IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Writ Appeal No.572 of 2011
and
M.P.No.1 of 2011

1. The Commissioner of Income Tax,
   Chennai V, Nungambakkam,
   Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
   Salary Circle - VI,
   121, M.G.Road,
   Chennai - 600 034. ... Appellants/Respondents

Vs.

S.Vasudevan ... Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.9.2010 passed in W.P.No.20525 of 2010 on the file of this Court.

W.P.No.20525 of 2010 : Writ Petition filed under Article 226 of Constitution of India seeking Writ of Certiorari, calling for records of the 1st Respondent in C.No.2063(35)/2002-03 CIT-V, dated 14.07.2009.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel for IT

For Respondent : No appearance

JUDGMENT
(Judgment of the Court was delivered by D.KRISHNAKUMAR, J)

This Writ Appeal has been preferred against the Order dated 15.9.2010 passed in W.P.No.20525 of 2010 by a learned single Judge of this Court.

2. The facts of the case are as follows:-

The respondent was an employee of M/s.Infosys Technology Ltd., Chennai and an assessee on the file of the second respondent. Based on the demand raised by the Assistant Commissioner of Income tax, TDS, Bangalore on 7.10.1999, for the failure to deduct tax at source in respect of perquisite value of stock options allotted to its employees who were covered by the Employees Stock Option, otherwise, known as ESOP scheme of the company, the employer of the respondent/assessee had paid the tax amount of Rs.49,52,35,650/- under section 201 (1) of the Income Tax Act along with the interest of Rs.4,82,85,475/- under section 201 (1A) of the Income Tax Act. Subsequently, respective tax was recovered from the salary of the respondent by his employer and the respondent/assessee was also issued Form 16 by the employer on 25.4.2010 certifying the further deduction and remittance towards tax. Subsequently, the respondent filed a revised return on 11.2.2003 and also filed a petition on 11.2.2003 before the first respondent for refunding the TDS amount along with interest along with a request to condone the delay in filing the returns. However, such request was rejected by the first respondent vide Proceedings dated 14.07.2009. Challenging the said proceedings, the respondent filed W.P.No.20525 of 2010 before the Writ Court and the same was allowed by the Writ Court by order dated 15.9.2010. Aggrieved against this order, the present Writ Appeal has been filed by the revenue.

3. The revenue preferred a batch of Writ Appeals, viz., W.A.Nos.1542 and 2161 of 2010 etc., batch, against the orders passed in several Writ Petitions in similar circumstances. In the aforesaid Writ Appeals, a Division Bench of this Court, following the order of the Karnataka High Court in the case of S.Thiagarajan vs. Asst. CIT, Cirle 14(1), Bangalore reported in (2009) 185 Taxman 20, dismissed the Writ Appeals by judgment dated 23.12.2011 with a direction to the respondents in those Writ Petitions to refund the amounts to the assessees with interest payable as per the provisions of the Act within a period of four weeks from the date of receipt of a copy of that order.

4. It is not disputed by the learned Senior Standing Counsel appearing for the appellant that the instant Writ Appeal also stands on the same footing and the Writ Appeal is covered by the said decisions.

5. Considering the facts and circumstances of the case and following the aforesaid decision of this Court in a batch of Writ Appeals, viz., W.A.Nos.1542 and 2161 of 2010 etc., batch, this Court is not inclined to interfere with the order of the Writ Court dated 15.9.2010 passed in W.P.No.20525 of 2010 and the same is confirmed. The Writ

Appeal is ***Dismissed** The appellants are directed to refund the amount to the assessee/respondent with interest payable as per the provisions of the Act within a period of four weeks from the date of receipt of a copy of this order. No order as to Costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)
Dt.25.7.16

***Corrected as per order of this Court for Being mentioned order dt.9.8.2016 in WA.572/11**
sd/-
Assistant Registrar
Dt.18.8.16

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Commissioner of Income Tax, Chennai V, Nungambakkam, Chennai - 600 034.

2. The Assistant Commissioner of Income Tax, Salary Circle - VI, 121, M.G.Road, Chennai - 600 034.

***To be Substituted to the order already despatched on 08.8.2016.**

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.36761

W.A.No.572 of 2011
and
M.P.No.1 of 2011

GJ(CO)
CA(27/07/2016)
krd 22/8