(2011) 11 KL CK 0041

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15925, 15979 and 15985 of 2008

T.V. Hameed — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:
Income Tax Act, 1961 — Section 119(2)(b), 19(2)(b), 190(2)(b)
Limitation Act, 1963 — Section 5

Citation : (2012) 205 TAXMAN 83

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Sajith Kumar V. and K.R. Sudhakaran Pillai, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

1. The writ petitioners were the co-owners of a building leased out to the State Bank of Travancore, Calicut during the period 1998 to 2002 and are aggrieved by the orders passed by the Commissioner of Income Tax, Calicut by Exts. P1 and P2. The facts leading to the present dispute is that the petitioners with respect to the assessment years 1998-99 to 2001-02 (total 4 in number) failed to file returns of the income accrued on leasing out the premises to State Bank of Travancore. The returns were filed belated in the year 2005 and was later supported by an application for condonation of delay u/s 190(2)(b) of the Income Tax Act (for short Income Tax Act) in the year 2006, after the expiry of about an year, from the date of filing of return of income. The petitioners contend that all of them were abroad and one another co-owner residing in India was managing the affairs of the building. They further contend that the said person who was managing their affairs fell sick in the year 2002 and after prolonged illness succumbed to death in the year 2004. The application for condonation of delay is not produced in the instant proceedings. However, the counsel for the petitioners refers to Ext. P7 to buttress his arguments regarding the reasons stated for condonation of delay and acceptance of returns. Ext. P1 was the order by which

the plea of the petitioners were rejected and though a review was not provided, when the petitioners insisted for a personal hearing, in compliance with the principles of natural-justice the Commissioner thought it fit to hear the petitioners and passed Ext. P2 order again rejecting the claim. The counsel for the petitioners relying on Exts. P4, P5 and P6 would contend that they were issued with the same only on 28.2.2004 long after the assessment years and hence they were unable to file the returns and seek for refund of the amounts deducted from them as Tax Deducted at Source (TDS). Exts. P4, P5 and P6, I am afraid, are not TDS certificates and on being confronted with the same the petitioners counsel sought for time to produce the TDS certificates issued by the Bank. The petitioners counsel in all fairness produced the TDS certificate and has handed over the same across the Bar and I find that the same has been issued at the end of the respective assessment years. It cannot also be otherwise since the lessee of the said building was an associate bank of State Bank of India viz., State Bank of Travancore. The contention that TDS forms were not issued at the proper time, on the close of the assessment year therefore fails and the contention made by the revenue in that context appears to be correct. What remains is to examine Whether u/s 119(2)(b), the petitioners were entitled to the reliefs sought for. Section 119(2)(b) speaks of the powers of the Board (at the relevant time delegated to the Commissioner) by which genuine hardship can be avoided in any case or class of cases, to admit an application for claim for any exemption, deduction, refund or any other relief after expiry of the period specified by or under the Act. The counsel for the petitioner would place heavy reliance on the interpretation given to the said section by this Court reported in Pala Marketing Co-op. Socy. Ltd. Vs. Union of India (UOI) and Others, : (2008) 167 Taxman 238 (Ker). Interpreting Section 119(2)(b) this Court held Section 119(2)(b) is not just an incorporation of section 5 of the Limitation Act and it contemplates wider powers conferred on the Board to avoid genuine hardship to the assessee in such cases which the Board considers desirable or expedient. This Court has made it clear that what has to be considered is the genuine hardship of the party, no matter whatever the delay is irrespective of whether there is a meticulous explanation. I am in respectful agreement with the above proposition but however, going to the facts of the above case what has to be considered is the hardship projected by the petitioners and the genuineness of the same. As relied on by the petitioner Ext. P7 enumerates three reasons to elaborate the hardship to the petitioners in support of the application for condoning delay, which are extracted below:-

(i) Mr. T. Abdurahiman, one of the Co-owners, who was dealing with the bank for obtaining TDS certificates, died and as a result the TDS certificate could not be collected on time.

(ii) And also, when the bank issued TDS certificates, one consolidated TDS certificate was issued and therefore each Co-owner could not file his/her return of income on time.

(iii) The matter was taken up with the bank officials and subsequently, TDS certificate showing with the break up of each Co-owner share was given by the bank with considerable delay.

All the three grounds are with respect to the delay in issuance of TDS certificates. The first ground stated is that death of the co-owner who had been dealing with the affairs of the lease and who was collecting the rent. The assessment years in question were 1998-99 to 2001-02 and even on the showing of the petitioners the death of the co-owner who was handling the lease was in the year 2004. The further contention in the writ petition that he had been ailing for two years prior to that, also cannot be a reason since the previous year of the last assessment year involved was 2000-01. The second ground projected is that the break up of the amounts were not given by the Bank and hence each of the co-owners could not file separate returns for the periods in dispute. The separate share of each co-owners is a matter of agreement between the parties and the lessee has absolutely no say in the matter. The non-receipt of break up of the respective shares cannot be projected as a reason for not having filed returns on the close of the respective assessment years. The petitioner even as per the provisions contained in Section 119(2)(b) does not have a case with respect to the assessment year 1998-99 since the same is beyond six years and is beyond the scope of power conferred by Section 19(2)(b). Even for the later years, that is, 1999-2000 to 2001-02 I am of the opinion that hardship projected by the petitioners for condonation of delay is not genuine and cannot be countenanced.

In view of the above findings these writ petitions are dismissed. No order as to costs.

