGRAHAYANA, 1945

WP(C) NO. 23606 OF 2023

PETITIONER:

S. UMESH SHENOY,
AGED 58 YEARS, S/O. LATE SRI. SREENIVAS SHENOY,
RESIDING AT C. C. DOOR NO. 44/4394,
SANKARASSERI ARCADE, CHITTOOR ROAD,
KOCHI, PIN - 682018.

BY ADVS.

SRI. R. LAKSHMI NARAYAN
SMT. R. RANJANIE
SMT. LEKSHMI BABU B. S.

RESPONDENTS:

- 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX -I,
KOCHI, OFFICE OF THE PRINCIPAL COMMISSIONER
OF INCOME TAX -I, CENTRAL REVENUE BUILDING,
IS PRESS ROAD, KOCHI, PIN - 682018.
- 2 COMMISSIONER OF INCOME TAX -I,
KOCHI, OFFICE OF THE PRINCIPAL COMMISSIONER
OF INCOME TAX -I, CENTRAL REVENUE BUILDING,
IS PRESS ROAD, KOCHI, PIN - 682018.
- 3 THE INCOME TAX OFFICER,
NON- CORP. WARD-I (I), KOCHI,
CENTRAL REVENUE BUILDING, IS PRESS ROAD,
KOCHI, PIN - 682018.

BY ADV.

SRI. CHRISTOPHER ABRAHAM - SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.23606 of 2023**

Dated this the 28th day of November, 2023

JUDGMENT

1. Heard Ms. R. Ranjanie, learned Counsel for the petitioner and Mr. Christopher Abraham, learned Standing Counsel for the Income Tax Department.

2. The present writ petition has been filed impugning the order in Exhibit P-6 dated 09.06.2023 passed by the Principal Commissioner of Income Tax – 1, Kochi rejecting petitioner's application for condoning the delay in filing the return of income for the assessment years 2016-17. The ground on which the application has been rejected is the time period prescribed for condoning the delay of six years as per the Circular No. 9/2015 dated 09.06.2015. The petitioner has filed the application on 31.05.2023 in respect of the assessment year 2016-17. The six years got over on 30.03.2023. However the application came to be filed on 31.05.2023. In view thereof, in the impugned order it mentioned that since petitioner's application is not in accordance with the conditions specified in the CBDT Circular No. 9/2015 dated 09.06.2015, the application got rejected.



3. The learned Counsel for the petitioner submits that the petitioner got no information in respect of his returns of income submitted for the assessment years 2016-17, 2017-18 and 2018-19 resubmitted on request dated 26.02.2019 before the 3rd respondent, giving details of the refund for which the petitioner was entitled. The petitioner has also filed complaint on Public Grievance Portal of the Prime Minister's Office. In response to the same, the petitioner was awarded Rs. 2,32,549/- vide the intimation dated 13.10.2022 and thus, the petitioner's grievance for refund pertaining to the assessment years 2017-18 and 2018-19 got redressed.

4. What remains is the demand in respect of the assessment years 2016-17 and the same was not addressed. It appears that the petitioner had filed returns for the assessment year 2016-17 on time but, same were defective and defect was not cured by the petitioner within the time prescribed for filing the return. When the petitioner came to know that the petitioner's returns were defective, he moved an application only on 31.05.2023 under Section 119 (2) (b) of the Income Tax Act, 1961 seeking condonation of delay in rectifying the returns for the assessment year 2016-17 and it was rejected by the impugned order in Exhibit P-6.



5. The learned Counsel for the petitioner submits that since the petitioner had changed the Chartered Accountant, his phone number and e-mail address were not updated on the Income Tax Portal and, therefore, the communication regarding the filing defective returns was not received by the new Chartered Accountant and for that reason the petitioner could not cure the defects in the returns for the assessment year 2016-17. The learned Counsel for the petitioner however, submits that the petitioner had raised the grievance in respect of non-refund in 2019 itself and continues to raise her grievance and even she raised the grievance in the Public Grievance Portal of the Prime Minister's Office by filing complaint. She therefore submits that the application dated 31.05.2023 should be treated as in continuation of the letter dated 26.02.2019 in Exhibit P-1 and should not have been treated in isolation as filed only on 31.05.2023. I find some substance in the submission of the learned Counsel for the petitioner.

6. Mr. Christopher Abraham, learned Standing Counsel for the Income Tax Department opposed the said contention however, left to the discretion of the Court to pass necessary orders.



7. Considering the fact that the petitioner had raised his grievances as early as on 26.02.2019 and also approached the Public Grievance Portal of the Prime Minister's Office and in pursuance to which the petitioner was refunded Rs. 2,32,549 in respect of the two assessment years i.e. 2017-18 and 2018-19, I am of the view that the application dated 31.05.2023 should not be treated in isolation as it dates back to 26.02.2019 when, the petitioner raised her grievance for the first time. Thus, I view the application said to be on time. Hence the impugned order is set aside. The petitioner should be permitted to rectify the returns of income for the assessment year 2016-17. The petitioner should approach the Assessing Authority within a period of ten days from today and rectify the errors/defects in the returns. After the petitioner rectifies the errors, his claim for refund should be processed in accordance with the law.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn



APPENDIX OF WP(C) 23606/2023

PETITIONER'S EXHIBITS

- EXHIBIT P-1 TRUE COPY OF THE REQUEST LETTER DATED 26.02.2019 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT
- EXHIBIT P-2 TRUE COPY OF THE GRIEVANCE ACKNOWLEDGMENT NO 6639258, CREATED ON 14.7.2022, GENERATED ONLINE
- EXHIBIT P-3 THE TRUE COPY OF THE INTIMATION DATED 13.10.2022, COMMUNICATING REFUND, GENERATED THROUGH THE PG PORTAL ON LINE
- EXHIBIT P-4 TRUE COPY OF THE GRIEVANCE DESCRIPTION DETAILS FOR REGISTRATION NO. CBODT / E/2022/ 32242, DATED 29.12.2022
- EXHIBIT P-5 TRUE COPY OF THE REPRESENTATION DATED 31.05.2023 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXHIBIT P-6 TRUE COPY OF THE ORDER DATED 9.06.2023 FROM THE THE 1ST RESPONDENT , ALONG WITH INTIMATION LETTER DATED 19.6.2023