

THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THISTHE 11<sup>TH</sup> DAY OF JUNE, 2009

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

WRIT PETITION No 12317 OF 2009 (T-IT)

BETWEEN

1 M/S SRI RAJESWARI COTTON GINNING  
AND PRESSING INDUSTRIES  
REPTD. BY ITS PARTNERS  
SRI MATADA HATI,  
P B RD,  
CHITRADURGA

... PETITIONER.

(By Sri R RAMA MURTHY, ADV. )

AND

1 THE COMMISSIONER OF INCOME TAX  
PARK VIEW BUILDING  
P J EXTENSION, 4TH MN  
DAVANGERE

... RESPONDENT.

(By Sri ARAVIND, ADV. FOR  
SRI M V SESHACHALA, ADV. )

THIS W.P FILED UNDER ARTICLES 226 AND 227 OF THE  
CONSTITUTION, PRAYING TO QUASH THE ORDER OF THE  
RESPONDENT DATED 19.08.2008 PASSED U/S.119(2)(B) OF  
THE ACT (ANNEXURE C)AND DIRECT THE RESPONDENT TO  
CONDONE THE DELAY IN FILING THE RETURN OF INCOME  
FOR THE ASSESSMENT YEAR 2002-2003.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner assessee is a partnership firm. Returns were filed for the assessment year 2002-03 on 31.3.2005. The relevant date for filing of the return for the assessment year 2002-03 was 31.7.2002 under section 139(1) of the Income Tax Act, 1961. Since the return was filed on 31.3.2008 beyond the period prescribed under section 139(4) of the Act, an application/petition was filed for condoning the said delay. A petition was made to the respondent. The respondent pursuant to the impugned order at Annexure-C has declined to condone the delay on the ground that it is a ruse by the petitioner to avoid payment of additional tax, if after scrutiny it is found that he has to pay the additional tax.

2. Mr. Ramamurthy, learned counsel appearing for the petitioner submits that the reasons are beyond the control of the firm, in as much as, the partner of the firm was suffering



from bilateral severe osteo arthritis of both knee joint and could not file the returns in time.

3. Mr. Aravind, learned counsel appearing for the respondent submits that the respondent was justified in rejecting the application for condonation of delay, in as much as, that was only to avoid payment of additional tax if the petitioner is found due. He has also made available an unreported ruling of this court in the case of Kamala Bai vs. Central Board of Direct Taxes in W.P. No. 13171/07 to buttress his contention.

4. On the question of delay, it is to be noticed that there was no reason for the respondent to outright reject the application for condonation of delay. Even though section 5 of the Limitation Act is not applicable to the present proceeding, the concept thereof is required to be taken note of, in as much as, sufficient cause is required to be liberally construed. In this regard reliance can be placed on the



certificate which is issued by the doctor. Hence I am of the view that the delay is required to be condoned.

5. In so far as the apprehension of Mr. Aravind, it is to be noticed that Mr. Rama Murthy learned counsel for the petitioner submits that he would file a memo in this court on behalf of the petitioner that the petitioner will abide by the assessment order to be passed by the authority. If this court so directs the authorities to pass an assessment order and if the petitioner is aggrieved they will avail the statutory remedy and will not plead limitation for passing such an order. Having regard to the submission made by Mr. Rama Murthy, I am of the view that the apprehension of Mr. Aravind learned counsel can be set at rest.

6. Consequently, the following order is passed:

Petition is allowed. The impugned order at Annexure-C stands quashed. The delay is condoned. As observed in the preceding paragraph, a memo shall be filed by Mr.



Ramamurthy, learned counsel for the petitioner, within four weeks in this court.

Petition stands disposed of accordingly.

Sd/-  
Judge

vge