IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WP(C).No. 17794 of 2010 (Y)

PETITIONER :

HAILEYBURIA TEA ESTATES LIMITED,
MARAR ROAD, WILLINGDON ISLAND, COCHIN-682 003
REPRESENTED BY ITS, EXECUTIVE CO-ORDINATOR
MR.K.K.NAIR.

BY ADVS.SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH

RESPONDENTS :
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1. THE STATE OF KERALA, DEPARTMENT OF TAXES,
   SECRETARIAT, THIRUVANANTHAPURAM
   REPRESENTED BY ITS SECRETARY.

2. THE AGRICULTURAL INCOME TAX OFFICER,
   COMMERCIAL TAXES, MATTANCHERY, KOCHI.

3. THE DEPUTY COMMISSIONER (APPEALS)
   AGRICULTURAL INCOME TAX & SALES TAX, ERNAKULAM.

4. THE INSPECTING ASSITANT COMMISSIONER,
   COMMERCIAL TAXES, MATTANCHERRY, KOCHI.

R1 TO R4 BY GOVERNMENT PLEADER SRI. R. RENJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

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APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF ASSESSMENT ORDER DT 6/2/1992 FOR THE ASSESSMENT YEAR 1987-88.

P1(a): COPY OF ASSESSMENT ORDER DT 30/4/1993 FOR ASSESSMENT YEAR 1988-89.

P1(b): COPY OF ASSESSMENT ORDER DT 28/4/190903 FOR ASSESSMENT YEAR 1989-90.

P1(c): COPY O ASSESSMENT ORDER DT 20/12/1997 FOR ASSESSMENT YEAR 1993-94.

P1(d): COPY OF ASSESSMENT ORDER DT 10-11-1997 FOR ASSESSMENT YEAR 1995-96.

P1(e): COPY OF REVISED ASSESSMENT ORDER DT 12/6/2002 FOR ASSESSMENT YEAR 1998-99.

P2: COPY OF ORDER DT 16/7/1997 PASSED BY the ADDITONAL DEPUTY COMMISSIONER (APPEALS), AGRICULTURAL INCOME TAX AND SALES TAX, ERNAKULAM IN AITA NO. 20/93 FOR ASSESSMENT YEAR 1988-99.

P2(a): COPY OF ORDER DT 16/7/1997 PASSED BY THE ADDITIONAL DEPUTY COMMISSIONER (APPEALS), AGRICULTURAL INCOME TAX AND SALES TAX ERNAKULAM IN AITA NO. 121/1993 FOR ASST. YEAR 1989-90.

P2(b): COPY OF ORDER DT 19/9/2002 IN AITA NO. 32/2001 FOR ASST. YEAR 1998-99.

P2(c): COPY OF ORDER DT 11/6/2004 IN AITA NOS 2 & 3/2004 FOR ASST. YEAR 1998-99.

P3: COPY OF MODIFIED ORDER DT 22/4/1998 FOR ASSESSMENT YEAR 1987-88.

P3(a): COPY OF MODIFIED ORDT 20/4/1998 FOR ASSESSMENT YER 1988-89.

P3(b): COPY OF MODIFIED ORDE DT 27/4/1998 FOR ASSESSMENT YEAR 1989-90.

P3(c): COPY OF MODIFIED ORDER DT 28/6/1993 FOR ASSESSMENT YEAR 1991-92.

P3(d): COPY OF MODIFIED ORDER DT 7/1/2005 FOR ASST. YEAR 1998-99.

P4: COPY OF APPLICATION FOR REFUND DT 23/6/2007 FOR ASSESSMENT YEAR 1986-87.

P4(a): COPY OF APPLICATION FOR REFUND DT 23/6/2007 FOR ASSESSMENT YEAR 1988-89.

P4(b): COPY OF APPLICATION FOR REFUND DT 23/6/2007 FOR ASSESSMENT YEAR 1988-89

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P4(c): COPY OF APPLICATION FOR REFUND DT 23/6/2007 FOR ASSESSMENT YEAR 1992-93.

P4(d): COPY OF APPLICATION FOR REFUND DT 23/6/2007 FOR ASSESSMENT YEAR 1993-94.

P4(e): COPY OF APPLICATION FOR REFUND DT 9/4/2007 FOR ASSESSMENT YEAR 1997-98.

P4(f): COPY OF APPLICATION FOR REFUND DT 9/4/2007 FOR ASSESSMENT YEAR 1999-99.

P5: COPY OF ORDER DT 10/3/2008 PASSED BY THE R4 FOR ASSESSMENT YEAR 1987-88.

P5(a): COPY OF ORDER DT 10/3/2008 PASSED BY THE R4 FOR ASSESSMENT YEAR 1988-89.

P5(b): COPY OF ORDER DT 10/3/2008 PASSED BY THE R4 FOR ASSESSMENT YEAR 1989-90.

P5(c): COPY OF ORDER DT 10/3/2008 PASSED BY THE R4 FOR ASSESSMENT YEAR 1993-94.

P5(d): COPY OF ORDER DT 10/3/2008 PASSED BY THE R4 FOR ASSESSMENT YEAR 1995-96.

P5(e): COPY OF ORDER DT 12/4/2007 PASSED BY THE R4 FOR ASSESSMENT YEAR 1999-2000.

P6: COPY OF APPLICATION DT 20/4/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1987-88.

P6(a): COPY OF APPLICATION DT 20/4/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1993-94.

P6(b): COPY OF APPLICATION DT 20/4/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1995-96.

P6(c): COPY OF APPLICATION DT 20/4/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1998-89.

P6(d): COPY OF APPLICATION DT 2/6/2009 FILED BY THE PETITIONER BEFOE THE R4 FOR ASSESSMENT YEAR 1988-89.

P6(e): COPY OF APPLICATION DT 2/6/2009 FILED BY THE PETITIOENR BEFORE THE R4 FOR ASSESSMENT YEAR 1989-90.

P7: COPY OF NOTICE DT 7/7/2009 ISSUED BY THE R4 FOR ASSESSMENT YEAR 1987-88.

P7(a): COPY OF NOTICE DT 7/7/2009 ISSUED BY THE R4 FOR ASSESSMENT YEAR 1988-89.

P7(b): COPY OF NOTICE DT 7/7/2009 ISSUED BY THE R4 FOR ASSESSMENT YEAR 1989-90.

P7(c): COPY OF NOTICE DT 7/7/2009 ISSUED BY THE R4 FOR ASSESSMENT YEAR 1993-94.

P7(d): COPY OF NOTICE DT 7/7/2009 ISSUED BY THE R4 FOR ASSESSMENT YEAR 1995-95.

P7(e): COPY OF NOTICE DT 7/7/2009 ISSUED BY THE R4 FOR ASSESSMENT YEAR 1998-99.

P8: COPY OF REPLY DT 22/7/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1987-88.

P8(a): COPY OF REPLY DT 22/7/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1988-89.

P8(b): COPY OF REPLY DT 22/7/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1989-90.

P8(c): COPY OF REPLY DT 22/7/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1993-94.

P8(d): COPY OF REPLY DT 22/7/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1995-96.

P8(e): COPY OF REPLY DT 22/7/2009 FILED BY THE PETITIONER BEFORE THE R4 FOR ASSESSMENT YEAR 1998-99.

P9: COPY OF ORDER DT 28-7-2009 OF THE R4 FOR ASSESSMENT YEAR 1987-88.

P9(a): COPY OF ORDER DT 28-7-2009 OF THE R4 FOR ASSESSMENT YEAR 1988-89.

P9(b): COPY OF ORDER DT 28-7-2009 OF THE R4 FOR ASSESSMENT YEAR 1989-90.

P9(c): COPY OF ORDER DT 28-7-2009 OF THE R4 FOR ASSESSMENT YEAR 1993-94.

P9(d): COPY OF ORDER DT 28-7-2009 OF THE R4 FOR ASSESSMENT YEAR 1995-96

P9(e): COPY OF ORDER DT 28-7-2009 OF THE R4 FOR ASSESSMENT YEAR 1998-99.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.17794 of 2010

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Dated this the 10th day of September, 2015

J U D G M E N T

The petitioner is a Public Limited Company engaged in the manufacture and production of Tea. It is an assessee under the Agricultural Income Tax Act, 1991. In the writ petition, the prayer of the petitioner is essentially for the grant of interest on delayed refund, of tax that was paid by the assessee during various assessment years between 1987-1988 and 1999-2000. The facts in the writ petition would disclose that, during the assessment years 1987-1988, 1988-1989 and 1989-1990, the petitioner had by virtue of modified assessment orders passed on 22.04.1998, 20.04.1998 and 27.04.1998 respectively, become entitled to various amounts by way of refund of tax that had been paid in excess by the petitioner during the said assessment years. It is also evident that, out of the amounts that were due to the petitioner by way of refund, a portion was adjusted towards tax dues that became payable by the petitioner for the assessment year 1991-1992. In the years that followed the petitioner again stood entitled for refund in the assessment years 1993-1994, 1995-1996, 1998-1999 and 1999-2000. Some portion of the amounts that became payable to the petitioner by way of refund were adjusted by the respondents towards tax liability for other assessment years where there was tax dues payable by the petitioner consequent to finalisation of assessments. In respect of all the years for which the petitioner was ultimately found to be entitled to refund, the 2nd/4th respondent Assessing Officer passed Ext.P5 series of orders, all dated 10.03.2008 (save for Assessment Years 1998-99 and 1999-2000), sanctioning various amounts by way of refund to the petitioner for the assessment years 1987-1988, 1988-1989, 1989-1990, 1993-1994, 1995-1996, 1998-1999 and 1999-2000. In the case of the assessment years 1998-1999 and 1999-2000, the order sanctioning refund is dated 12.04.2000. It is not in dispute that, the petitioner received the refund amount consequent to Ext.P5 series of orders. What is prayed for in the writ petition is the grant of interest for the period during which the refund payments were delayed by the respondents .

2. I have heard the learned Senior counsel appearing on behalf of the petitioner and the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that under the Kerala

Agricultural Income Tax Act, 1991, the relevant provision that deals with the grant of refunds is Section 68 which reads as follows:

> "**68.Refunds**:-(1) If any person satisfies the Agricultural Income Tax Officer that the amount of tax paid by him for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess amount so paid.
>
> (2) Where, as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee, the Agricultural Income Tax Officer shall, except as other wise provided in this Act, refund the amount to the assessee without his having made any claim in that behalf.
>
> (3) If any advance tax paid by any person in accordance with section 37 is found in excess of the amount properly chargeable under this Act for the year, he shall be entitled to a refund of the excess amount so paid.
>
> (4) If any refund due under this section is not paid within three months from the date of receipt of the order by which the claim for refund has arisen simple interest at 15 per cent annum is to be paid to the assessee on such amount from the date of expiry of the said three months."

4. The revenue is under certain circumstances entitled to set off the refund amounts payable to an assessee against sums that remain payable by the assessee to the department. The relevant provision in this regard is Section 71 of the Act which reads as follows:

> "**71. Set off of refunds against sum remaining payable**:- Where under any of the provisions of this Act, a refund is found to be due to any person, the Agricultural Income Tax Officer, the Inspecting Assistant Commissioner, the Deputy Commissioner or the Commissioner, as the case may be, may in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the tax, penalty or interest if any remaining payable under this Act by the person to whom the refund is due."

5. It can be seen from a joint reading of Sections 68 and 71 of the Act that, if as a result of any order passed in appeal or other proceedings, a refund of amounts become due to an assessee, the Assessing Officer is obliged to refund the amounts to the assessee even without the assessee having to make a claim for the refund. It is also clear that, if the refund due in terms of Section 68 of the Act is not paid to the assessee within three months from the date of receipt

the order by which the claim for refund has arisen, simple interest at 15% per annum is to be paid to the assessee on such amounts from the date of expiry of the said three months. In the present writ petition, the refund amounts in respect of the various assessment years were sanctioned on the dates indicated in Ext.P5 series of orders. Under normal circumstances, Ext.P5 series of orders would be treated as the order pursuant to which a claim for refund arose for the purposes of Section 68 and the respondents would be liable to pay interest only if the amounts sanctioned by way of refund by Ext.P5 series of orders were not paid to the petitioner within three months from that date. As a matter of fact, in respect of the assessment years 1993-1994 and 1995-1996, the petitioner became entitled to the refund amounts only pursuant to Ext.P5(c) and P5(d) orders respectively, and therefore, in respect of those years, the petitioner cannot claim any amount by way of interest on the refund amounts sanctioned to him. For the assessment years 1987-1988,1988-1989, 1989-1990, 1998-1999 and 1999-2000, however, the amounts sanctioned by way of refund in Ext.P5, P5(a), P5(b) and P5(e) orders, would have to carry interest with effect from 22.07.1998, 20.07.1998, 27.07.1998, 07.04.2005 and 23.11.2005 respectively since those would be the days that correspond to the expiry of three months from the date of the order by which the claim for refund actually arose in favour of the petitioner. Accordingly, I dispose the writ petition by declaring that, the petitioner is entitled to interest on belated payment of the refund amounts in Exts.P5, P5(a), P5(b) and P5(e) orders in terms of Section 68 of the Agricultural Income Tax Act, 1991, and in respect of the assessment years 1987-1988, 1988-1989, 1989-1990, 1998-1999 and 1999-2000 for the period from 22.07.1998, 20.07.1998, 27.07.1998, 07.04.2005 and 23.11.2005 respectively till the date of the actual payment of the refund amount to them pursuant to Ext.P5 series of orders. The interest shall be calculated at the statutory rate of simple interest of 15% per annum on the amounts of refund sanctioned to the petitioner by the aforementioned orders and shall be disbursed to the petitioner within a period of four months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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