IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.6459 of 2015
and
M.P.No.1 of 2015

V.Ram Mohan ...Petitioner

Vs

The Assistant Commissioner
of Income Tax,
Business Circle XII,
Chennai - 6. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondent for the assessment year 2005-06 and quash the order in PAN No.AAAPR6060K dated 27.12.2010 passed therein on the petitioner herein and further direct the respondent to refund the amounts due for the assessment year 2007-08 without any adjustments along statutory interest under Sections 214 and 244A of the Income Tax Act, 1961 to the petitioner herein.

For Petitioner : Ms.Pushya Seetharaman,
Sr. Counsel for Ms.J.Sreevidya

For Respondent : Mr.T.Pramod Kumar Chopda,
Sr. Standing Counsel

ORDER

Challenging the assessment order passed by the respondent in PAN No.AAAPR6060K dated 27.12.2010, the petitioner has filed the present writ petition.

2.It is the case of the petitioner that for the assessment year 2007-2008, the respondent passed a revised assessment order, determining a refund of Rs.36,60,996/- and the petitioner filed a petition under Section 154 of the Income Tax Act to rectify certain mistakes. Though the petitioner made several letters/representations to the respondent, requesting refund with interest under Section 244A of the Income Tax Act, no action has been taken and the appeal filed by the Department against the Commissioner of Income Tax (Appeals) was also dismissed by the Tribunal in ITA No.669/Mds/2012 vide order dated 04.04.2013. Thereafter, related to refund query, the petitioner filed an appeal under Section 19 of the Right to Information Act before the Chief Commissioner of Income Tax, Chennai, which was in turn transferred to the Joint commissioner of Income Tax and a direction was also issued to the respondent to refund the amount within seven days. Even thereafter, no refund was issued. While so, the petitioner was served with a copy of the assessment order for the assessment year 2005-2006 dated 27.10.2010 only on 14.09.2014. Therefore, the petitioner made several representations requesting the respondent to furnish the acknowledgment. Instead of furnishing acknowledgment, the respondent vide his communication dated 14.10.2014, intimated the Income Tax Officer, O/o.Chief Commissioner of Income Tax I, Chennai that an amount of Rs.12,78,903/- towards tax liability was adjusted out of the refund of Rs.44,55,862/- determined for the assessment year 2007-2008 and an amount of Rs.31,76,959/- had been refunded to the assessee on 14.10.2014. Aggrieved by the same, the petitioner sent several representations, requesting balance refund, which has been adjusted against the alleged demand. Since no action is forthcoming, the petitioner has filed the present writ petition.

3.Ms.Pushya Seetharaman, learned senior counsel appearing for the petitioner would submit that though the assessment order for the assessment year 2005-2006 was passed actually on 27.12.2010, copy of the said order came to be served on the petitioner only on 14.09.2014. The learned senior counsel would further submit that the inaction on the part of the authority cannot be countenanced. The learned senior counsel submitted that there is no explanation whatsoever for inordinate delay in serving the said order and hence no such an order was really passed on the said date and prayed to set aside the impugned order, directing the respondent to refund, as prayed for by the petitioner.

4.On the other hand, the learned senior standing counsel appearing for the respondent submitted that the petitioner participated in the re-assessment proceedings under Section 153 (2) of the Act and after sufficient opportunity only, the order came to be passed and hence the submission of the senior counsel appearing for the petitioner on limitation lacks merit. He also produced the ledger, wherein necessary entries are available for having passed the assessment order on 27.12.2010 itself. He has fairly submitted that the copy of the assessment order dated 27.12.2010 was not served on the petitioner inadvertently and it was served belatedly on 14.09.2014.

5.I have considered the rival submissions and perused the materials available on record.

6.Since the refund claimed by the petitioner to the tune of Rs.12,78,903/- was already adjusted towards tax liability out of the refund of Rs.44,55,862/- determined for the assessment year 2007-2008, this Court is of the view that it would be appropriate to direct the petitioner to file an appeal against the assessment order dated 27.12.2010 for **2005-06*** before the appellate authority. Accordingly, the petitioner is directed to submit an application to the respondent to furnish the certified copy of the assessment order for **2005-06*** as well as demand notice, within a period of two weeks from today. On receipt of such application, the respondent is directed to furnish the certified copy of the order sought for by the petitioner forthwith. On receipt of the same, the petitioner is directed to file appeal before the appellate authority within a period of two weeks. On such filing of the appeal, the appellate authority is directed to entertain the same without raising any issue with regard to limitation and decide it on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, within a period of three months thereafter.

7.The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)
dt. 06.10.2015

//True Copy//

Amended as per court order
dated 16.10.2015

Sd/-
Assistant Registrar(CO)
dt. 27.10.2015

Sub Assistant Registrar

mmi

To

The Assistant Commissioner of Income Tax,
Business Circle XII,
Chennai - 6.

1 CC to Ms.J.Sreevidya, Advocate SR.No.57654

1 CC to Mr.T.Pramod Kumar Chopda, Advocate SR.No. 52994

W.P.No.6459 of 2015

PUR (CO)
PSI (06.10.2015)
EU 27.10.2015