



2023:KER:75189

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945

WP(C) NO. 37648 OF 2023

PETITIONER/S:

M/S. BEST READY MIX CONCRETE
IV/566B, VELAKKODE, MUNDUR, THRISSUR, REPRESENTED
BY ITS PARTNER, K.M. AMEER, PIN - 680541

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENT/S:

- 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX
AAYAKAR BHAVAN, MANANCHIRA, KOZHIKODE, PIN -
673001
- 2 INCOME TAX OFFICER (HQ & TPS)
AAYAKAR BHAVAN, NORTH BLOCK, MANANCHIRA,
KOZHIKODE, PIN - 673001

BY ADVS.
KEERTHIVAS GIRI
ADV. P.G. JAYASHANKAR PGJ

OTHER PRESENT:

P.G. JAYASANKAR-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**J U D G M E N T**

The present writ petition has been filed impugning the order dated 18.10.2023 passed by the Principal Commissioner of Income Tax, Kozhikkode in Ext.P7 under Section 119(2)(b) of the Income Tax Act, 1961 ("Act", for short) rejecting the application of the petitioner for condonation of delay of one day in filing the income tax return for the assessment year 2021-22.

2. The order impugned, Ext.P7, would read as under:

"The assessee M/s.Best Ready Mix Concreted has filed a petition on 03.06.2022 to condone the delay in filing of return of income for AY-2021-22.

As per the instructions of CBDT CIRCULAR 9/2015 [F.NO.312/22/2015-OT], DATED 9-6-2015, on CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF CARRY FORWARD LOSSES UNDER SECTION 119(2)(b) the powers of acceptance/rejection of the application in case of such claims will be subject to Following conditions:

I. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared



and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

II. The correctness of the claim should be ascertained.

In the subject case, sufficient opportunities were given to the assessee to furnish evidences/details regarding the claims made. However, assessee failed to furnish the details/evidences called for.

In the absence of substantiating evidences related to the claims made by the assessee, the application is hereby rejected.”

3. Learned counsel for the petitioner submits that the power under Section 119(2)(b) of the Act is vested with the Central Board of Indirect Taxes and Customs and it delegates the Principal Commissioner/the Principal Chief Commissioner of Income Tax to condone the delay in filing return, on consideration given to the application filed by an assessee for not filing return on time. She further submits the Act does not give power to the Principal Chief Commissioner/the Principal



Commissioner of Income Tax to consider the merits of the claim of income, loss etc. The impugned order would disclose that the Principal Commissioner of Income Tax has not delineated the grounds for condoning the delay, but has rejected the application considering the merits of the claim of the petitioner. She further submits that such consideration is illegal and not authorised, as held by a Division Bench of this Court in **Daisy v. The Principal Commissioner of Income Tax**, in W.A.No.1420/2023 dated 26.9.2023.

4. On the other hand, Sri.P.G.Jayasankar, learned Standing Counsel for the Department, submits that the Principal Chief Commissioner has not considered the merits of the claim, but since the assessee did not produce or furnish substantiating evidences with regard to the claims made in the application, the Principal Commissioner of Income Tax rejected the application of the petitioner.

5. Section 119(2)(b) of the Act would read as



under:

"119. Instructions to subordinate authorities -

(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:

(2) without prejudice to the generality of the foregoing power,-

(a) xxx xxx xxx

(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, authorize 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."

6. On a perusal of Section 119(2)(b) of the Act, it is evident that the said section only empowers the Board to admit an application or claim for exemption, deduction, refund or any other



relief under the Act, after the expiry of the period specified by or under the Act for making such application or claim and deal with the same on merits, in accordance with law. The Board has delegated such power to the Principal Chief Commissioner of Income Tax/the Principal Commissioner of Income Tax vide its circular No.9/2015 dated 9.6.2015. A Division Bench of this Court had an occasion to consider the provisions of section 119(2)(b) of the Act and the said circular in the case of **Daisy** (*supra*), wherein the Court has been of the opinion that the Circular empowers the Principal Chief Commissioner/the Principal Commissioner of Income Tax to consider the merits of the refund claim while exercising the delegated power under section 119(2)(b) of the Act, which would amount to circumvent the provisions of the Act. It has been further held that the Principal Chief Commissioner or the Principal Commissioner of Income Tax has no power to consider the merits of the refund application and what is required to be



considered is the merits of the application for condonation of delay only.

7. Considering the provisions of Section 119(2)(b) of the Act and the Circular dated 9.6.2015 aforesaid, the order impugned herein, Ext.P7, is unsustainable and the same is hereby set aside. The writ petition stands allowed. The matter is remitted back to the file of the Principal Commissioner of Income Tax to pass fresh orders on the application of the petitioner-assessee for condonation of delay in filing the return. While considering the said application for condonation of delay, the Principal Commissioner is not required to go into the merits of the claim of the petitioner.

Pending interlocutory application, if any, in the present writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE



WP (C) NO. 37648 OF 2023

APPENDIX OF WP (C) 37648/2023

PETITIONER EXHIBITS

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| Exhibit P1 | COPY OF DISCHARGE SUMMARY OF ASTER MEDICITY HOSPITAL IN RELATION OF SRI. ABDUL HAMEED, PETITIONER'S MANAGER DTD. 15-11-2021 |
| Exhibit P2 | COPY OF CIRCULAR NO. 9/2015 (F.NO.312/22/2015-OT) ISSUED BY THE BOARD DTD. 09-06-2015 |
| Exhibit P3 | COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 02-06-2022 |
| Exhibit P4 | COPY OF LETTER ISSUED BY THE 2ND RESPONDENT DTD. 23-05-2023 |
| Exhibit P5 | COPY OF LETTER SUBMITTED BY THE PETITIONER WITH THE ACKNOWLEDGEMENT RECEIVED FROM THE DEPARTMENT DTD. 30-05-2023 |
| Exhibit P6 | COPY OF ACKNOWLEDGEMENT FROM THE PORTAL OF THE DEPARTMENT DTD. NIL |
| Exhibit P7 | COPY OF ORDER ISSUED BY THE 1ST RESPONDENT 18-10-2023 |
| Exhibit P8 | COPY OF JUDGMENT IN WA NO. 1420/23 OF THIS HON'BLE COURT DTD. 26-09-2023 |