IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 29205 of 2015 (A)

PETITIONER(S):

KANNAN DEVAN HILLS PLANTATIONS
COMPANY PRIVATE LIMITED
KDHP HOUSE, MUNNAR - 685 612
REPRESENTED BY ITS
EXECUTIVE DIRECTOR MR.P.M.SRIKRISHNAN.

BY ADVS.SRI.JOSEPH MARKOS (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC

RESPONDENT(S):

INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, AGRICULTURAL INCOME TAX
IDUKKI AT KATTAPPANA 685 515.

BY GOVERNMENT PLEADER DR. SEBASTIAN CHAMPAPPILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29205 of 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS

P1: TRUE COPY OF ASSESSMENT ORDER DATED 25/5/2010 FOR AY 2006-07 PASSED BY THE RESPONDENT.

P2: TRUE COPY OF ASSESSMENT ORDER DATED 2/8/2010 FOR AY 2007-08 PASSED BY THE RESPONDENT.

P3: TRUE COPY OF ASSESSMENT ORDER DATED 16/06/2012 FOR AY 2008-09 PASSED BY THE RESPONDENT.

P4: TRUE COPY OF THE PROVISIONAL ORDER DATED 12/9/2011 FOR AY 2009-10 PASSED BY THE RESPONDENT.

P5: TRUE COPY OF ASSESSMENT ORDER DATED 22/02/2013 FOR AY 2009-10 PASSED BY THE RESPONDENT.

P6: TRUE COPY OF THE LETTER DATED 24/9/2014 ISSUED BY THE PETITIONER TO THE RESPONDENT.

P7: TRUE COPY OF THE LETTER DATED 19/02/2015 ISSUED BY THE PETITIONER TO THE RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL.

TRUE COPY

P.A. TO JUDGE.

das

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 29205 of 2015
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Dated this the 19th day of October, 2015

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P5 assessment order under the Kerala Agricultural Income Tax Act, to the extent it does not set off the carried forward losses of the petitioner for the assessment years 2006-07 and 2007-08, from the income that is determined for the assessment year 2009-10. It is the case of the petitioner that in Ext.P5 assessment order, the respondent has only carried forward and set off the losses incurred by the petitioner for the assessment year 2008-09 and on account of not setting off the losses for the earlier years, there was a lesser amount of refund shown as payable to the petitioner. It is the case of the petitioner that if the losses for 2006-07 and 2007-08 were also considered, the refund due to him would have been in a higher amount.

2. I have heard the learned senior counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in accordance with the specific provisions of Section 12 of the

Agricultural Income Tax Act, 1991, the petitioner is entitled to claim a set off of carried forward losses of earlier assessment years for a period of eight years. In Ext.P5 order, that was passed by the respondent, while the carried forward loss of 2008-09 has been set off against the income determined for the year 2009-10, the carried forward losses pertaining to the years 2006-07 and 2007-08 have not been set off in the assessment order. Thus, I quash Ext.P5 order, to the extent it has not considered the set off of the carried forward losses for the years 2006-07 and 2007-08. Accordingly, the respondent shall pass a revised assessment order for the assessment year 2009-10, by taking into account the carried forward losses of the petitioner for the assessment years 2006-07, 2007-08 and 2008-09 and compute the amount of tax/refund that is due from/to the petitioner, for the assessment year 2009-10. The respondent shall pass a revised assessment order as directed, within a period of one month from the date of receipt of a copy of this judgment. The claim of the petitioner for interest on delayed refund, if any, is left open to be decided in appropriate proceedings.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /19.10.15