IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.No.10700 of 2011

G.L.Naidu ...Petitioner

Vs

1. The Commissioner of Income Tax -I,
   No.68, Race Course Road,
   Coimbatore - 641 018.

2. The Income Tax Officer,
   Ward II (2)
   No.68, Race Course Road,
   Coimbatore - 641 018. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceeding in C.No.131(2)/2010-11/CIT-I/CBE dated 30.08.2010, quash the same and further direct the 1st respondent herein to refund the excess payment of Rs.51,000/- towards advance tax paid as per the representation made by the petitioner dated 19.05.2010.

For Petitioner : M/s.V.Abarna

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

O R D E R

According to the petitioner, he is an Income Tax Assessee on the file of the second respondent. For the assessment year 2006-07, he filed his income tax returns admitting the net taxable income of Rs.3,62,440/- on 31.10.2006 and paid tax to the tune of Rs.52,768/-. Before filing his returns, he also paid advance tax of Rs.51,000/- on 15.03.2006 vide Challan No.05293 in Indian Bank, Coimbatore Main Branch. It is the grievance of the petitioner that at the time of filing the returns of income, he inadvertently omitted to claim the advance tax of Rs.51,000/- paid by him. Hence, he submitted a petition on 19.05.2010 seeking to refund the excess tax. However, the said petition came to be rejected by the first respondent vide communication dated 30.08.2010. Therefore, the petitioner has approached this Court with the present writ petition to quash the said communication and consequently, direct the first respondent to refund the excess payment of

Rs.51,000/- towards advance tax, to him.

2.Heard both sides and perused the materials placed before this Court.

3.The facts remain that the petitioner filed his income tax returns for the assessment year 2006-07 to the second respondent on 31.10.2006 i.e., well within the limitation period. Apart from payment of Rs.51,000/- towards advance tax on 15.03.2006, he also paid tax to the tune of Rs.52,768/- on 28.10.2006, based on self-assessment. But, he omitted to claim the advance tax paid, in the income tax returns filed by him. So, he filed the petition dated 19.05.2010 claiming refund of the said sum of Rs.51,000/-, which was rejected by the first respondent. Hence, this writ petition.

4.On a bare reading of the communication impugned herein, it is seen that without looking into the request made by the petitioner in a proper perspective, the first respondent rejected the same, considering it as the petition filed under Section 119(2)(b) of the Income Tax Act, seeking to condone the delay in filing the returns of income, for the assessment year 2006-07, that too, without assigning any reason.

5.Section 237 of the Act contemplates refund, which reads as follows:-

> "S.237 Refunds:
>
> "If any person satisfies the Income Tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year be shall be entitled to a refund of the excess."

The aforesaid provision makes it clear that if the Assessing Officer is satisfied that the amount of tax paid by the assessee for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, the assessee be given refund of the excess amount. That apart, in terms of Section 240 of the Act, an obligation is cast upon the revenue to refund the amount to the assessee without his having to make any claim in that behalf.

6.In a case, where an assessee chooses to deposit by way of abundant caution advance tax or self-assessment tax, which is in excess of his liability on the basis of return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of assessment proceeding. He can certainly make such a claim also before the concerned authority calculating the refund and the authority concerned, on being satisfied, shall grant appropriate relief. So, an assessee will not be placed in a more disadvantages position than what he would have been, had an assessment been made in accordance with law.

7.In the present case, the petitioner being a dutiful citizen, paid the advance tax, in complying with the requirement of the Act. Subsequently, he also paid the self-assessment tax along with his income tax returns for the assessment year in question, well within the prescribed time. As such, he is entitled to receive the excess payment made by way of advance tax. However, the petition filed by him seeking refund, was rejected by the first respondent, on the ground of limitation. In the opinion of this Court, such approach on the part of the first respondent in dealing with the genuine claim of the petitioner / assessee, cannot be countenanced, as the law does not permit the revenue to derive benefit by way of unjust enrichment by not refunding the amount of advance tax, when no tax is due on the part of the assessee.

8.It is obvious that there is some delay on the part of the petitioner in approaching the authority concerned to make his refund claim. That itself would not be a factor to turn out the said plea, when the petitioner paid the tax in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, since retention of the same amounts to violation of Article 265 of the Constitution. It was with a fond hope of getting justice at the hands of the first respondent, the petitioner preferred petition seeking refund of advance tax paid, which was rejected by the first respondent under Section 119(2)(b) on the ground of limitation.

9.This Court is of the view that the first respondent ought not to have adopted the hyper technical plea of limitation to avoid return of the advance tax paid by the petitioner. The higher authorities of the Department to whom such powers can be delegated under Section 119 of the Act, need not always take only a pro revenue approach. Their approach in such case should be equitious, balancing and judicious which should reflect the application of mind to the facts of the case and before denying the genuine claim of the assessee on the ground of mere delay in making such claim. Technically, strictly and literally speaking, the first respondent might be justified in denying the refund claim by rejecting such condonation application, but the petitioner, who substantially satisfies the condition for availing such benefit, should not be denied the same, merely on the bar of limitation and therefore, no straight jacket formula or guidelines can be laid down in this regard. Hence, in the interest of fairness and justice, the first respondent ought to have considered the petition seeking refund of the advance tax paid by the petitioner.

10.In such view of the matter, the communication dated 30.08.2010 sent by the first respondent is liable to be quashed and is accordingly quashed. Consequently, the delay in filing the petition seeking refund of advance tax paid by the petitioner for the assessment year 2006-07 is condoned. The respondent concerned is directed to consider the refund claim of the petitioner and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

11.This writ petition is allowed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To
1. The Commissioner of Income Tax -I,
No.68, Race Course Road,
Coimbatore - 641 018.

2. The Income Tax Officer,
Ward II (2), No.68, Race Course Road,
Coimbatore - 641 018.

+1cc to Mr.A.P. Srinivas, Advocate SR.No.23342

+1cc to Mr.S.Rajasekar, Advocate SR.No.23427

W.P.No.10700 of 2011

VSN II(CO)
GMY(27/07/2020)