IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.09.2018

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9544 of 2016

T.V.Ramanathan (HUF),
"Sundara"
No.24, SundareswaraSwamy Street,
Chennai – 600 004. ... Petitioner

vs.

1. Assistant Commissioner of Income Tax,
   Business Non-Corporate Circle,
   CPC Bangalore Ward II(1),
   Income Tax Department,
   Post Bag No.1, Electronic City Post Office,
   Bangalore 560 100.

2. The Deputy Commissioner of Income Tax
   Non-Corporate Circle 2(1)
   No.121, Nungambakkam High Road,
   Chennai – 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in PAN No.AAAHR0319D dated 19.01.2016 deemed to be as "True Copy" of the Intimation under Section 143 (1) and quash the same as void and unenforceable in law and consequentially quash the Intimation under Section 143(1) dated 26.11.2015 issued by the first respondent in so far as it relates to the set off action as void and unenforceable in law and direct the second respondent herein to issue refund for the assessment year 2015-16.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel
for Income Tax

O R D E R

The petitioner, a Kartha of Hindu Undivided Family, is an assessee under the respondents. The present writ petition is filed challenging the proceedings of the second respondent dated

19.03.2012, said to have been served on the petitioner by way of "True Copy" on 19.01.2016. Consequently, the petitioner seeks for a direction to the second respondent to issue refund for the assessment year 2015-16.

2. The following are the short facts which have driven the petitioner to file the present writ petition.

In respect of assessment year 2015-16, the petitioner filed return claiming refund of Rs.54,030/-. The Assessing Officer, based on the return filed by the petitioner, issued a communication dated 26.11.2015, informing that the total income tax refundable to the petitioner as computed under Section 143(1) of the said Act is Rs.56,188/-. However, on the very same day, further communication was issued as if a total outstanding demand of Rs.1,25,197/- was due from the petitioner in respect of assessment years 2004-05, 2010-11, 2002-03 & 2008-09 and that the said amount of Rs.56,190/- payable to the petitioner by way of refund has been adjusted towards such outstanding demand. Consequently, the petitioner was informed that the balance outstanding demand payable by him, excluding interest under Section 220(2) is Rs.69,007/- in respect of those four assessment years.

3. The grievance of the petitioner before this Court is that there was no demand made at any point of time in respect of assessment years 2004-05, 2010-11 and 2008-09 and consequently, in the absence of any arrears of tax payable by the petitioner in respect of those three assessment years, the Assessing Officer is not justified in making adjustment towards the so called liability in respect of those three assessment years, from and out of the refund amount payable to the petitioner in respect of assessment year 2015-16. Insofar as the assessment year 2002-03 is concerned, it is the contention of the petitioner that an advance tax paid by the petitioner of Rs.25,000/- in respect of the said assessment year was not at all taken into consideration, though it was brought to the notice of the Assessing Officer through the petitioner's communication dated 20.10.2015. Therefore, it is contended that making an adjustment of Rs.30,609/- in respect of the said assessment year 2002-03 is also not justifiable.

4. On the other hand, it is contended by the respondents as follows:

Insofar as the assessment year 2004-05 is concerned, an adjustment originally made for Rs.125/- was subsequently refunded on 19.04.2016. Likewise, in respect of assessment year 2010-11, an adjustment originally made for Rs.15,993/- towards outstanding demand of Rs.84,990/- was subsequently refunded on 18.04.2016. Likewise, in respect of assessment year 2008-09, a sum of Rs.9,473/- originally adjusted was subsequently refunded to the petitioner on 19.04.2016. The assessee does not have arrears for assessment year 2010-11. However, in respect of the assessment year 2002-03 is concerned, the petitioner's request made through his communication dated 20.10.2015 for considering his advance payment of tax of Rs.25,000/- is under consideration and appropriate orders will be passed based on the materials placed by the petitioner.

5. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents.

6. It is seen that the petitioner made refund claim to the tune of Rs.54,030/- by way of filing return for the assessment order for the year 2015-16. Though, such refund claim was accepted by the Revenue, the same, however, was sought to be adjusted in respect of the alleged outstanding tax arrears for the four assessment years namely 2004-05, 2010-11, 2002-03 & 2008-09, for a sum of Rs.125/-, Rs.84,990/-, Rs.30,609/- and Rs.9,473/- respectively.

7. According to the petitioner, the said claim of outstanding, in respect of those four assessment years are not factually correct. It is the specific case of the petitioner that he is not in arrears and that no demand whatsoever was made in respect of the so called arrears for the assessment years 2004-05, 2010-11, 2002-03 and 2008-09. Now, before this Court the Revenue has stated that the amount adjusted towards 2004-05, 2008-09 and 2010-11 as stated supra, was already refunded to the petitioner on 19.04.2016, 19.04.2016 and 18.04.2016. The learned counsel for the petitioner is not disputing the same. The learned counsel for the respondents thus, submitted that there is no claim of arrears in respect for those three assessment years. Further, she also produced a communication received from the Assistant Commissioner of Income Tax stating that the assessee does not have an arrear for the assessment year 2010-11. Thus, the dispute is now narrowed down only in respect of the assessment year 2002-03, wherein, the Revenue claimed an outstanding arrears of tax as Rs.30,609/- from the petitioner. Though, such demand is made by the Revenue, the communication issued by the petitioner dated 20.10.2015 indicates that he has claimed to have paid an advance amount of Rs.25,000/- on 27.03.2002 and such payment was not given credit to. In support of such contention, the petitioner has also obtained a Certificate from the Chennai Central Cooperative Bank Ltd., Mylapore Branch, Chennai-4 dated 27.08.2003 certifying that a sum of Rs.25,000/- was deducted on 27.03.2002 from the Savings Bank account of the petitioner favouring Indian Bank Account Income Tax, through clearing. Therefore, from the perusal of the communication of the petitioner dated 20.10.2015 and the certificate issued by the said Bank dated 27.08.2003, it is evident that the claim of the petitioner in making the advance payment of Rs.25,000/- has not been considered by the Assessing Officer, while making the claim of Rs.30,609/-, in respect of the assessment year 2002-03.

8. Now, the learned counsel for the respondents before this Court fairly submitted that for the said claim made by the petitioner, based on the documents already filed by him, will be considered and appropriate orders will be passed accordingly. If an order is passed by considering the said representation of the petitioner and the certificate issued by the bank, I do not think that the petitioner may have any further grievance. Therefore, this Writ Petition is disposed of as follows:

The second respondent is directed to consider the claim of the petitioner in respect of assessment year 2002-03 in making the advance payment of tax of Rs.25,000/- through his communication dated 20.10.2015 also by considering the certificate issued by the Chennai Central Cooperative Bank Ltd., Mylapore Branch, Chennai, dated 27.08.2003 and pass appropriate orders accordingly on merits, within a period of three weeks from the date of receipt of a copy of this order. Based on the order to be passed by the second respondent as stated supra, consequential order on the refund amount already determined by the Revenue in respect of assessment year 2015-16 shall also be passed accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sni

To

1. Assistant Commissioner of Income Tax,
   Business Non-Corporate Circle,
   CPC Bangalore Ward II(1),
   Income Tax Department,
   Post Bag No.1, Electronic City Post Office,
   Bangalore 560 100.

2. The Deputy Commissioner of Income Tax
   Non-Corporate Circle 2(1)
   No.121, Nungambakkam High Road,
   Chennai - 600 034.

+1cc to Mr.R.Sivaraman, Advocate,SR.No.65782

W.P.No.9544 of 2016

BR(CO)

rrs 25/10/2018