IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8658 of 2014
and M.P.No.1 of 2014

P.R.Ganapathy .. Petitioner

vs.

1.The Commissioner of Income Tax -1
No.67-A, Race Course Road,
Coimbatore 641 018.

2.The Income Tax Officer,
Ward – II(5),
No.63, Race Course Road,
Coimbatore. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st respondent in C.No.129(53)/CIT-I: CBE/2012-13 dated 05.10.2012 insofar as the non-payment of interest alone is concerned and the consequential communication dated 13.08.2013 in C.No.129(53)/CIT/I: CBE/11-12 and quash the same and further direct the respondents to grant the interest from 01.04.2000 to 03.04.2013, of the refund of TDS amount of Rs.12,66,569/- which was illegally collected from the petitioner during the assessment year 1999-2000.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.N.Prasath
Addl.Govt.Pleader

O R D E R

The petitioner was allotted shares by his employer. Tax was demanded from the petitioner's employer on the ground that the employer failed to make Tax Deductions at Source (TDS). The issue was taken up by the employer in appeal.

2. The Income Tax Appellate Tribunal, Bangalore ultimately answered the issue in favour of the petitioner's employer, holding that the petitioner's employer was not

required to make Tax Deduction at Source on the shares allotted to its employees vide its Final Order No.818-820/2000 dated 28.6.2002.

3. Further, an appeal before the High Court and the Supreme Court have confirmed the aforesaid order of the Income Tax Appellate Tribunal.

4. However, during interregnum proportionate amount of tax which was demanded by the Income Tax Department was paid by the petitioner's employer and debited by the employer against payable to the petitioner.

5. The petitioner therefore filed the revised return for the assessment year 1999-2000 and requested for refund of the amount paid as tax together with interest.

6. The 1st respondent by the 1st mentioned impugned proceeding dated 5.10.2012 ordered refund of tax paid by the petitioner's employer alone without interest.

7. It is the case of the petitioner that the petitioner is entitled to interest under Section 244 A of the Income Tax Act, 1961. Therefore, the petitioner once again approached the 2nd respondent with a request to revise the order of assessment by rectifying the same for the assessment year 1999-2000.

8. On 3.7.2013, the petitioner sent representation and requested for interest on delayed refund of amount. The petitioner enclosed copies of the decision of the Honourable Supreme Court, Karnataka High Court in the case of the petitioner's employer and that of this Court in W.P.No.2504 of 2010 dated 12.3.2010 wherein the interest was directed to be paid under a somewhat similar circumstances.

9. In the 2nd mentioned impugned order dated 13.8.2013, 1st respondent has rejected the request without any reasoning and has merely stated that the request of the petitioner cannot be considered.

10. Heard the learned counsel for the petitioner and the respondents.

11. The learned counsel for the petitioner submits that payment of interest under Section 244 A of the Income Tax Act, 1961 is axiomatic consequential to refund and the department has no choice but to pay interest on delayed refund of tax.

12. The learned counsel further submits that the issues now covered by the decision of this Court rendered in W.P.No.2504 of 2010 in its order dated 12.3.2010.

13. Per contra, the learned counsel for the respondents reiterate that both the impugned orders are well reasoned and requires no interference. The learned counsel further submits that the decision of this Court rendered in W.P.No.2504 of 2010 vide its order dated 12.3.2010 is not applicable to the facts and circumstances of the case and therefore prayed for dismissal of the present writ petition.

14. I have considered the submissions of the petitioner and the respondents. The tax was paid by the petitioner's employer pursuant to collateral proceedings initiated against the employer for alleged failure to make Tax Deductions at Source (TDS).

15. This issue was taken up before the appellate authorities and its now stands concluded that the petitioner's employer was not required to make Tax Deductions at Source on the shares allotted to the petitioner. Therefore, any amount paid by the employer during the pendency of such proceedings was liable to be refunded together with interest.

16. In this case, the amount paid by the petitioner's employer alone has been refunded back without interest vide 1st mentioned impugned order of the 1st respondent dated 5.10.2012. There is however no discussion as to why the interest under Section 244 A of the Income Tax Act, 1961 was not payable to the petitioner.

17. The Honourable Supreme Court in Sandvik Asia Ltd versus Commissioner of Income Tax has ordered payment of interest in case of delayed payment of refund. There it was held amount paid during pendency of the appeal are to be considered as deposits and therefore they should be refunded back together with interest.

18. Further, Sub-clause (1) (a) to section 244 A of the Income Tax Act, 1961 permits interest on delayed payment of refund. That being the case, the petitioner is justified in asking for interest on delayed refund of tax that was paid by his employer which has been held to be not payable by the employer. Further, once there is a refund and if there is a delay, interest is payable by the employer. There is no basis for denying interest on such delayed refund of the amounts.

19. Under these circumstances, I am of the view that the petitioner has made out sufficient case for interfering with the impugned orders of this Court to give a positive direction to the respondents to pay interest to the petitioner on such delayed refund of the amount.

20. Accordingly, this writ petition stands allowed with consequential relief to the petitioner. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

lbm/kkd

To

1.The Commissioner of Income Tax -1
No.67-A, Race Course Road,
Coimbatore 641 018.

2.The Income Tax Officer,
Ward - II(5),
No.63, Race Course Road,
Coimbatore.

+1cc to Mr.K.Soundararajan, Advocate SR.No.102141

+1cc to Mr.AP.Srinivas, Advocate SR.No.102289

W.P.No.8658 of 2014
and M.P.No.1 of 2014

PA(CO)
GMY(03/02/2020)