

Court No. - 39

Case :- WRIT TAX No. - 867 of 2017

Petitioner :- M/S Chauhan Associates Thru Its Partner K.S. Chauhan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Praveen Kumar, Hitashu Kataria Anand

Counsel for Respondent :- C.S.C., C.B Tripathi

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Praveen Kumar, learned counsel for the petitioner and Sri Ankur Agarwal, learned counsel for the State.
2. Present petition has been filed by the assessee claiming refund of excess amount deposited towards tax with interest under the U.P. Trade Tax Act, 1948 and U.P. VAT Act, 2008 for the Assessment Year 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2013-14.
3. While the principal amount of excess tax deposited has been refunded to the petitioner during the pendency of this writ petition and the parties are not in dispute as to the computation of that amount, serious dispute exists with respect to the interest liability being claimed by the petitioner.
4. Here, principally, Sri Praveen Kumar, learned counsel has demonstrated that the assessee was under the Compounding Scheme both under the U.P. Trade Tax Act, 1948 as also under the U.P. VAT Act, 2008.
5. It is also his case, that for all the year in question, the rate of compounding fee was 1% whereas tax was deducted at source @ 2%. It resulted in twice the amount of tax being deposited by the

assessee in each of the year under dispute.

6. Second, it has been submitted, it is absolutely fallacious to acknowledge that the excess amount of tax deposited in one year, at the behest of the assessee under the compounding scheme, may ever have been adjusted against the likely demand for the next assessment year, when in proven facts, the assessee has remained under compounding scheme even in the subsequent year, without break. At present, learned counsel for the Revenue does not admit the correctness of the submission so advanced i.e. according to him, it is not established on record that the revenue authorities had created artificial date of refund later than the actual date on which the refund entitlement arose and it is also not proven that the assessing authority had adjusted the excess amount against the subsequent year at the same time.

7. Third, it has been urged, in none of the Assessment Years in question, the assessee was deprived of the benefit of compounding. Yet, on a wholly artificial and unsustainable legal reasoning, the excess amount of tax deposited by the petitioner was not refunded within statutory time frame. Instead of acting fairly, in paying the interest on the delayed refunds, that claim has been denied, by first setting up artificial dates of refund much later than the date of refund becoming payable-upon compounding being accepted. Merely because the revenue authorities may have taken more than reasonable time to make due verification of the tax deducted at source on payments made to the petitioner, it may not deprive the petitioner of the refund together with interest.

8. We are constrained to observe that such inferences do appear to have been drawn by the assessing authority in the chart annexed as S.C.A.-1 to the supplementary counter affidavit filed in this petition.

9. The correctness of those facts has been doubted by the petitioner by means of filing the supplementary rejoinder affidavit.

10. Without recording any final conclusion, by way of principle we record that an assessee, who may have been assessed under the compounding scheme from Assessment Year 2005-06 to Assessment Year 2013-14, may remain entitled to interest on refund due from the date of order finalizing the compounding fee. Second, we recognize that in such facts, it may never have become open to the assessing authority to adjust the excess deposit of compounding fee in the earlier Assessment Year, against the projected / likely demand of compounding fee for any subsequent year.

11. Third, we recognize that merely because the assessing authority may have been negligent or may have allowed delay to arise in making due verification of tax deducted at source, liability of interest on delayed refund may not be avoided by the revenue authorities unless the delay is attributed to any contributory or other conduct of the assessee in the process of making due verification of tax deposited at source.

12. Rule of law would mandate that interest, if any, be paid to the petitioner in full without any further delay or doubt.

13. In view of the above, we dispose of the writ petition with a direction upon respondent no. 2 to pass appropriate order that may ensure that the claim of interest on delayed refund made by the petitioner for the Assessment Year 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2013-14 under the U.P. Trade Tax Act, 1948 and U.P. VAT Act, 2008, may be dealt with by appropriate authority. Such arrangement may be made within a period of two weeks from today.

14. Thereupon, the authority vested with such jurisdiction may proceed to consider the claim of the petitioner strictly in accordance with law and pass appropriate orders and communicate the same to the respondent no. 2 with copy to the petitioner, within a period of three months. Interest found payable may be paid out to the petitioner within the same time.

15. Upon the matter being thus reported to the Commissioner, we leave it open to the said authority to pass appropriate orders for administrative action, against the erring officers, if any.

16. With the above observations, the writ petition is **disposed of**.

Order Date :- 30.11.2023

SK Srivastava

(Shiv Shanker Prasad,J.) . . . (S.D. Singh,J.)