Mrs.Lucy John vs The Income-Tax Officer

ID: F2J-C-2676 **Court:** Kerala High Court
Case: WP(C).No. 27644 of 2010 (E) **Date:** 2009-10-10

Kerala High Court Mrs.Lucy John vs The Income-Tax Officer on 10 October, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY,THE 14TH DAY OF OCTOBER 2014/22ND ASWINA, 1936

WP(C).No. 27644 of 2010 (E) ----------------------------

PETITIONER(S): --------------------------

MRS.LUCY JOHN, THATTALA HOUSE, II CONVENT ROAD, 2/80, IFL THOTTAKKATTUKARA P.O., ALUVA - 683 108 (KERALA).

BY ADVS.SRI.KMV.PANDALAI SMT.S.HEMALATHA

RESPONDENT(S): ----------------------------

1. THE INCOME-TAX OFFICER, WARD-2, ALUVA.

2. THE COMMISSIONER OF INCOME-TAX-II, C.R.BUILDINGS, KOCHI - 682 018.

3. THE CHIEF COMMISSIONER OF INCOME-TAX-II, COCHIN, C.R.BUILDINGS, KOCHI - 682 018.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27644 of 2010 (E)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF ACKNOWLEDGEMENT FOR A.Y 2007-08.

EXT.P2: COPY OF ACKNOWLEDGEMENT FOR A.Y 2008-09.

EXT.P3: COPY OF PETITION DATED 10.10.2009 FILED BY THE PETITIONER.

EXT.P4: COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT ON 30.06.2010.

EXT.P5: COPY OF BOARD'S ORDER DATED 12.10.93 & 26.10.93 AS REPORTED IN 204 ITR 154 & 155.

EXT.P6: COPY OF PETITION DATED 30.07.2010 FILED BEFORE THE 3RD FOR ASSESSMENT YEAR 2007-08.

EXT.P6(a): COPY OF PETITION DATED 30.07.2010 FILED BEFORE THE 3RD FOR ASSESSMENT YEAR 2008-09.

EXT.P7: COPY OF THE COMMUNICATION DATED 04.08.2010 RECEIVED FROM THE 3RD RESPONDENT.

EXT.P7(a): COPY OF BOARD'S INSTRUCTION NO.13/200 DATED 22.12.2006 PROVIDED BY THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A TO JUDGE

LSN

A.K.JAYASANKARAN NAMBIAR, J. ------------------------------------ W.P.(C).No.27644 of 2010 -- Dated this the 14th day of October 2014

J U D G M E N T

The petitioner is aggrieved by Ext.P4 order of the second respondent, whereby his petition for condonation of delay, in filing the refund application for refund of excess tax paid for the assessment years 2007-08 and 2008-09, was rejected. It would appear that, in respect of the assessment years 2007-08 and 2008-09, the petitioner filed returns on 05.08.2009, declaring the total income of the petitioner for the previous years and also claiming refund in respect of excess tax deducted from the commission that was paid to her by the Life Insurance Corporation, of which she was an agent. In Ext.P4 order, the prayer of the petitioner for condonation of the delay in filing the refund application is seen rejected by relying on the medical certificate produced by the petitioner that showed that she had met with an accident in 2006 and was advised rest for a week at that point of time. It is the case of the petitioner that, as a matter of fact, she was not in a position to work for a considerable period of time after the date of the accident, although the medical certificate, that she was asked to produce before the second respondent, W.P.(C). No. 27644 of 2010 2 indicated only that she was required to take rest for one week. It is pointed out that although in Ext.P4 order, the delay in respect of refund claim filed for the assessment year 2008- 2009 is also not condoned, subsequently the second respondent granted the refund in respect of that assessment year, on finding that there was actually no delay that required to be condoned in respect of the refund claimed for that year. It is submitted that this sanctioning of refund for the assessment year 2008-2009, was not reflected in Ext.P4 order but, the petitioner was given the benefit of the refund in subsequent assessments. The challenge in the writ petition against Ext.P4 order is therefore confined to the assessment year 2007-08.

2. I have heard Sri K.M.V.Pandalai, learned counsel appearing for the petitioner and also Sri.Jose Joseph, learned Standing counsel appearing for Income Tax Department.

3. Considering the facts and circumstances of the case and the submissions made across the Bar, I find that in Ext.P4 order, the second respondent relies only on the medical certificate produced by the petitioner to find that her claim, that it was on account of the accident in August 2006, that she was disabled from filing the return for the assessment years W.P.(C). No. 27644 of 2010 3 under consideration, could not be believed. Thereafter, the second respondent proceeded to reject the petition for condonation of delay in filing the returns in respect of both the assessment years. On going through the provisions of Section 239 of the Income Tax Act r/w Sec.119 and Ext.P7 board circular issued by the Central Board of Direct Taxes, it is clear that the non condonation of the delay for the assessment year 2008-09, in Ext.P4 order, was clearly illegal since, going by the provisions referred above, as also the board circular, it was evident that the refund claim of the petitioner for the assessment year 2008-09 was filed within time and, therefore, had to be considered on merits. Although, the petitioner subsequently got the benefit of the refund in respect of the assessment year 2008-09, the fact remains that the non-consideration of this aspect in Ext.P4 indicates a non-application of mind by the second respondent while passing Ext.P4 order. The petitioner would, therefore, be justified in her contention that the second respondent did not apply his mind to the issue of condonation of delay in respect of the refund claim preferred for the assessment year 2007-08 also, in the light of the aforementioned provisions and board circular and also the fact that there was only a delay of W.P.(C). No. 27644 of 2010 4 126 days from the end of the period specified in Sec.239(2)(c) of the Income Tax Act. Under these circumstances, I am of the view that the second respondent should consider the refund application preferred by the petitioner, through the return filed on 05.08.2009, for the assessment year 2007-08 afresh after considering the material that the petitioner has to produce, to explain the delay in preferring the refund claim. The second respondent shall consider and pass fresh orders on the aforesaid refund application of the petitioner within a period of two months from the date of receipt of a copy of this judgement, after affording the petitioner an opportunity of being heard. The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR JUDGE lsn