IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.10726 & 10727 of 2011 and
M.P.Nos.1 & 1 of 2011 & 1 & 1 of 2015

Mr.Gopalan Thygarajan ... Petitioner in both W.Ps.

Vs.

1. The Commissioner of Income Tax,
   Chennai-V,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034.

2. The Deputy Commissioner of Income Tax,
   Salary Circle-IV,
   121, Mahatma Gandhi Road,
   Chennai-600 034. ... Respondents in both W.Ps.

Prayer in W.P.No.10726 of 2011 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in C.No.2063(33)/2002-03/CIT-V dated 26.10.2009 and quash the same as illegal, arbitrary and without authority of law and further direct the second respondent to refund the tax amount of Rs.3,43,658/- along with admissible interest.

Prayer in W.P.No.***10727** of 2011 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent order dated 22.02.2011 and quash the same as illegal, arbitrary and without authority of law and further direct the second respondent to refund the tax amount of Rs.1,83,294/- along with admissible interest.

For Petitioner : Mr.S.Thiruvengadam

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel

COMMON ORDER

Heard Mr.S.Thiruvengadam, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents.

2.The petitioner has filed W.P.No.10726 of 2011 challenging the order dated 26.10.2009 passed under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred as "the Act"). By the said order, the return filed by the petitioner on 11.02.2003, was held to be non-constituted revised return under Section 139(5) of the Act, and the view taken by the assessing officer that it is an invalid return was upheld by the Commissioner.

3.The petitioner has filed W.P.No.10727 of 2011 challenging the order passed by the first respondent dated 22.02.2011, rejecting the petition filed by the assessee under Section 119 (2)(b) of the Act praying for condonation of delay in filing the revised return for the assessment year 1998-99.

4.Identical orders were subject matter of challenge in a batch of writ petitions in W.P.No.16375 of 2010 etc., batch. All other similarly placed persons like the petitioner, are all employees of Infosys Technology Limited. Those writ petitions were allowed, as against which, the Department preferred writ appeals viz., W.A.No.1542 of 2010 etc., batch and by a common judgment dated 23.12.2011, the writ appeals were dismissed.

5.In respect of one Mr.S.Vasudevan, who is also an employee like that of the petitioner herein, his case came up for consideration before the Hon'ble Division Bench in W.A.No.572 of 2011, by the revenue as against the order in W.P.No.20525 of 2010 dated 15.09.2011 and the Division Bench by judgment dated 30.06.2016, following the earlier Division Bench's judgment in W.A.No.1542 of 2010 etc., batch, dismissed the appeal filed by the revenue. The operative portion of the order reads as follows:

> "5.Learned counsel for the appellants in the writ appeals has contended that the Department had raised a demand under Section 201 and for interest under Section 201(1A) of the Income Tax Act

against the employer for the failure to deduct tax at source in respect of perquisite value of stock option adopted by the employees covered under Employees Stock Option Scheme (ESO Scheme) and against such demand the employer had not preferred any appeal and, in such circumstances, the learned single Judge ought not to have directed the Revenue to refund the amount to the employee, against whom admittedly there was no demand, with interest. According to him, the decision of the Karnataka High Court in S.Thiagarajan's case is not applicable to the facts of the case and in that case Section 240 was dealt with, whereas the present case is covered by the provisions of Section 239 of the Act. He further added that the Chief Commissioner of Tax has no power to condone the delay and he should have directed the assessee to approach the Board.

6.The writ petitions were filed by the employees seeking refund of the TDS amount with admissible interest by quashing the order passed by the authorities in the application filed by them for condonation of delay in seeking refund. The writ petitioners seeks refund by placing reliance on the decision of the Karnataka High Court in S.Thiagarajan's case and the decision of this Court, which is in challenge in the writ appeals.

7.The learned single Judge has allowed the writ petitions by following the order of the Karnataka High Court in S.Thiagarajan's case. Though the learned Standing Counsel for the Revenue contends that the said decision is not applicable to the facts of the present case, we are not able to take a contra view. In the said case, the Karnataka High Court has categorically held that it is an obligation cast on the Revenue to effect the refund, without calling upon the assessees to apply for refund the claim. The learned Standing Counsel is not in a position to state as to whether the order of the order of the Karnataka High Court has been reversed by the Division Bench or the Hon'ble Supreme Court and, moreover, he is not contra view. Moreover, the contention of the learned Standing Counsel that the Chief Commissioner has no power to condone the delay sustained in view of the decision of the hon'ble Supreme Court in the earlier round of litigation."

6.Thus, following the above decision, these writ petitions are allowed, the impugned orders are set aside and the respondents are directed to refund the amount to the petitioner/assessee with interest payable as per the provisions of the Income Tax Act within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)
(22/12/2017)
(* AMENDED AS PER ORDER DATED 19.01.2018 MADE IN WP.10726 & 10727/2011)

-s/d-
Assistant Registrar(CS II)
(22/01/2018)

True Copy

Sub-Assistant Registrar

abr

To

1. The Commissioner of Income Tax,
   Chennai-V,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034.

TO BE SUBSTITUTAD TO THE ORDER COPY ALREADY DESPATCH ON 08.01.2018

2. The Deputy Commissioner
   of Income Tax,
   Salary Circle-IV,
   121, Mahatma Gandhi Road,
   Chennai-600 034.

+2 Ccs to Mr.S. Thiruvengadam, Advocate sr 4058 & 4059.
+1 CC to Mr.A.P. Srinivas, Advocate sr 88298.

W.P.Nos.10726 & 10727 of 2011

SP(22/12/2017)

GP(CO)
TR(22/01/2018)