



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 9520 OF 2024 (T-IT)

BETWEEN:

SRI. MUTHU MARIAYAMMA DEVASTHANA TRUST
A TRUST REGISTERED UNDER THE CHARITABLE AND
RELIGIOUS TRUSTS ACT, 1920
AND HAVING ITS OFFICE AT,
OLD MADRAS ROAD, DOORVANI NAGAR,
BENGALURU - 560 016.
REPRESENTED BY ITS GENERAL SECRETARY,
SHRI MARIYAPPA M,
S/O LATE MUNIHANUMANHIAH,
AGED ABOUT 67 YEARS,
OCCUPATION: RETIRED
RESIDING AT: NO. 134, YARIARALLAPALYA,
RAMMURTHY NAGAR, BENGALURU - 560 016.

...PETITIONER

(BY SRI. M.V. SESHACHALA SENIOR ADVOCATE FOR
SRI. BALACHANDRAN B S., ADVOCATE)

AND:

1. THE PRINCIPAL CHIEF COMMISSIONER
OF INCOME-TAX, (EXEMPTION), DELHI,
CIVIC CENTRE, MINTO ROAD,
NEW DELHI - 110 002.
2. COMMISSIONER OF INCOME-TAX (EXEMPTION)
BENGALURU, C R BUILDING,
QUEENS ROAD, BENGALURU - 560 001.
3. CENTRAL BOARD OF DIRECT TAXES
SECRETARIAT BUILDING,
NORTH BLOCK, NEW DELHI - 110001
REP. BY ITS CHAIR PERSON.

...RESPONDENTS





(BY SRI. ARAVIND V CHAVAN, ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO i) QUASH THE IMPUGNED ORDER DATED:26.09.2023 PASSED BY THE R1 IN DIN AND ORDER NO.ITBA/COM/F/17/2023-24/1056534553(1) REJECTING THE CONDONATION APPLICATION OF THE PETITIONER FILED UNDER SECTION 119(2)(b) OF THE IT ACT FOR THE AY 2020-21 VIDE ANNEXURE-K AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has called in question the validity of the order dated 26.09.2023 at Annexure-K whereby the respondent has rejected the application filed seeking condonation of delay under Section 119(2)(b) of the Income Tax Act in filing of return of income by the assessee for the Assessment year 2020-21. By virtue of the order at Annexure-K application for condonation of delay which would enable filing of return of income having been rejected, the petitioner has challenged the said order before this Court.

2. The facts made out are:



2.1 That the petitioner is a Trust running a temple. In the Assessment year 2020-21 said temple was acquired and compensation of Rs.6,85,59,681/- was awarded by deducting TDS at 10%. It is submitted that the last date for filing of income tax return was 31.10.2020 which stood extended in terms of the notification dated 24.06.2020 till 30.11.2020.

2.2 It is the case of the petitioner that after temple premises was acquired by the Bangalore Metro Rail Corporation Limited (BMRCL) for construction of metro rail, the temple was subsequently demolished and an alternate land was allotted.

2.3 It is submitted that the construction in the alternate land had commenced on 25.01.2021. The time for filing of return according to the petitioner stood extended till 30.12.2020. It is further submitted that by virtue of the CBDT Circular time stood extended till 15.02.2021. Application came to be filed under Section 119(2)(b) of the Income Tax Act seeking for condonation of delay on 14.10.2022.

2.4 It is the case of the petitioner that the delay in filing of the returns was due to demolition of the temple and they were also in the process of obtaining an alternate land for



reconstruction in a different site and in the light of such circumstance there was delay in filing of the returns.

3. Sri.M.V.Seshachala, learned Senior counsel appearing for the petitioner submits that while considering the application under Section 119(2)(b) of the Income Tax Act, it is necessary to take note that the Trust having been registered under Section 12A of the Income Tax Act exemption is claimed on such ground and that even otherwise insofar as the compensation received consequent to acquisition such amount is also exempted from tax net as observed by this Court in W.P.No.7660/2023. It is submitted that if that were to be so, the retention of TDS deducted by the Department itself would be contrary to Article 265 of the Constitution of India. It is submitted that this will make it a case different from other cases and such aspect is required to be kept in mind while considering the delay sought to be condoned.

4. Sri.Aravind V. Chavan, learned counsel appearing for the revenue submits that the order rejecting the application for condonation is well reasoned. That the circumstance mentioned by the petitioner cannot be construed to be one beyond the



control of the assessee. Further it is submitted that the cause made out would neither be a reasonable cause nor it could be described as genuine hardship.

5. Perused the order at Annexure-K. Nodoubt the authorities have taken a view that the assessee ought to have filed the return within the time permissible and that there was no reasonable cause or genuine hardship requiring any indulgence in the matter, however, it must be noticed that the factum of the land in which the temple was constructed was acquired and temple was demolished is not in dispute. Needless to state that though alternate land was allotted as averred on behalf of the petitioner, the construction is still on and in light of the very existence of the temple and its reconstruction not having been completed, the delay in filing the returns ought to have been appreciated in proper perspective.

6. Insofar as a case for exemption made out under Section 12A of the Income Tax Act as well as reliance placed on the order passed by the Co-ordinate Bench in W.P.No.7660/2023 regarding exemption from the tax net of



compensation as a result of acquisition by Bangalore Metro Rail Corporation Limited nodoubt are matters that has to be appreciated by the respondent however *prima facie* matter requires consideration and there is a requirement for the returns to be processed. The fact that the order of the Coordinate Bench in W.P.No.7660/2023 has made certain observations at paragraph 4 are matters to be taken note of.

7. Nodoubt these matters are matters regarding which a conclusion can only be made when the assessment order is passed. But, however the factum of exemption and reliance on the observations made in W.P.No.7660/2023 would qualify the present case requiring condonation of delay and tax returns being processed in accordance with law. In the peculiar facts of this case an unduly conservative interpretation regarding delay cannot be applied. The fact that the temple is still to be completely reconstructed and such interregnum between demolition and reconstruction period is a matter that would constitute the supervening circumstance. Insofar as the petitioner is concerned that the very temple is not in the same state as it was prior to the demolition is a matter of genuine hardship for the petitioner. The aspect of hardship cannot be a



pure objective analysis and may take note of certain subjective consideration as made out in the present case. Accordingly order at Annexure-K is set aside and delay is condoned. The return for the assessment year 2020-21 is permitted to be filed and thereupon to be processed in accordance with law.

Accordingly, petition is disposed off.

**Sd/-
JUDGE**

SBN
List No.: 1 SI No.: 22