



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.20806 of 2019

M/s.Karur Vysya Bank Limited,
Rep.by its General Manager,
(Finance & Control Department & CFO),
Post Box No.21,
Erode road, Karur - 639 001.

... Petitioner

Vs.

1.The Principal Commissioner of
Income Tax,
No.44, Williams Road, Cantonment,
Thiruchirappalli - 620 001.

2.The Union of India,
Through its Revenue Secretary,
Department of Revenue, Ministry of
Finance,
128-A/North Block, New Delhi.

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records relating to order in C.No.6144(2)/PCIT/TRY-1/2019-20/380 passed by the 1st Respondent dated 07-08-2019 for AY 2007-08, quash the same, provide opportunity of being heard, direct the respondents to pass orders in light of the direction of this Court and grant such other order or direction as deemed fit by this Court in the facts and circumstances of the case.

For Petitioner : Ms.G.Janani
for M/s.Lakshmi Kumaran
and Sridharan Attorneys.
For Respondents : Mr.N.Dilipkumar for R1
Mr.S.Karthik for R2

ORDER

Heard the learned counsel for the petitioner and the learned Standing counsel for the respondent department.

2.The petitioner is a banking company. It is an assessee registered under the Income Tax Act. The petitioner filed fringe benefit tax return for the assessment year 2006-07 on 29.11.2006 declaring fringe benefit value of Rs.2,87,06,054/-. It was processed and a rectification order was passed on 26.08.2008. The petitioner took the stand that the value of contribution to



statutory pension fund cannot be considered as a perquisite and therefore, cannot be regarded as fringe benefit under the Income Tax Act. In this regard, an order adverse to the petitioner was passed on 22.02.2012. Questioning the same, the petitioner went before the Commissioner of Income Tax (Appeals). The appellate authority declined to interfere with the order passed by the assessing authority. Questioning the same, the petitioner moved the Income Tax Appellate Tribunal by filing ITA No.1639/mds/2014. The appeal filed by the petitioner came to be allowed on 29.02.2016 holding that the statutory contribution made to superannuation fund is outside the ambit of FBT. That was in turn challenged by the department by filing Tax Case Appeal No.602 of 2017. The petitioner's counsel firmly states that no interim order in favour of the department was granted and it is still pending. Since by the time the petitioner filed their return for the assessment year 2007-08, they had not tasted success for the preceding assessment year, they chose to go by the stand taken by the department. They later filed revised return declaring the fringe benefit tax value of Rs.7,75,33,846/- as per Section 115 WD(4) of the Income Tax Act on 29.02.2008. They also paid the fringe benefit tax for the said assessment year 2007-2008 to the extent of Rs.2,02,48,171/-.

3. When the petitioner's appeal in ITA No.1639/Mds/2014 came to be allowed, the petitioner remembered that they had erroneously paid FBT for the year 2007-08. They therefore filed a revision under Section 264 of the Act before the Principal Commissioner of Income Tax, Trichy. The said revision petition was rejected as not maintainable vide order dated 19.03.2018. Questioning the same, the petitioner filed WP(MD)No.12595 of 2018. The said writ petition was allowed by this Court on 12.06.2019 and the matter was remitted to the file of the first respondent to pass orders afresh under Section 119 of the Income Tax Act within a period of eight weeks from the date of receipt of copy of this order. Pursuant to the direction given by this court, the impugned order came to be passed once again rejecting the petitioner's request for refund. The rejection order dated 07.08.2019 is challenged in this writ petition.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and wanted this Court to allow the writ petition as prayed for. The respondent has filed a detailed counter affidavit and the learned standing counsel for the Income Tax department submitted that the impugned order does not call for any interference and wanted this Court to sustain the same.

5. I carefully considered the rival contentions and went through the materials on record. The impugned order dated 07.08.2019 is predicated on the circular dated 09.06.2015 issued by the Central Board of Direct Taxes. The said circular reads as follows :

"CIRCULAR 9/2015 [F.NO.312/22/2015-OT] DATED 9-6-2015



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In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2) (b) of the Income-tax Act, (the Act) the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

2. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

4. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

5. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to Following conditions:

At the time of considering the case under Section 119(2) (b), it shall be ensured that the income/loss



declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

6.A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsJT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

I.The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

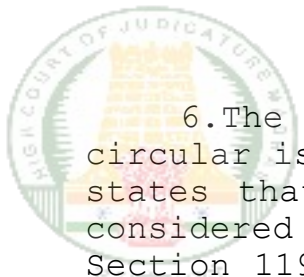
ii.No interest will be admissible on belated claim of refunds.

iii.The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

7.In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

8.This circular will cover all such applications/claims for condonation of delay under section 119(2xb) which are pending as on the date of issue of the Circular.

9.The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by

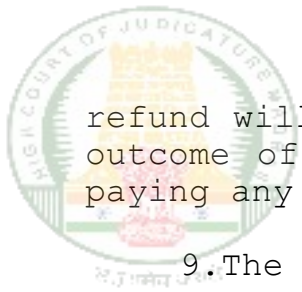


6.The learned standing counsel pointed out that the aforesaid circular is binding on the first respondent. Para 2 of the circular states that any claim of refund exceeding Rs.50.00 lakhs shall be considered by the Board. He pointed out that this Court had invoked Section 119 of the Income Tax Act in favour of the petitioner. But then, the circular issued by the board circumscribes the power and jurisdiction of the first respondent in entertaining the claim of refund. The petitioner seeks refund to the tune of more than two crores. Therefore, according to him, if all all the claim could have been considered only by the Board not by the first respondent. He would also point out that this circular talks of an outer time limit for entertaining the refund application. When the circular states that a claim for refund will not be entertained beyond six years from the end of the assessment year for which the claim is made, that will have to be given a strict application.

7.I find the contentions of the learned standing counsel to be sustainable. I am not in a position to interfere with the order impugned in the writ petition. But at the same time, I must note that the first respondent has not at all taken note of the spirit of my order dated 12.06.2019. I had stated that if the petitioner was not liable to be pay any fringe benefit tax, then, the department ought to have refunded the same. The income tax department being an arm of the State is bound by the constitutional mandate enshrined in Article 14 of the Constitution of India. In other words, the department is bound by the principles of fairness and reasonableness. Of course, I am conscious that any taxing statute will have to be construed strictly and there is no scope for applying equitable principles. But the case on hand is not one of tax liability. As per the legal position that is presently prevailing, the petitioner was not at all liable to have made any payment of FBT in respect of contribution towards Superannuation Fund. In fact, the case on hand turns less on the maintainability of the claim for refund, but more on the lawfulness of the department in retaining the amount paid by the petitioner without any corresponding legal liability.

8.The circular issued by the Central Board of Direct Taxes is no doubt binding on the authorities including the first respondent. But then, a constitutional court is not bound by such a circular. Section 119 of the Act also does not have any limitation. Considering the facts and circumstances obtaining in this case, I permit the the petitioner to file an appropriate application before the Central Board of Direct Taxes. Since as on date there is absolutely no tax liability on the part of the petitioner herein, the said application will be entertained without reference to limitation. CBDT will pass orders on the petitioner's application thereon within a period of twelve weeks. If in the meanwhile, TC(A) No.602 of 2017 filed by the department is allowed, the question of allowing the petitioner's application will not arise. If the said TC

<https://hccases.mca.gov.in/hccservices/> (24) <https://hccases.mca.gov.in/hccservices/> proposed or dismissed in the meanwhile, the order of



refund will be made but again that would be subject to the eventual outcome of the said TC(A). It is made clear that the question of paying any interest by the department will not arise.

9.The writ petition is disposed of accordingly. No costs.

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Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Principal Commissioner of Income Tax,
No.44, Williams Road, Cantonment,
Thiruchirappalli - 620 001.

2.The Revenue Secretary, Union of India,
Department of Revenue, Ministry of Finance,
128-A/North Block, New Delhi.

+1 CC to M/s.S.KARTHIK, Advocate (SR-5339[F] dated 16/02/2021)

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-5407[F] dated 16/02/2021)

+1 CC to M/s.LAKSHMI KUMARAN, Advocate (SR-5788[F] dated 17/02/2021)

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15.02.2021

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