IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.25266 of 2019
and
WMP.No.24839 of 2019

M/s.Narayanan Chettiar Industries
Rep. by its Partner Mr.Rm.Subramaniyam
14, Davidson Street,
Chennai-600 001. ...Petitioner

vs.

1. The Income Tax Officer
Non-Corporate Ward 12(1)
Chennai-600 006.

2. The Joint Commissioner of Income Tax
Non-Corporate Range 12
Room No.215, Wing 2nd Floor, Tower-2
BSNL Building, No.16, Greams Road,
Chennai-600 006. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to refund the amount of Rs.15,18,650/- for the assessment year 1990-1991 and any excess interest collected U/s.220 along with statutory interest U/s.244A of the Income Tax Act, 1961 from the date of determination of the refund, till the date of issue of refund and further, pay compensation for the inordinate delay in granting the refund.

For Petitioner : Mrs.Pushya Sitaraman, Senior Counsel for M/s.J.Sreevidya

For Respondents : Mr.J.Narayanasamy standing counsel

O R D E R

The petitioner seeks for a mandamus directing the respondents to refund the amount of Rs.15,18,650/- for the assessment year 1990-1991 and any excess interest collected U/s.220 along with statutory interest U/s.244A of the Income Tax Act, 1961 from the date of determination of the refund, till the date of issue of refund and further, pay compensation for the inordinate delay in granting the refund.

2. The case of the petitioner, in short, is as follows:

For the assessment year 1990-1991, the assessment was completed under Section 143(3) r/w 147 of the Income Tax Act, 1961 (for brevity "the IT Act") and a demand was raised for a sum of Rs.63,23,528/-. The petitioner filed an appeal before the Commissioner of Income Tax (Appeals), Chennai, who in turn vide order dated 03.02.2000 held that a portion of the lands are not liable to tax and the rest should be assessed as Short Term Capital Gains and thus, remitted the matter to the Assessing Officer. The petitioner took up the matter further by way of appeal to the Income Tax Appellate Tribunal, Chennai. The Tribunal, vide orders dated 14.05.2001 & 01.10.2001, held that the profit on sale of non-agricultural lands should be assessed as Long Term Capital Gains and not the Short Term Capital Gains and however, upheld the order of Commissioner of Income Tax (Appeals) in remanding the matter. Thereafter, the first respondent passed an order dated 02.12.2002 under Section 143(3) r/w 254 to give effect to the order of the Tribunal and reduced the demand to Rs.40,78,567/-. The petitioner challenged the same before the Commissioner of Income Tax (Appeals), Chennai, who partly allowed the appeal, vide order dated 20.12.2006. The first respondent passed the giving effect order dated 29.03.2007 to the order of the Commissioner of Income Tax (Appeals), thereby reducing the demand to Rs.20,49,872/-. In the meantime, the first respondent certified the arrears of demand including interest for the assessment year 1990-1991 to the Tax Recovery Officer to recover the amounts from the petitioner on various dates. Since the demand raised by various orders passed by the Assessing Officer was already recovered and since the demand was considerably reduced, the petitioner requested the first respondent to refund the excess amount. The respondent reworked the interest under Sections 220 and 224 of the IT Act and refunded the amount of Rs.96,90,242/- including the statutory interest, thereby reducing the demand to Rs.20,49,872/- for the assessment year 1990-1991. The petitioner filed a further appeal against the giving effect order dated 29.03.2007 before the Commissioner of Income Tax (Appeals), and the same was allowed in favour of the petitioner vide order dated 26.04.2011. Thereafter, a giving effect order dated 08.06.2011 was passed by the Assessing Officer to the order of the Commissioner of Income Tax (Appeals) dated 26.04.2011, wherein the demand of Rs.20,49,872/- was reduced to Rs.5,31,202/-. It is stated that no appeal was filed by the Revenue against the order dated 26.04.2011 passed by the Commissioner of Income Tax (Appeals). Therefore, the issue attained its finality and the Revenue owes an amount of Rs.15,18,670/- towards excess tax collected, being the difference arising on account of the reduced demand together with statutory interest and also the excess interest collected under Section 220 of the IT Act. Therefore, the petitioner seeks for refund of the said sum of Rs.15,18,670/- as the excess tax collected from the petitioner. Since the request of the petitioner for refund of Rs.15,18,670/- was not considered inspite of several reminders, the present writ petition is filed with the relief as stated supra.

3. When the writ petition was taken up for admission on 04.09.2019, Mr.J.Narayanasamy, learned standing counsel (IT) took notice for the respondents and sought time to get instructions. Accordingly, the matter is listed today for further hearing.

4. The learned standing counsel for the respondents today produced a communication dated 19.09.2019 issued by the Income Tax Officer, Non-Corporate Ward 12(1), Chennai addressed to the learned Senior Standing Counsel, Chennai, wherein, it is stated as follows:

> "On a perusal of records of M/s.Narayanan Chettiar (hereinafter called the assessee), it is noticed that as much as Rs.96,90,240/- being the refund and interest payable thereon for the A.Ys.1990-91 and 1992-93 was issued and the assessee claims that part of the refund for the A.Y.1992-93 is yet to be received by it.
>
> In this regard, it is pertinent to mention that original records are not available in this case and even the reconstructed records contain partial information only. Even the consequential orders giving effect to appellate orders containing details of tax credits allowed are not available, which is

crucial to arrive at the balance sum to be refunded. In order to mitigate the hardship of the assessee, a request to M/s.Writers Information which is the custodian of our old records to trace out any correspondence or copies of orders etc available, if any, and their reply is awaited. Further, the assessee will also be requested to provide any other papers relating to the impugned issue so that necessary action can be taken up without further loss of time.

In this regard, it is assured that the assessee would be paid the refund due to it along with necessary interest at the earliest after obtaining relevant information either from the assessee or from M/s.Writers Information.

In view of the above, it is requested that the Hon'ble Court may be pleased to not to take any adverse view and grant time of four weeks to attend to the grievance of the assessee on priority basis."

5. By citing the above written instructions, the learned standing counsel for the respondents submitted that the request of the petitioner for refund of the sum of Rs.15,18,670/- will be considered and the amount will be refunded to the petitioner within a period of four weeks.

6. Considering the above stated facts and circumstances and considering the fact that the above claim made by the petitioner for refund of the sum of Rs.15,18,670/- is not disputed by the respondents and on the other hand, the respondents seek four weeks time to refund the same, this Writ Petition is disposed of, by recording the above stand taken by the respondents, also with further direction to the respondents to refund the said sum of Rs.15,18,670/- along with appropriate interest within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Officer
   Non-Corporate Ward 12(1)
   Chennai-600 006.

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   Non-Corporate Range 12
   Room No.215, Wing 2nd Floor, Tower-2
   BSNL Building, No.16, Greams Road,
   Chennai-600 006.

+1cc to M/s.J.Sreevidya , Advocate SR.No. 78693

W.P.No.25266 of 2019

A.SK(01/10/2019)