Kaizen Projects and Constructions (Since Dissolved) vs the Principal Commissioner of Income Tax

Kaizen Projects and Constructions (Since Dissolved) vs the Principal Commissioner of Income Tax

SooperKanoon Citation : sooperkanoon.com/1405130

Court : Kerala

Decided On : Nov-24-2023

Judge : Honourable Mr. Justice D. K. Singh

Appeal No. : WP(C)/37637/2023

Appellant : Kaizen Projects and Constructions (Since Dissolved)

Respondent : The Principal Commissioner of Income Tax

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945 WP(C) NO. 37637 OF 2023 PETITIONER/S: KAIZEN PROJECTS AND CONSTRUCTIONS (SINCE DISSOLVED) FLAT NO.5, ASHTAPADI APARTMENTS, THIRUVAMBADI ROAD, THRISSUR REPRESENTED BY ITS SURVIVING PARTNER, MRS. RATNAM KRISHNAN, PIN - 680022 BY ADVS. ANIL D. NAIR TELMA RAJU AADITYA NAIR RESPONDENT/S: 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW

ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 2 THE INCOME TAX OFFICER (TECH.) OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 3 COMMISIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 BY ADVS. KEERTHIVAS GIRI ADV. P.G. JAYASHANKAR PGJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.11.2023, ALONG WITH WP(C) Nos.37665, 37751, 37779 & 37794 OF 2023 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945 WP(C) NO. 37665 OF 2023 PETITIONER/S: KAIZEN PROJECTS AND CONSTRUCTIONS (SINCE DISSOLVED), FLAT NO.5, ASHTAPADI APARTMENTS THIRUVAMBADI ROAD, THRISSUR. REPRESENTED BY ITS SURVIVING PARTNER, MRS. RATNAM KRISHNAN, PIN - 680022 BY ADVS. ANIL D. NAIR TELMA RAJU AADITYA NAIR RESPONDENT/S: 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 2 THE INCOME TAX OFFICER (TECH.), OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX, AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001. 3 COMMISIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 BY ADVS. KEERTHIVAS GIRI ADV. P.G. JAYASHANKAR PGJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

24.11.2023, ALONG WITH WP(C).37637/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945 WP(C) NO. 37751 OF 2023 PETITIONER/S: KAIZEN PROJECTS AND CONSTRUCTIONS (SINCE DISSOLVED) FLAT NO.5, ASHTAPADI APARTMENTS THIRUVAMBADI ROAD, THRISSUR. REPRESENTED BY ITS SURVIVING PARTNER, MRS. RATNAM KRISHNAN, PIN - 680022 BY ADVS. ANIL D. NAIR TELMA RAJU AADITYA NAIR RESPONDENT/S: 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 2 THE INCOME TAX OFFICER (TECH.) OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001. 3 COMMISIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 BY ADVS. KEERTHIVAS GIRI ADV. P.G. JAYASHANKAR PGJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.11.2023, ALONG WITH WP(C).37637/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945 WP(C) NO. 37779 OF 2023 PETITIONER/S: KAIZEN PROJECTS AND CONSTRUCTIONS (SINCE DISSOLVED) FLAT NO.5,

ASHTAPADI APARTMENTS THIRUVAMBADI ROAD, THRISSUR-680 022. REPRESENTED BY ITS SURVIVING PARTNER, MRS. RATNAM KRISHNAN, PIN - 680022 BY ADVS. ANIL D. NAIR TELMA RAJU AADITYA NAIR RESPONDENT/S: 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 2 THE INCOME TAX OFFICER (TECH.) OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001. 3 COMMISIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 BY ADVS. KEERTHIVAS GIRI ADV. P.G. JAYASHANKAR PGJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.11.2023, ALONG WITH WP(C).37637/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945 WP(C) NO. 37794 OF 2023 PETITIONER/S: KAIZEN PROJECTS AND CONSTRUCTIONS (SINCE DISSOLVED) FLAT NO.5, ASHTAPADI APARTMENTS THIRUVAMBADI ROAD, THRISSUR. REPRESENTED BY ITS SURVIVING PARTNER, MRS. RATNAM KRISHNAN, PIN - 680022 BY ADVS. ANIL D. NAIR TELMA RAJU AADITYA NAIR RESPONDENT/S: 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 2 THE INCOME TAX OFFICER (TECH.) OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXURE BUILDING, MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 3 COMMISIONER OF INCOME

TAX AAYAKAR BHAVAN, NORTH BLOCK NEW ANNEXURE BUILDING MANANCHIRA, KOZHIKODE, KERALA, PIN - 673001 BY ADVS. KEERTHIVAS GIRI ADV. P.G. JAYASHANKAR PGJ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.11.2023, ALONG WITH WP(C).37637/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

[WP(C) Nos.37637, 37665, 37751, 37779 & 37794 of 2023] The very same petitioner in these writ petitions is the surviving partner of a partnership firm, which was dissolved on account of death of its Managing Partner. The petitioner herein, aged above 80 years, challenges Exts.P7 orders dated 20.10.2023 passed by the Principal Commissioner of Income Tax, Kozhikkode under Section 119(2)(b) of the Income Tax Act, 1961 (Act, for short) rejecting her applications for condonation of delay in filing income tax returns for the assessment years 2017-18, 2018-19, 2019-20, 2020-21, 2021-22. The reason stated in the impugned orders, Exts.P7, for rejecting the applications for condonation of delay in filing the returns is one and the same, which reads as under:

> xxx xxx xxx As per the instructions of CBDT CIRCULAR 9/2015 [F.NO.312/22/2015-OT], DATED 9-6-2015, on CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF CARRY FORWARD LOSSES UNDER SECTION 119(2)(b) the powers of acceptance/rejection of the application in case of such claims will be subject to Following conditions:

I. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits. II. The correctness of the claim should be ascertained. In the subject case, sufficient opportunities were given to the assesse to furnish evidences/details regarding the claims made. However, assesse failed to furnish the details/evidences called for. In the absence of substantiating evidences related to the claims made by the assesse, the application is hereby rejected.

2. Learned counsel for the petitioner submits

that consequent to the filing of the applications seeking condonation of delay in filing returns for the assessment years mentioned above, the Department issued notice dated 7.7.2023 to the petitioner to furnish proof/supporting documents on or before 14.7.2023. The petitioner sought one month's time to furnish documents as per communication dated 12.7.2023. Thereafter, on 12.8.2023, she uploaded the reply to the notices along with supporting documents in the Department's Portal and the same were acknowledged. The petitioner alleges that without considering the documents submitted/uploaded by the petitioner in support of her contentions in the applications for condonation of delay in filing returns for the assessment years in question, the Department vide Exts.P7 orders dated 20.10.2023, relying on Circular No.9/2015 dated 9.6.2015, rejected the applications stating that the assessee failed to furnish the details/evidences called for. She prays that the impugned orders may be set aside and the matter may be directed to be re-considered after hearing the petitioner.

3. Today, this Court had considered the very

same issue in WP(C) No.37648/2023, wherein the application of the petitioner therein for condonation of delay of one day in filing the income tax return was rejected on the very same ground, and this Court after hearing both sides and considering the provision under Section 119(2)(b) of the Act and Circular No.9/2015 dated 9.6.2015 and the Division Bench judgment of this Court in Daisy v. The Principal Commissioner of Income Tax, in W.A.No.1420/2023 dated 26.9.2023, allowed the

writ petition and set aside the impugned order

therein. Learned counsel for the petitioner herein and the learned Standing Counsel for the Department submit that these writ petitions are also covered by the same judgment delivered today and therefore, these writ petitions are also liable to be allowed following the judgment in WP(C) No.37648/2023 delivered today. The relevant portion of the said

judgment is extracted herein below:

> 3. Learned counsel for the petitioner submits that the power under Section 119(2)(b) of the Act is vested with the Central Board of Indirect Taxes and Customs and it delegates the Principal Commissioner/the Principal Chief Commissioner of Income Tax to condone the delay in filing return, on consideration given to the application filed by an assessee for not filing return on time. She further submits the Act does not give power to the Principal Chief Commissioner/the Principal Commissioner of Income Tax to consider the merits of the claim of income, loss etc. The impugned order would disclose that the Principal Commissioner of Income Tax has not delineated the grounds for condoning the delay, but has rejected the application considering the merits of the claim of the petitioner. She further submits that such consideration is illegal and not authorised, as held by a Division Bench of this Court in Daisy v. The Principal Commissioner of Income Tax, in W.A.No.1420/2023 dated 26.9.2023.

4. On the other hand, Sri.P.G.Jayasankar, learned Standing Counsel for the Department, submits that the Principal

Chief Commissioner has not considered the merits of the claim, but since the assessee did not produce or furnish substantiating evidences with regard to the claims made in the application, the Principal Commissioner of Income Tax rejected the application of the petitioner.

5. Section 119(2)(b) of the Act would

> read as under: "119. Instructions to subordinate authorities - (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper

administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

(2) Without prejudice to the generality of the foregoing power,-

(a) xxx xxx xxx

(b) the Board may, if it considers it

desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize any income-tax authority, not being a Commissioner Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law."

6. On a perusal of Section 119(2)(b) of

the Act, it is evident that the said Section only empowers the Board to admit an application or claim for exemption, deduction, refund or any other relief under the Act, after the expiry of the period specified by or under the Act for making such application or claim and deal with the same on merits, in accordance with law. The Board has delegated such power to the Principal Chief Commissioner of Income Tax/the Principal Commissioner of Income Tax vide its circular No.9/2015 dated 9.6.2015. A Division Bench of this Court had an occasion to consider the provisions of Section 119(2)(b) of the Act and the said circular in the case of Daisy (supra), wherein the Court has been of the opinion that the Circular empowers the Principal Chief Commissioner/the Principal Commissioner of Income Tax to consider the merits of the refund claim while exercising the delegated power under Section 119(2)(b) of the Act, which would amount to circumvent the provisions of the Act. It has been further

held that the Principal Chief Commissioner or

the Principal Commissioner of Income Tax has no power to consider the merits of the refund application and what is required to be considered is the merits of the application for condonation of delay only.

7. Considering the provisions of Section

> 119(2)(b) of the Act and the Circular dated 9.6.2015 aforesaid, the order impugned herein, Ext.P7, is unsustainable and the same is hereby set aside. The writ petition stands allowed. The matter is remitted back to the file of the Principal Commissioner of Income Tax to pass fresh orders on the application of the petitioner-assessee for condonation of delay in filing the return. While considering the said application for condonation of delay, the Principal Commissioner is not required to go into the merits of the claim of the petitioner.

4. In view of the above, following the

judgment in WP(C) No.37648/2023 delivered today,

these writ petitions are also allowed. The impugned orders in these writ petitions, Exts.P7, dated 20.10.2023 are set aside as unsustainable and the matter is remitted back to the file of the Principal Commissioner of Income Tax to pass fresh orders on the applications of the petitioner- assessee for condonation of delay in filing returns for the assessment years 2017-18, 2018-19, 2019-20, 2020-21, 2021-22. It is made clear that while considering the said applications for condonation of delay, the Principal Commissioner is not required to go into the merits of the claim of the petitioner. Pending interlocutory application, if any, in these writ petitions stands dismissed. Sd/- DINESH KUMAR SINGH JUDGE jg APPENDIX OF WP(C) 37665/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION UNDER SEC.119(2) (B) FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2017-18. Exhibit P2 TRUE COPY OF THE NOTICE DATED 7.7.2023 ISSUED BY THE 2ND RESPONDENT Exhibit P3 TRUE COPY OF LETTER DATED 12.7.2023 FROM THE PETITIONER TO THE 2ND RESPONDENT Exhibit P4 TRUE COPY

OF THE ACKNOWLEDGMENT OF FILING THE LETTER DATED 12.7.2023 Exhibit P5 TRUE COPY OF LETTER ALONG WITH THE DOCUMENTS UPLOADED ON 12.8.2023 Exhibit P6 TRUE COPY OF ACKNOWLEDGMENT OF HAVING FILED THESE DOCUMENTS DATED 12.08.2023 Exhibit P7 TRUE COPY OF THE ORDER DATED 20.10.2023 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE CIRCULAR NO. 9 OF 2015 DATED 09.06.2015 APPENDIX OF WP(C) 37751/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION UNDER SEC.119(2) (B) FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2018-19 DATED 16.02.2022 Exhibit P2 TRUE COPY OF THE NOTICE DATED 7.7.2023 ISSUED BY THE 2ND RESPONDENT Exhibit P3 TRUE COPY OF LETTER DATED 12.7.2023 FROM THE PETITIONER TO THE 2ND RESPONDENT Exhibit P4 TRUE COPY OF THE ACKNOWLEDGMENT OF FILING THE LETTER DATED 12.7.2023 Exhibit P5 TRUE COPY OF LETTER ALONG WITH THE DOCUMENTS UPLOADED ON 12.8.2023 Exhibit P6 TRUE COPY OF ACKNOWLEDGMENT OF HAVING FILED THESE DOCUMENTS DATED 12.08.2023 Exhibit P7 TRUE COPY OF THE ORDER DATED 20.10.2023 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE CIRCULAR NO. 9 OF 2015 DATED 09.06.2015 APPENDIX OF WP(C) 37779/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION UNDER

SEC.119(2) (B) FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2019-20 DATED 16.02.2022

Exhibit P2 TRUE COPY OF THE NOTICE DATED 7.7.2023 ISSUED BY THE 2ND RESPONDENT Exhibit P3 TRUE COPY OF LETTER DATED 12.7.2023 FROM THE PETITIONER TO THE 2ND RESPONDENT Exhibit P4 TRUE COPY OF THE ACKNOWLEDGMENT OF FILING THE LETTER DATED 12.7.2023 Exhibit P5 TRUE COPY OF LETTER ALONG WITH THE DOCUMENTS UPLOADED ON 12.8.2023 Exhibit P6 TRUE COPY OF ACKNOWLEDGMENT OF HAVING FILED THESE DOCUMENTS DATED 12.08.2023 Exhibit P7 TRUE COPY OF THE ORDER DATED 20.10.2023 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE CIRCULAR NO. 9 OF 2015

DATED 09.06.2015 APPENDIX OF WP(C) 37794/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION UNDER SEC.119(2) (B) FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2020-21. Exhibit P2 TRUE COPY OF THE NOTICE DATED 7.7.2023 ISSUED BY THE 2ND RESPONDENT Exhibit P3 TRUE COPY OF LETTER DATED 12.7.2023 FROM THE PETITIONER TO THE 2ND RESPONDENT. Exhibit P4 TRUE COPY OF THE ACKNOWLEDGMENT OF FILING THE LETTER DATED 12.7.2023 Exhibit P5 TRUE COPY OF LETTER ALONG WITH THE DOCUMENTS UPLOADED ON 12.8.2023 Exhibit P6 TRUE COPY OF ACKNOWLEDGMENT OF HAVING FILED THESE DOCUMENTS DATED 12.08.2023 Exhibit P7 TRUE COPY OF THE ORDER DATED 20.10.2023 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE CIRCULAR NO. 9 OF 2015 DATED 09.06.2015 APPENDIX OF WP(C) 37637/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION UNDER SEC.119(2) (B) FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2021-22. Exhibit P2 TRUE COPY OF THE NOTICE DATED 7.7.2023 ISSUED BY THE 2ND RESPONDENT Exhibit P3 TRUE COPY OF LETTER DATED 12.7.2023 FROM THE PETITIONER TO THE 2ND RESPONDENT. Exhibit P4 TRUE COPY OF THE ACKNOWLEDGMENT OF FILING THE LETTER DATED 12.7.2023 Exhibit P5 TRUE COPY OF LETTER ALONG WITH THE DOCUMENTS UPLOADED ON 12.8.2023 Exhibit P6 TRUE COPY OF ACKNOWLEDGMENT OF HAVING FILED THESE DOCUMENTS DATED 12.08.2023 Exhibit P7 TRUE COPY OF THE ORDER DATED 20.10.2023 ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE CIRCULAR NO. 9 OF 2015 DATED 09.06.2015