Karnataka High Court Sri A. Balakrishnan S/O Late ... vs The General Manager, Hindustan ... on 1 February, 2007 Equivalent citations: (2007) 208 CTR Kar 337, 2007 290 ITR 227 KAR, 2007 290 ITR 227 Karn Author: D S Kumar Bench: D S Kumar ORDER D.V. Shylendra Kumar, J. Page 0540 1. Petitioner was an employee in the 1st respondent - Organization M/s. HMT Ltd. Petitioner availed of a voluntary retirement scheme as on 31.3.2003 that was mooted by the employer and as a result he received an amount of Rs. 6,01,270/-. The employer at the time of paying this amount deducted a sum of Rs. 29,331/- at source under the provisions of Section 192 of the Act and an acknowledgment in Form 16-A was also issued to the petitioner evidencing the deduction of this amount from the amount paid to him and remitted the same to the credit of the Income Tax Department. 2. It is the version of the petitioner that in respect of the amount that he has received in terms of the provisions of Section 10(10)(c), 173(1) and 89 of the Income Tax Act, 1961 [for short the Act] read with Rules 2 (A)(A), the Page 0541 petitioner was not liable for payment of any tax and the amount of Rs. 29,331/- deducted on the amount of Rs. 1,01,270/- purporting to be on the salary part of the assessee was to be refunded even in terms of the law laid down by this Court in the case of The Commissioner of Income Tax, Bangalore and Anr. v. Surendra Prabhu P reported in 2005 (59) KLJ 609 [HC][DB]. 3. It appears the petitioner had filed a return in Form No. 2-D seeking refund of this amount A copy of the return is produced as Annexure-C to the writ petition. It is the further case of the petitioner that the Income Tax Authorities did not respond to the return filed by the petitioner in Form 2-D and as a consequence the petitioner pressed into service the provisions of the Right to Information Act 2005 by filing an application on 18.7.2006, copy at Annexure-D to the petition. It is in response to this, the 2nd respondent - Commissioner of Income Tax, Bangalore -5, has intimated the petitioner that return of income is not a valid return and cannot be processed as it has been filed beyond the time limit prescribed under Section 139 of the Act. 4. It is aggrieved by the action of the respondents and at this stage, the petitioner has filed this writ petition, inter alia, seeking for quashing of the endorsement at Annexure-E and for issue of a consequential mandamus to direct the respondent No. 2 to refund the excess deduction of Rs. 29,331/- deducted by his employer and remitted to the Income Tax Department. 5. Notices had been issued to the respondents and respondent No. 2 has entered appearance through its standing Counsel. Statement of objections has also been filed. 6. While the facts are not in dispute, what is urged in the statement of objections is that the assessee having filed the return on 18-5-2006 is beyond the permitted time in terms of Section 139(1) of the Act as according to the respondents, the return should have been filed by 31-7-2003 and the return filed on 18-5-2006 being even beyond the extended period permitted in terms of Section 139(4) of the Act, the return is invalid and is treated as non est. It is also indicated that the respondents are fortified in taking such view in terms of the Judgment of the division Bench of the Calcutta High Court in the case of Commissioner of Income Tax, West Bengal - III v. Srimati Minabati Agarwalla reported in 79 ITR 278 and accordingly prayed for dismissal of the writ petition. 7. Petition was admitted and

thereafter Sri. Sukumaran, learned Counsel for the petitioner and Sri. Aravind, learned Counsel for respondent No. 2 have been heard. 8. What is pointed out by learned Counsel for the petitioner is that the return filed in form-2D is not an application for refund but a return of the factual position of the receipts of the petitioner from his salary income etc., and it is not open to the income tax department to decline to process the return. 9. Learned Counsel for the petitioner points out that a non filing of the return within the time stipulated under Section 139(1) of the Act or the extended time under Section 139(4) of the Act would only result in the Page 0542 consequential liability for interest etc., and possible penalty also and is not one which places an embargo on the Income Tax Department from processing the return and passing the orders on the same; that in the circumstances, while endorsement at Annexure-E should be quashed, if not a mandamus for refund, a mandamus for processing the return at least should be issued to the respondent No. 2. 10. Sri. Aravind, learned Counsel for respondent No. 2 on the other hand submits that the 2nd respondent or the Income Tax Department is not so much averse to consider the return of the petitioner but petitioner is required to file an application in terms of Section 139(2)(b) of the Act as the return which was filed on 18-5-2006 on the face of it is a belated return; that unless the Commissioner in exercise of the power delegated by the Board under this provision condones the delay in filing such return, it may not be possible for the assessing officer to process the return and would therefore submit that if the petitioner should file an application before the Commissioner invoking the provisions of Section 139(2)(b) of the Act, it will enable the concerned assessing officer to process the return if the Commissioner should condone the delay in filing the return etc.,. 11. It is the submission of learned Counsel for the respondent No. 2 that unless this procedure is gone through, it is not open to the assessing officer to assess the return as the return is a void return or non est in law and therefore mandamus as sought for cannot be issued nor certiorari for quashing the endorsement at Annexure-E. 12. In support of his submission, learned Counsel for respondent No. 2 would place reliance on the decision of the division Bench of the Calcutta High Court in the case of Commissioner of Income Tax, West Bengal-III v. Srimati Minabati Agarwalla reported in 79 ITR 278 as also a single Bench decision of the Punjab & Haryana High Court in the case of Auto and Metal Engineers v. Union Of India and Anr. reported in 111 ITR 161. 13. The decision of the Calcutta High Court in Minabati's case was a decision rendered in the context of the provisions of Section 22(2), 22(3) and 34(3) of the Indian Income Tax Act, 1922, holding that as returns filed by the assessee in that case for the years 1953-54 to 1956-57 on 9-8-1961 were invalid, no fresh assessment could have been made on the basis of an order passed by the Commissioner under Section 33B of the Indian Income Tax Act, 1922. The Calcutta High Court was answering the question which reads as under: Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the returns filed by the assessee for the assessment years 1953-54 to 1956-57 on 9th August, 1961, were invalid and that no fresh assessments could be made on the basis of the Commissioner's order under Section 33B of the Indian Income-Tax

Act? The learned Judges on considering the case law on the point and also examining the decision of the Supreme Court answered the question in the affirmative holding that such returns were invalid and the Commissioner Page 0543 by issue of directions under Section 33B of the Indian Income Tax Act, 1922 could not have directed for passing fresh assessment orders on such returns. 14. The actual question that arose in that case was about the competence of the Commissioner to issue directions under Section 33B to direct the assessing officer to process a return otherwise invalid under the provisions of the Indian Income Tax Act, 1922. 15. The filing of the returns under the Income Tax Act 1961 is now governed by the provisions of Section 139 of the said Act. A perusal of the provisions of Section 139 does not indicate that the authorities are barred from processing return filed under the Act just because it is not filed within the time stipulated either under Section 139(1) or 139(4) of the Act. 16. While it may not be open to the income tax department to bring to tax any income beyond the period permitted in terms of Section 147 of the Act if within that time either a return is filed whether within the time stipulated under Section 139(1) or 139(4) or otherwise, it can be looked into and there is no embargo as such. 17. In the present case, the petitioner having filed the return though beyond the time permitted, it is not as though the return is one which is per se prohibited to be processed by the income tax authorities under the statutory provisions. It is for this reason, with great respect, I am not inclined to follow the decision rendered by the Calcutta High Court in Minabatt's case supra. 18. Learned Counsel for respondent No. 2 has also placed reliance on the decision of the Punjab & Haryana High Court in Metal Engineer's case supra. 19. That was a case where the assessing authority declined to process a return filed by the assessee within the permitted time under Section 139 and on the other hand had issued a notice under Section 147 of the Act calling upon the assessee to make a return and on the other hand the assessee had questioned the legality of the notice issued under Section 147 of the Act. 20. The court took the view that notice under Section 147 was not invalid as the assessee had not filed the return within the time permitted under Section 139(1) of the Act and it cannot be automatically taken that there was an extension of time permitted under Section 139(2) of the Act, just because the Income Tax Officer had impressed upon the assessee the need to file the return immediately in a letter addressed to the addressee. 21. The court again was involved with the question of validity of notice issued under Section 147 of the Act in the context of a belated return by the assessee. 22. I am afraid, this decision does not apply to the case of the petitioner in the present situation. 23. Learned Counsel for respondent No. 2 has also brought to the notice of the court Section 119(2)(b) of the Act and submits that unless the petitioner files an application for refund before the Board and the Board directs for Page 0544 processing the return after condoning the delay, the assessing officer win not be in a position to process the return; that the Board in exercise of its power under Section 119 in turn can delegate the power on other Officers of the Income Tax Department for the purpose of condoning any delay or non-compliance for which there are time stipulations and such power having been delegated to the Commissioner, it is necessary that the

petitioner should apply to the Commissioner under this provision seeking the condonation of delay in filing the return of income. 24. While it is no doubt open to an assessee to invoke the provisions, not one invoking the provisions of Section 119(2)(b) does not come in the way of the duly of the income tax department to process the return filed by the petitioner. 25. A reference to Section 119(2)(b) of the Act cannot relieve the respondents from the obligation of examining a return filed by the petitioner. It cannot be used as an excuse for inaction on the part of the respondents. 26. In the present case, it is obvious that the respondent No. 2 is not inclined to process the return as the petitioner may become entitled for refund if the return is processed and orders passed thereon. If it were to be a case where the petitioner was to pay some tax which he had not paid earlier, perhaps the respondents would have been more than willing to even issue a notice under Section 147 of the Act and calls upon the assessee to file a return or a revised return as the case may be and proceed to take further action under the Act The test is if a return pursuant to the notice under Section 147 of the Act could be processed, there is no reason as to why return filed otherwise cannot be processed. The defence put up by the respondents for not processing the return filed by the assessee in Form-2D (copy at Annexure-DJ is not supported by any provision of the statute and can only amount to inaction on the part of the respondents. 27. The time stipulation prescribed for filing return of income in terms of Section 139 of the Act is operative on a person who is compelled to file a return in terms of Section 139(1) of the Act. It is a person who has income over and above the exempted limit and whose income is taxable under the Act, who is required to file the return and while so, is bound to follow the period. The extended periods in terms of several sub-sections are also applicable to such persons. 28. Likewise, the notice in terms of Section 147 and the time stipulation for issue of notice etc., are also in respect of a person who has taxable income and whose taxable income has either not been offered to assessment at all or who has not declared full particulars of his income. For a person like the petitioner, if his taxable income is nil, in the sense that he has no obligation to file a return, the time stipulations also equally cannot apply. Therefore, to say that the income tax authorities are disabled from scrutinizing the return filed by the petitioner, in view of the time stipulation in terms of Section 153 for processing such return may not be correctly apply at all. On the other hand, the employer having deducted certain amount from the Page 0545 petitioner as deduction at source on the payment of salary/retiral benefits and having remitted it to the account of the income tax department and this deduction being in terms of the provisions of the Act and if the assessee is not otherwise enabled to claim refund of this amount under any other statutory provisions and if he is not actually liable to pay the kind of income tax deducted at source nor the teamed counsel for respondent having pointed out to any enabling statutory provision, the only other way the petitioner can seek for refund of the amount is by filing a return of his income and as a result of the assessment if it is found the tax liability of the petitioner is nil, the assessing officer may take note of the amount already deducted from out of the amount paid to the petitioner by his employer and remitted to the income

tax department and direct refund of that amount to the assessee as part of the assessment order. For not performing this exercise, the respondents cannot bind the time stipulation indicated in Section 139 of the Act as a defence. 29. For the very reason, reference to provisions of Section 192(1B) of the Act and on which reliance is placed by the learned Counsel for the respondents is also not tenable, as it is only such assessee who is seeking for an extension of the time stipulation or a condonation of delay in compliance, may invoke the provisions of Section 119(2)(a) of the Act. If no time stipulation was in the first instance applicable to the return that is filed by the petitioner, the provisions Section 119(2)(b) arc also not needed at all. 30. Viewed from another angle also, the respondents cannot decline to process the return as the exemption of payment as terminal benefit and exceeding a sum of Rs. 5.00 lakh in terms of Section 10(10C) of the Act is also one on a claim by the assessee as an amount received which qualifies for this exemption. This again can be done only in a return filed by the assessee and not elsewhere. It may be noticed that if the assessee is not entitled for this benefit of Section 10(10C), then the income becomes taxable and it can be brought to tax by the assessing officer by invoking the provisions of Section 147 of the Act At feast for determination of this position, it will be necessary for the assessing officer to process the return and finalize the same and if need be by invoking the provisions of Section 147 also. Even without looking into the return, it will not be possible for the assessing officer to conclude that as there is no taxable income, no need to process the return etc. Therefore, in either view of the matter, it will be necessary for the assessing officer to process the return and to pass orders in accordance with the provisions of the Act and not to justify the inaction. 31. It is the duty of the functionaries under the Income Tax Act to Implement the provisions of the Act in accordance with law. A return filed is bound to be processed by the Income Tax Authorities for which purpose they are meant unless there is an embargo placed. Learned Counsel for respondent No. 2 has not been able to point out a specific statutory provision which places an embargo and on the other hand is only pointing out to other Page 0546 possibilities of invoking relaxation etc., which by itself does not place an embargo to process the return. 32. It is rather unfortunate that the Income Tax Department has taken such an adamant and stubborn stand only to deny a possible refund to the petitioner. An amount which would have been otherwise due to the petitioner if is retained by the Income Tax Department without any justification, then inaction cannot be put up as a defence for retention of an amount. I say this because the amount which can be realised even by way of income tax from any assessee can only be in accordance with the statutory provisions, as is mandated under Article 265 of the Constitution of India. 33. In terms of the law laid down by this Court in the case of The Commissioner of Income Tax, Bangalore and Anr. v. Surendra Prabhu P reported in 2005 (59) KLJ 609 [HC][DB] on which reliance is placed by learned Counsel for the petitioner it does points out that in respect of any payment received by a person seeking voluntary retirement the first five lakhs rupees is exempt under Section 10(10-C) of the Act and in respect of balance of the amount, the tax deducted is not justified as the balance amount is one which entitles for exemption within

the permissible limit. 34. It is not necessary for this Court to go into these details. If such is perhaps the factual position, retention of the amount can be obviously in violation of law and as one without proper authority. 35. Though a writ of mandamus could have been issued even for refunding of the amount, as this aspect of the matter has not been examined by the authorities, it is but proper to issue a mandamus directing the 2nd respondent to ensure that the return filed by the assessee is duly processed in accordance with law and appropriate orders passed on the same within three months from today. 36. Petitioner having been put to the ordeal of not processing his return, declining an amount which he would have earned by his toil, respondents are bound to compensate and I am of the view it calls for commensurate cost to be paid to the petitioner. Cost is also increased to make the respondents realise the effect of it, as this Court cannot appreciate an inaction on the part of a public authority being put forth as a defence for not performing the duty and that in turn resulting in harassment and hardship to an hapless citizen like the petitioner, who is compelled to approach this Court for relief. 37. Rule made absolute. The endorsement bearing No. F.No. 5/RTI/CIT V/2006-07 dated 18-8-2006 [copy at Annexure-E] passed by the respondent No. 2 is hereby quashed by issue of a writ of certiorari. 38. Writ petition allowed levying cost of Rs. 10,000/- on the respondents. Cost to be paid within eight weeks from today.