# R.Pannerselvam vs The Principal Commissioner Of Income

**ID:** F2J-C-2590 **Court:** Madras High Court
**Case:** W.P.No.7433 of 2019 **Date:** 2021-11-23



[Cites 23, Cited by 0]

Madras High Court R.Pannerselvam vs The Principal Commissioner Of Income ... on 23 November, 2021 Author: C.Saravanan Bench: C.Saravanan W.P.No.7433 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.7433 of 2019 and W.M.P.No.8101 of 2019

(Through Video Conferencing)

R.Pannerselvam ... Petitioner

Vs

1. The Principal Commissioner of Income Tax, Central-1, 108, Uthamar Gandhi Salai, Chennai-34.

2. Assistant Commissioner of Income Tax, Central Circle-3(3), Chennai. ... Respondents Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Order C.No.1592/PCIT/C-1/03/2018-19 dated 07/12/2018 and quash the same and direct the respondents to return the sum of Rs.36,94,940/- paid as TDS and TCS in the account of the petitioner for the assessment year 2011-12.

For Petitioner : Mr. T. Vasudevan For Respondents : Mr. A.P.Srinivas Sr. Standing Counsel https://www.mhc.tn.gov.in/judis 1/18

W.P.No.7433 of 2019

ORDER

This writ petition has been filed to quash the impugned order dated 07.12.2018 passed by the respondent rejecting the request of the petitioner for refund of sum of Rs. 36,94,940/- which was deducted as tax.

2. The refund claim pertains to the assessment year 2011-12. The facts on record indicate that the petitioner had not filed returns either under Section 139(1) of "Income Tax Act, 1961" ( "IT Act, 1961" for the sake of brevity) on 31.10.2011 or within the extended period under Section 139 (4) of the said Act. After the expiry of the period of limitation for filing the returns, the petitioner filed an application on 19.11.2018 under Section 119 of the IT Act, 1961 for condoning the delay in filing the return so as to claim refund of the excess amount of tax.

3. According to the petitioner, after adjustment of the tax liability for the aforesaid assessment year amounting to Rs.8,61,892, the petitioner was entitled for a refund of 37,20,790/- [45,82,682-8,61,892]. It is submitted that the respondent has wrongly reached the request of the petitioner.

4. Appearing on behalf of the petitioner, learned counsel for the https://www.mhc.tn.gov.in/judis 2/18 W.P.No.7433 of 2019 petitioner submits that the reason given in the impugned order stating that the application was beyond the time prescribed under Board's Circular No. 9/2015 issued in F.No.312/22/2015-OT dated 09.06.2015 with regard to condonation of delay refund claim under Section 119 (2) (b) is incorrect inasmuch as the return itself was filed for the first time on 26.02.2015 beyond the period of limitation, and therefore, the petitioner should have been allowed to file the returns for the purpose of refund under Section 237 of the IT Act, 1961. It is submitted that Section 237 of the Act is an independent provision and is not dependent on the returns and therefore, the fate of the refund claim of the petitioner cannot be tied down to the above circular supra. It is, therefore, submitted that this writ petition deserves to be allowed and impugned order is liable to be quashed with consequential direction.

5. Learned counsel for petitioner has relied on the following two decisions of this Hon'ble High Court and that of the Hon'ble Delhi High Court in the following cases :-

(i) R.Seshammal Vs. Income Tax Officer and Another, https://www.mhc.tn.gov.in/judis 3/18 W.P.No.7433 of 2019 1998 (9) TMI 56- MADRAS HIGH COURT.

(ii) G.V.INFOSUTIONS PVT.LTD.Vs.DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 10(2), & ANR 2019 (2) TMI 177-DELHI HIGH COURT.

6. Learned counsel for the petitioner has also placed reliance on the few passages from judgement of R.Seshammal Vs. Income Tax Officer and Another, 1998 (9) TMI 56- MADRAS HIGH COURT which is reproduced below:-

" 4. The argument advanced by counsel for the Revenue that Section 237 of the Act does not permit such refund being made is not supported by the terms of that section. Section 237 of the Act provides that if monies have been paid in excess of the amount for which the payer is "properly chargeable under the Act for that assessment year" such person is entitled to get the refund of the excess amount. The entire amount paid by the assessee was in excess of the amount which was actually chargeable. The assessee was, therefore, entitled to have refund of the excess amount.

5. Section 237 of the Act does not specify that an assessment order must be made and that some amount must be found to be payable as tax and that some amount in excess of that amount should have been paid. It is not a pre-condition for invoking that section that some liability for tax must have

been cast upon the person claiming refund."

https://www.mhc.tn.gov.in/judis 4/18 W.P.No.7433 of 2019

7. G.V.INFOSUTIONS PVT.LTD.Vs.DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 10(2), & ANR 2019 (2) TMI 177-DELHI HIGH COURT a reference was made to the following passage:-

"9. The statute or period of limitation prescribed in provisions of law meant to attach finality, and in that sense are statutes of repose; however, wherever the legislature intends relief against hardship in cases where such statutes lead to hardships, the concerned authorities - including Revenue Authorities have to construe them in a reasonable manner. That was the effect and purport of this court's decision in Indglonal Investment & Finance Ltd. (supra). This court is of the opinion that a similar approach is to be adopted in the circumstances of the case."

8. Opposing the prayer for the relief, learned counsel for the respondent submits that the petitioner is a regular income assessee and is not a novice. It is submitted that the petitioner is in Hotel Business of ought to filed returns either under Section 139 (1) of IT Act, 1961 in time or within the extended period under Section 139 (4) of the IT Act, 1961.

9. It is submitted that in this case, admittedly the respective dates expired on 31.10.2012 and 31.03.2013 and therefore, the attempt of the petitioner to file a return on 26.02.2015 was of no consequence. It is submitted that the assessment is deemed to have been completed and there is no question of entertaining afresh return under Section 139 https://www.mhc.tn.gov.in/judis 5/18 W.P.No.7433 of 2019 beyond the period of limitation and therefore, the consequential refund also cannot be entertained in the light of the above Board's Circular.

10. Learned counsel for the respondents further submits that the petitioner has also not given any reasons as to how the respondent can ignore Section 119 (2) (b) of the IT Act, 1961. It is further submitted that petition under Section 119 of the IT Act, 1961 was filed beyond six years period and therefore, even on this count the impugned order cannot be interfered and therefore, the writ petition was liable to be dismissed.

11. Finally, learned counsel for the respondents also submitted that petitioner could have resorted to other avenues available under law to redress his grievance. It is submitted that petitioner could have approached to Director General of Income Tax, Tamil Nadu and Puducherry or the Central Board of Direct Taxes, New Delhi to redress his grievance before approaching this Court. It is, therefore, submitted that since the petitioner has these alternatives, the writ petition filed was liable to be dismissed as premature.

12. Learned counsel for respondent, further submits that two https://www.mhc.tn.gov.in/judis 6/18 W.P.No.7433 of 2019 decisions cited by learned counsel for writ petitioner are not applicable facts by the present case. It is submitted that in the decision of this High Court in R.Seshammal Vs. Income Tax Officer and Another, 1998 (9) TMI 56- MADRAS HIGH COURT. Claim amount was crystallized. It is submitted that the deemed assessment can not be reopened as the time for reopening the assessment has got over and therefore the question granting refund to the petitioner also will not arise.

13. Heard learned counsel for the petitioner and for the respondents, I have perused the affidavit filed and counter affidavit by the respondents. I have also perused the circular cited above dated issued under Section 119 of the Income Tax Act, 1961 and the two decisions cited by the learned counsel for the petitioner. Section 237 of the IT Act, 1961 is a substantiate provision for refund of the income tax paid by mistake under the Income Tax Act, 1961. 13 A. Section 237 deals with refund of excess tax paid by an assessee of the IT Act, 1961 which reads as under: Section 237:- If any person or assessee satisfies the assessing officer that the amount of the tax paid by him or paid by any person on his behalf during any previous assessment year exceeds the amount with which he is properly chargeable under the act for that year, he https://www.mhc.tn.gov.in/judis 7/18 W.P.No.7433 of 2019 is entitled to refund of excess amount paid.

The authority will also after considering the facts and circumstances of the case issue order for the refund of excess tax paid by the assessee. It is right of the assessee to demand excess tax paid over as tax assessed.

13 B. Reading of Section 237 makes it clear that there is no limitation prescribed for filing a refund of income tax. As far as filing of returns beyond the period of limitation prescribed under Section 139 (1) and 139 (4) for efficient management of the work of assessment and collection of revenue, The Central Board of Direct Taxes may issue general or special order under Section 119 of the IT Act, 1961 which reads 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: Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any income- tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions.

2. Without prejudice to the generality of the foregoing power,- https://www.mhc.tn.gov.in/judis 8/18 W.P.No.7433 of 2019 (a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147, 148, 154, 155, sub- section (1A) of section 201, sections 210, 211, 234A, 234B , 234C , 271 and 273 or otherwise, general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income- tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information; (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, authorise any income- tax authority, not being a Deputy Commissioner (Appeals) or 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. "

14. The Central Board of Direct Taxes has issued circulars Under Section 119 of the IT Act, 1961 from time to time. For the period in dispute, the relevant circular was issued on 09/06/2015 bearing CIRCULAR 9/2015 F.NO.312/22/2015-OT which is reproduced below:-

"In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income-tax Act, (the Act) the present Circular is being issued containing comprehensive https://www.mhc.tn.gov.in/judis 9/18 W.P.No.7433 of 2019 guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

2. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made.This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

4. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT 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 Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

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6. A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsJT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

(i) The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

(ii) No interest will be admissible on belated claim of refunds.

(iii) The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

7. In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

8. This circular will cover all such applications/claims for condonation of delay under section 119(2xb) which are pending as on the date of issue of the Circular.

9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board."

15. A reading of the above Circular issued Section 119 (2) (b) as extracted above indicates that avoiding genuine hardship The Board may in any case or by general or special order authorize any income authority https://www.mhc.tn.gov.in/judis 11/18 W.P.No.7433 of 2019 not being Commissioner Appeals to admit an application or for exemption, deduction, refund or any claim under this Act after the expiry of period of limitation specified for making such application or claim and deal with the same on merits in accordance with law. Further, as per Para 3 of the Circular, "No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made.This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible".

16. The facts on record indicate that the petitioner, being an income tax assessee had failed to file returns in time. The second respondent or the Jurisdictional Assessing Officer ought to have issued notice under Section 148 of the IT Act, 1961 on or before 31.03.2018 for the assessment year 2011-12 as there would have been a prima-facie https://www.mhc.tn.gov.in/judis 12/18 W.P.No.7433 of 2019 presumption that income had escaped assessment for the aforesaid assessment year. The petitioner initially made an attempt to file a return belatedly before the second respondent on 26.02.2015. This return naturally could not have been accepted as it was beyond the period of limitation prescribed under Section 139 of the IT Act, 1961.

17. If a notice under Section 148 of the IT Act, 1961 was issued to the petitioner, a proper assessment would have been completed. Such assessment would have finally determined whether the petitioner was indeed liable to pay tax or was entitled to refund of income tax deducted at source credit by the persons who made payment to the petitioner during the relevant financial year.

18. In this case, the petitioner has approached the first respondent under Section 119 of the IT Act, 1961 on 29.08.2018 with a request for adjustment of the tax Directorate source and for refund of the amount.

19. It would have been different if the application under Section 119 was made to claim exemption for the first time after the returns were https://www.mhc.tn.gov.in/judis 13/18 W.P.No.7433 of 2019 filed in time and after the period prescribed for revising the assessment had expired, where the assessment had attained finality. Where no return was filed, it was incumbent on the part of the second respondent or the Jurisdictional Assessing Officer as was expected to have issued a notice under Section 148 of the IT Act, 1961 to the petitioner within the time prescribed under the Act, in which case, the question of the petitioner filing an application before the first respondent under Section 119 of the IT Act, 1961 would have arisen at all.

20. Since the law mandates a particular thing to be done in a particular manner, it was incumbent on the part of the second respondent or the Jurisdictional Assessing Officer ought to have issued a notice under Section 148 of the IT Act, 1961, to determine the tax liability of the petitioner. As this was not done, case deserves to be remitted back to the second respondent to first finalize the assessment of the petitioner for the assessment year 2011-12 within a period of three months from the date of receipt of copy of this order. Failure to issue a notice under Section 148 of the IT Act, 1961, cannot be to the prejudice of the petitioner, if ultimately it is found that petitioner was entitled to a refund. However, liberty is https://www.mhc.tn.gov.in/judis 14/18 W.P.No.7433 of 2019 given to penalise the petitioner for failure to file returns in time and for levy of interest if any.

21. Respondents are therefore, directed to examine the refund claim independently and pass appropriate orders within a period of three months from the date of receipt of copy of this order.

22. The second respondent or the Jurisdictional Assessing Officer is, therefore, directed to first pass an assessment order within a period of three months from the date of receipt of copy of this order. It is found that petitioner was indeed entitled to refund of the tax paid in excess, such refund shall be made within a period of three months thereafter, dully appropriating the amount out such refund towards penalty if any. Under the said Act.

Thus the writ petition is allowed with the above directions. There shall be no order as to costs. Connected miscellaneous petition is also closed.

23.11.2021 https://www.mhc.tn.gov.in/judis 15/18 W.P.No.7433 of 2019 Index: Yes/ No Internet : Yes/No Speaking/Non-speaking Order nst To

1. The Principal Commissioner of Income Tax, Central-1, 108, Uthamar Gandhi Salai, Chennai-34.

2. Assistant Commissioner of Income Tax, Central Circle-3(3), Chennai. https://www.mhc.tn.gov.in/judis 16/18 W.P.No.7433 of 2019 C.SARAVANAN,J. nst W.P.No.7433 of 2019 and W.M.P.No.8101 of 2019 https://www.mhc.tn.gov.in/judis 17/18 W.P.No.7433 of 2019 23.11.2021 https://www.mhc.tn.gov.in/judis 18/18