IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition No.20542 of 2011

No.AA, 182, Erode Co-operative
Building Society Limited,
Rep. by its Special Officer,
160, KNK Road, Thiru Nagar Colony,
Erode - 638 003.

... Petitioner

Vs.

The Commissioner of Income Tax - II,
Race Course Road,
Coimbatore - 641 018. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorarified mandamus, calling for the entire records relating to the impugned orders passed by the respondent authority in his proceedings dated 09.09.2009 and quash the same and consequently direct the respondent authority to order for the refund of the tax deducted at source amounting to Rs.4,03,519/-.

For Petitioner : Mr.K.Premkumar
For Respondent : Mr.A.N.R.Jayapratap
Senior Standing counsel

ORDER

Heard the learned counsel for the petitioner and learned Senior Standing Counsel for respondent.

2. The Central Board of Direct Tax has issued circular dated 22.12.2006 under Section 119 of the Income Tax Act, 1961 bearing instruction number 13 of 2006. The said circular has modified the then existing circular and has delegated the powers to pass orders under Section 119(2)(b) of the Income Tax Act for processing refund claims. The claim should below Rs.50,00,000/- for The Chief Commissioner of Income Tax to consider and pass orders. Paras 3,4,5 & 6 of the said circular is hereunder:

"3. The applications/claims under section 119(2)(b) for condonation of delay involving refund claims exceeding Rs.50,00,000/- would continue to be processed by Central Board of Direct Taxes, both for acceptance and rejection.

4. No fresh application for claim of refund will be entertained beyond six years from the end of the assessment year for which the application/claim is made.

5. The powers of acceptance/rejection within the monetary limits delegated to the CCsIt/CsIT would be subject to the following conditions:-

(a) The refund has arisen as a result of excess tax deducted /collected at source andpayments of advance tax under the provision of Chapters XVII-B, XVII-BB and XVII-C respectively and the amount of refund does not exceed Rs.50,00,000 in respect of CCsIT and Rs.10,00,000 in respect of CsIT for any one assessment year.

(b) The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act; and

(c) No interest will be admissible on the belated refund claims.''

3. The power has been given under the circular to the Chief Commissioner of Income Tax for refund of amount not exceeding Rs.50,00,000/-. The Circular also makes it clear that no interest will be admissible in case of belated refund claims. While A Division Bench of the Bombay High Court in Sitaldas K.Motwani -Vs- Director-General of Income-Tax and others, has also considered this circular and has remitted back to the authority to consider the question of hardship as well as the correctness and genuineness of the refund claim.

4. Considering the aforesaid decision, I am of the view that this case also should be remitted back to the respondent to pass appropriate order, keeping in mind, the purpose of circular issued under section 119 of the Income Tax Act, 1961 by construing it liberally. Impugned order is thus set aside and the case is remitted back to the respondent. The respondent shall pass appropriate order within a period of three months from the date of receipt of copy of this order.

This writ petition is disposed with the observation. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

drl

To

The Commissioner of Income Tax - II,
Race Course Road,
Coimbatore - 641 018.

+1 CC to Mr.A.P. Srinivas, Advocate sr 106472.

W.P.No.20542 of 2011

NMI(CO)
SP(04/02/2020)