IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No. 34937 of 2015

Anand Cine Service ... Petitioner

Vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20, Aayakar Bhavan,
121, MG Road, Chennai 600 034. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of Writ of Mandamus to direct the respondent to refund the amount of Rs.5,78,424/- which has been wrongly adjusted from the refunds due to the petitioner for the assessment year 2009-10, along with the interest due thereon under section 244A of the Income Tax Act, 1961.

For petitioner : Mr. Arun Karthik Mohan
For respondents : Mr.T. Pramodkumar Chopda
Addl. Govt. Pleader (T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.T. Pramodkumar Chopda, learned Additional Government Pleader (T), who took notice for the respondent and with their consent, the writ petition is taken up for disposal at the admission stage itself.

2.The writ petition has been filed under Article 226 of the Constitution of India to direct the respondent to refund the amount of Rs.5,78,424/- which has been wrongly adjusted from the refunds due to the petitioner for the assessment year 2009-10, along with the interest due thereon under section 244A of the Income Tax Act, 1961.



3. The petitioner is a partnership firm involved in the business of leasing of film equipments and has been assessed with the respondent department. For the assessment year 1990-91, the respondent passed the assessment order assessing petitioner's total income as Rs.17,58,450/- on 1.2.1993, against which, the petitioner preferred appeal before the Commissioner of Income Tax (Appeals).

4. The said appeal was partly allowed on 16.4.1993 by the Commissioner of Income Tax (Appeals). Thereafter on 21.4.1993, an order was passed by the assessing officer, giving effect to the order of the Commissioner of Income Tax (Appeals). Subsequently, on 23.8.1993, the respondent passed an order under Section 154 of Income Tax Act revising the total income and accordingly calculated the total tax payable at Rs.7,14,777/-.

5. By a letter dated 13.10.1993, the respondent has adjusted a refund due to Mrs.Manoramma, a sum of Rs.40,653/- towards demands due from the petitioner for the said assessment year. Thereafter the respondent claimed through its letter dated 18.3.1994, the arrears of income tax amounting to Rs.1,99,803/- from the petitioner for the assessment year 1990-1991. For that, the petitioner replied through its letter dated 01.04.1994 specifically pointing out that the total tax payable by the petitioner for the said assessment year was only Rs.2,23,667/- after giving effect to the order of the Commissioner of Income Tax (Appeals).

6. According to the petitioner, though the Commissioner of Income Tax (Appeals) has passed its order on 16.4.1993, setting aside certain issues, the respondent has till date, not taken any steps towards re-examining such issues set aside by the Appellate Authority. But to the shock and surprise of petitioner, in form 26AS relating to assessment year 2012-2013, a sum of Rs.7,14,780/- has been erroneously adjusted against a purported demand for the assessment year 1990-91. The tax payable for the assessment year 1990-91 after giving effect to the order of Commissioner of Income Tax (Appeals) was only a sum of Rs.2,23,667/- and after adjusting payments made earlier, the balance due as against the demand for the assessment year 1990-91 is only a sum of Rs.1,36,356/- and by adjusting Rs.7,14,780/- as demand due for assessment year 1990-91, the respondent adjusted an excess amount of Rs.5,78,424/-. The petitioner, on 10.7.2015, pointing out the above erroneous adjustment, sent a representation to the respondent for refund of Rs.5,78,424/- . The grievance of the petitioner is that inspite of efflux of time and inspite of constant requests, no refund whatsoever has been made for the assessment year 2009-2010. Hence the petitioner is before this Court.



7. During the course of the argument, the learned counsel for the petitioner submitted that refund claim made by the petitioner be considered by the respondent and it would suffice if a direction is given to the respondent to dispose of the representation of the petitioner after verifying the back files, within a stipulated time fixed by this Court.

8. In view of the above, this writ petition is disposed of by directing the respondent to consider the representation dated 10.7.2015 of the petitioner with regard to refund claim and pass appropriate orders, after verifying the back files. It is made clear that the petitioner is directed to produce copies of all the relevant records along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same after verifying the back files and pass appropriate orders on merits and in accordance with law, within a period of eight weeks thereafter. No costs.

9. The Writ Petition is disposed of in the above terms. Consequently, the connected M.P.No.1 of 2015 is closed.

msr

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20,
Aayakar Bhavan,
121, MG Road, Chennai 600 034.

+ 1 cc to Mr.Arunkarthik Mohan, Advocate SR 65218

+ 1 cc to Spl. Govt.Pleader SR 65550

nm(co)
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