OD – 12

ORDER SHEET
WPO/375/2010
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHREEKANT PHUMBHRA
VS
UNION OF INDIA AND OTHERS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 1ST DECEMBER, 2021.

Appearance:
Mr. R.K. Murarka, Sr. Adv.
Mr. Vivek Murarka, Adv.
Mrs. Sutapa Roy Chowdhury, Adv.
..for the petitioner

Mr. P.K. Bhowmik, Adv.
..for the respondent

The Court : Heard learned Advocates appearing for the parties.

This Writ petition has been filed by the petitioner being aggrieved by inaction on the part of the Assessing Officer concerned in making payment of refund due arose after order under Section 143(1) of the Income Tax Act, 1961.

Petitioner has challenged the impugned order dated 16th March, 2009, being Annexure P-10 to the writ petition, rejecting the petitioner's claim for refund of the said amount on the ground that after lapse of six or seven months, claim for refund was made by the petitioner which on the face of it, is bad and contrary to record and provisions of law and the allegation of the respondents of delayed claim of refund is baseless and is unfounded as appears from record that in the return itself petitioner had claimed the refund as appearing at page 38 of the writ petition.

Furthermore, the impugned order of rejection of claim of the petitioner for refund is not sustainable in law in view of Assessing Officer's own order dated 19th March, 2002, which is an order under Section 143(1) of the Income Tax Act, from which it appears that the Assessing Officer himself has determined the refundable amount of Rs. 733,224/-. If such is the situation, why the petitioner will have to make any further formal claim for refund of the same. Not only that, petitioner has made series of representations thereafter, which are part of annexures to this writ petition which were not considered by the Assessing Officer and petitioner was compelled to approach this Court.

It appears from Sections 143(1) and 143(3) of the Income Tax Act, 1961 that both in the cases of summary assessment and regular assessment after the assessment and determination of tax, if any amount is refundable to an assessee then automatically petitioner is entitled to get back the same and why the petitioner will have to repeatedly approach the Assessing Officer for getting such refund? The stand of the respondents that delay in filing the claim for refund is not tenable in the eye of law.

In view of the legal position and what appears from the record and the plea of the respondent about delay in claiming of refund submission of form No. 30 has no relevance for claiming refund in case of summary assessment under Section 143(1) of the Income Tax Act, 1961 and the Assessing Officer is legally bound to refund the amount if it is refundable on assessment.

Mr. Bhowmik, learned Advocate appearing for the respondents is not in a position to contradict the above legal position as well as facts which appears from the record.

In view of the discussions made, this writ petition being WPO No. 375 of 2010 is disposed of by directing the Assessing Officer concerned having jurisdiction over the petitioner/assessee at present to take expeditious steps, preferably within one month, for refund of amount in question with statutory interest.

Petitioner will be entitled to get interest on such refund for the period till the date of payment. I am constraint to observe that on account of the lapse on the part of the Assessing Officer concerned, the Government had to suffer loss from public exchequer by paying interest which could have been avoided.

(MD. NIZAMUDDIN, J.)

Sbghosh