

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 4th DAY OF JANUARY 2010

BEFORE

THE HON'BLE MR. JUSTICE B.S.PATIL

WRIT PETITION NO.36406 OF 2009 (T-IT)

BETWEEN :

SMT.VISHALAKSHI
W/O ANANTHARAM K.S.
AGE: 63 YEARS
OCC: EX-EMPLOYEE OF RBI
BANGALORE, R/O NO.75
3RD CROSS, P & T COLONY
R.T.NAGAR,
BANGALORE - 560 032 ... PETITIONER

(BY SRI MALLAHA RAO, ADVOCATE FOR
SRI S. PARTHASARATHI, ADVOCATE)

AND :

THE COMMISSIONER OF INCOME
TAX, BANGALORE V, ROOM NO.301
HMT BHAVAN, BELLARY ROAD
BANGALORE - 560 032 ... RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE FOR
SRI M.V.SESHACHALA, ADVOCATE)

This writ petition is filed under Article 226 and 227 of the Constitution of India praying to issue a writ in the nature of certiorari quashing the respondent Commissioner's letter in the form of order dated 31.1.08 for the Assessment year 2004-05 relating to S.119(2)(b) vide Ann-G and etc.

This petition coming on for preliminary hearing in 'B' group this day, the court made the following :

ORDER

In this writ petition, petitioner is challenging the communication dated 31.01.2008 issued by the Income Tax Officer (Technical) acting for the Commissioner of Income Tax, Bangalore, informing the petitioner that the application filed by him under section 119(2)(b) for condonation of delay in filing the revised return for the assessment year 2004-05 has been rejected.

2. The petitioner had filed a revised return of his income for the assessment year 2004-05 on 21.08.2006 beyond the due date, claiming exemption under section 10(10C) of the Income Tax Act, in a sum of Rs.5,00,000/- and thereby seeking refund of Rs.1,65,000/- paid by him as tax. Petitioner had filed an application seeking condonation of delay for filing the revised return. Without considering the reasons assigned for the delay and without also examining the



matter in its proper perspective, the respondent has chosen to reject the application for condonation of delay on the ground that the case of the petitioner was not fit for condonation. While coming to such a conclusion reference is made to the instructions given by Central Board of Direct Taxes, stating that the employees who retired on OERS scheme of the RBI were not eligible for claiming exemption under section 10(10C) of the Income Tax Act.

3. A perusal of the impugned communication discloses that neither there is any application of mind to the grounds urged by the petitioner for condonation of delay nor to the merits of the case. The respondent authority has to first examine the case made out by the petitioner for condonation of delay. After condoning the delay, the matter could be examined on merits by providing reasonable opportunity in accordance with law. Since the respondent has not followed this



procedure, the impugned communication deserves to be set aside.

4. Accordingly, the writ petition is partly allowed.

Impugned communication Annexure-G is quashed.

A direction is issued to the respondent to reconsider the matter afresh in the light of the observations made above.

Sd/-
JUDGE

RV