

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 8<sup>TH</sup> DAY OF OCTOBER, 2021**

**BEFORE**

**THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV**

**WRIT PETITION No. 52305/2018 (T-IT)**

**Between:**

Sri. Devendra Pai  
S/o. Late Narasimha Pai  
No. 1012, "Udaya",  
2<sup>nd</sup> Cross, Vivekananda Circle,  
Mysore - 23.

... Petitioner

(By Sri. S. Shankar, Senior Advocate as Amicus Curiae  
Sri. S. Parthasarathi, Advocate)

**And:**

1. The Assistant Commissioner of  
Income Tax, Circle 1(2)  
Aayakar Bhavan, Mysore - 10.
2. The Pr. Commissioner of  
Income Tax, No.21/16,  
Aayakar Bhavan,  
Residency Road, Nazarbad,  
Mysore - 570 010.

... Respondents

(By Sri. E. I. Sanmathi, Advocate)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the order passed by respondent No.2 dated 17.02.2017 vide Annexure-G and direct respondent No.2 to consider the application filed by petitioner under Section 264 of the Act and condone the delay in filing the

same before him and grant exemption under Section 10(10C) of the Act as prayed for by petitioner vide Annexure-F.

This Writ Petition coming on for preliminary hearing in 'B' group this day, the Court, made the following:

**ORDER**

At the hearing of the petition, the Court felt that the equity of facts require assistance. Accordingly, Sri. S. Shankar, learned Senior counsel was requested to assist the Court.

2. Petitioner is a retired ICICI Bank employee and had availed of the Reserve Bank's Optional Early Retirement Scheme and was paid superannuation benefit of Rs.5,00,000/-. The certificate reflecting benefit made out to the petitioner as per the scheme is enclosed at Annexure-A.

3. Petitioner submits that return of income for the assessment year 2004-2005 was filed and in the return filed, petitioner did not claim the benefit of exemption as was available under Section 10(10C) of the Income Tax Act, 1961 (for short 'the Act'). The respondent issued intimation under Section 143(1) of the Act accepting the return filed

by the petitioner. The assessment order came to be passed, copy of which is enclosed at Annexure-D which reads follows:

*"The assessee filed return of income on 02.05.2005 declaring total income of Rs.14,12,000/-. In response to notice u/s 143(2) the assessee appeared and the case is discussed. The assessee has salary and ERS payments from ICICI Bank in addition to interest on deposits. No exemption u/s 10(10CC) is claimed but only relief u/s 89(1) is claimed."*

4. Petitioner, it is stated made a representation to the Assessing Officer by a letter dated 18.03.2008 which reads as follows:

*"With reference to the above subject as per the I.T. Appellate Tribunal Bangalore Bench 'A' The order is given on ERS and Voluntary Retirement Scheme U/S 10(10C) First 5 Lakhs or maximum 5 Lakhs amount Exempted from the Income Tax. But as per your order 5 Lakhs amount not taken into consideration of tax exemption. Once again I enclosed my tax calculation and order copy similar benefited taken from income tax department, Bangalore. Please once again*

*scrutinize the matter and issue the fresh order with refund of Rs.1,26,065/- along with the interest expected from your end."*

5. Subsequently, the petitioner has sought to file a revised return. Copy of the application seeking condonation of delay under Section 119(2)(b) of the Act is enclosed at Annexure-F.

6. The respondent - Authority by its order at Annexure-G has rejected the application for condonation of delay as time barred as return of income could not be condoned after 6 years from the end of the assessment year and thereby foreclosing the processing of revised return.

7. Petitioner has filed the present writ petition and has challenged the validity of the order passed. It is further contended that the letter dated 18.03.2008 which was filed, in effect, is an application for rectification and could have been considered by the Assessing Officer while pointing out that the Assessing Officer in the Assessment Order has

clearly opined that the exemption under Section 10(10C) of the Act could not be granted as no exemption was claimed. It is submitted that such observation in the assessment order could be construed to be an error apparent insofar as the Assessing Officer has declined the exemption that could have been availed of on the sole ground that exemption under Section 10(10C) was not available.

8. Reliance is placed on the judgment of the Apex Court in the case of ***L. HIRDAY NARAIN vs. INCOME TAX OFFICER - (1970) 78 ITR 26*** and attention is drawn to the observation of the Apex Court wherein the Apex Court has observed as follows:

“Exercise of power to rectify an error apparent from the record is conferred upon the Income Tax Officer in aid of enforcement of a right. The income tax officer is an officer concerned with assessment and collection of revenue and the power to rectify the order of assessment conferred upon him is to ensure that injustice to the assessee or to the revenue may be avoided. It is implicit in the nature of the power and its

entrustment to the authority invested with quasi-judicial functions under the Act, that to do justice it shall be exercised when a mistake apparent from the record is brought to his notice by a person concerned with or interested in the proceeding. The High Court was, in our judgment, in error in assuming that exercise of the power was discretionary and the income-tax officer could, even if the conditions for its exercise were shown to exist, decline to exercise the power."

9. Reliance is also placed on the judgment of the Madras High Court in the case of ***RAMCO CEMENT DISTRIBUTION CO. PVT. LTD. vs. DEPUTY COMMERCIAL TAX OFFICER – 1974 33 STC 180 Mad.*** to contend that under similar factual matrix, the Madras High Court has granted relief after noticing the judgment in the case of ***L. HIRDAY*** (Supra).

10. Learned counsel for the Department submits that the case under Section 154 is not made out and the question of processing the revised return requires hurdle of limitation to be crossed.

11. Learned Senior counsel for the petitioner submits that insofar as the letter dated 18.03.2008 is concerned, prima facie the same does have the ingredients of rectification application.

12. Heard both sides.

13. The fact that the assessment order observes regarding exemption under Section 10(10C) of the Act, which indicates that the Assessing Officer was aware of non-claiming of the exemption. If the judgment of the Apex Court in the case of **L. HIRDAY** (Supra) and the decision of the Madras High Court in the case of **RAMCO CEMENT** (Supra) are taken note of, prima facie an order to consider the letter of 18.03.2008 as the rectification application and to pass an order appears to be a legally justifiable order. However, learned counsel for the respondent would point out that no case is made out for rectification as the mistake relates to a mistake in non-claiming of an exemption, which

is a mistake at the end of the assessee and has nothing to do with the passing of the assessment order.

14. Taking note of the peculiar facts of the case, the fact remains that the entitlement of exemption under Section 10(10C) of the Act was noticed by the Assessing Officer. In fact the petitioner had also sought relief of rectification by way of letter dated 18.03.2008. As no order appears to have been passed on the letter of 18.03.2008, the petitioner decided to seek for condonation of delay to file a revised return by an application under Section 119(2)(b) of the Act. If an order had been passed as regards the rectification application, the assessee may have got relief at that end itself. As no order was passed, the assessee then decided to explore the possibility of filing a revised return.

15. Unfortunately, the assessee's application under Section 119(2)(b) has been rejected on the ground that the same was filed beyond the period of 6 years, while



observing that the Circular 9/2015 dated 09.06.2015 does not permit condoning the delay beyond 6 years.

16. The Circular No.014 (XL-35) dated 11.04.1955 provides as follows:-

*"The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasise that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."*

*emphasis supplied*

17. Keeping in mind the above and the peculiar facts of the case, including that letter that could be construed to be a rectification application is not decided, noticing the merits of the claim for exemption, a fit case is made out for consideration of the revised return on its merits.

18. Accordingly, it would be appropriate to set aside the order of 119(2)(b) and condone the delay. It is also to be noticed that the reasons assigned while seeking condonation of delay are also satisfactory.

19. Accordingly, the impugned order at Annexure-G dated 17.02.2017 is set aside, the delay is condoned and the application under Section 119(2)(b) of the Act is allowed. It is however clarified that as regards to the grant of refund, eventually in light of the delay, there would be exclusion of interest on the amount of refund. It is also clarified that the order is passed taking note of the peculiar facts and circumstances of the case and accordingly, may not be considered to have laid down the law as regards the aspect of condonation of delay under Section 119(2)(b) of the Act or on other issues dealt with herein.

20. The Court places on record the appreciation of assistance by the Amicus Curiae.

Accordingly, the writ petition is ***disposed off***.

**Sd/-  
JUDGE**

VP