IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-14181-2019 (O&M)
Date of decision:03.08.2022

Oswal Denims ... Petitioner

Vs.

State of Punjab & another ... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE PANKAJ JAIN.

Present: Mr. Aalok Jagga, Advocate for the petitioner.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab.

Mr. Tarunveer Singh Lehal, Advocate for respondent No.2.

...

TEJINDER SINGH DHINDSA, J.

Petitioner seeks a mandamus directing the 2nd respondent i.e. Nagar Panchayat, Lalru, District SAS Nagar to pay interest on the amount that had been deposited as pre-deposit in terms of Section 84-A (2) of the Punjab Municipal Act, 1911 along with appeal that had been preferred by the petitioner.

Brief factual matrix may be noticed.

Petitioner owns a property at Lalru which falls within the jurisdiction of respondent.2. Property tax was to be paid by the petitioner in terms of provisions of the Punjab Municipal Act, 1911 (hereinafter to be referred to as 'the Act'). On 09.12.2013, on the basis of self assessment of tax on land and building, petitioner calculated the payable tax to be Rs.3,73,187/- for the year 2013-14 in terms of Section 68 of the Act. On 06.04.2015, respondent No.2 issued a notice in terms of Section 68-A of the

Act raising an additional demand of Rs.5,99,950/-. This was followed by another demand notice dated 20.04.2015 (Annexure P-3) imposing penalty @ 20% and interest @ 18% and thereby raising a demand of Rs.6,58,667/- as total property tax payable by the petitioner.

Petitioner challenged the demand before the Appellate Authority under Section 84-A of the Act. The appeal was filed on 03.06.2015, but an objection was raised by respondent No.2 that the condition of pre-deposit would have to be met, failing which, the appeal would not be maintainable. Consequently, the amount of Rs.5,66,326/- was deposited on 22.09.2015. Such factual premise is not in dispute.

On 14.10.2015, the Regional Deputy Director, Local Bodies-cum-Appellate Authority, Patiala allowed the appeal preferred by the petitioner and remanded the matter back with the directions that tax may again be calculated. Copy of the order dated 14.10.2015 stands appended as Annexure P-6 along with the petition. Aggrieved against such order, respondent No.2 filed an appeal before the second Appellate Authority-cum-Director, Local Government, Punjab and which came to be dismissed vide order dated 09.12.2015 at Annexure P-8. Petitioner raised a request vide letter dated 29.02.2016 for refund of Rs.5,66,326/- that had made towards pre-deposit. Even a legal notice dated 07.06.2016 was served. Since the refund was not forthcoming, petitioner even filed CWP-15648-2016 which was disposed of on 04.08.2016 (Annexure P-9) directing respondent No.2 to take a decision upon the claim of the petitioner and the legal notice dated 07.06.2016. It may be taken note that respondent No.2 on the other hand challenged the orders dated 14.10.2015 and 09.12.2015 passed by the

Appellate and Second Appellate Authorities by filing CWP-18715-2016 and CWP-18716-2016. The aforementioned writ petitions came to be dismissed by a Division Bench of this Court vide common judgment dated 31.07.2017 at Annexure P-11. Since the claim of the petitioner for refund of pre-deposit along with interest was not being processed, petitioner filed COCP-522-2018 in this Court. It is only after filing of the contempt petition that pre-deposit of Rs.5,66,326/- came to be refunded. COCP-522-2018 was disposed of granting liberty to the petitioner to claim the interest on the payments which were wrongly claimed by the respondents and the petitioner had been forced to deposit the same.

Order dated 26.10.2018 passed by this Court while disposing of COCP-522-2018 is in the following terms:

> "Learned counsel for the respondent makes a statement t*hat cheque bearing No.018879 dated 03.05.2018, amounting to Rs.3,00,000/- and cheque bearing No.019045 dated 18.05.2018, amounting to Rs.2,08,773/-, totaling the amount to Rs.5,08,775/-, have been handed over to the petitioner, which was the amount received in excess of the amount of Property Tax, which is alleged to have been recovered by the Municipal Committee, Lalru.*
>
> *In view of the above, the present contempt petition has been rendered infructuous. Disposed of as such. Liberty is, however, granted to the petitioner to claim the interest on the payments which were wrongly claimed by the respondents and the petitioner was forced to deposit with them.*
>
> *Rule issued to the respondents stands discharged.*
>
> **(AUGUSTINE GEORGE MASIH)**
> **JUDGE**"

Counsel for the petitioner has vehemently argued that the petitioner is entitled to interest from the date of pre-deposit i.e. 23.09.2015 till the actual date of refund and that too, at the rate of 18% i.e. the same interest which respondent No.2 had imposed while issuing the demand notice dated 12.08.2015 and which ultimately had been set aside upon the statutory appeal having been allowed. It is further argued that the demand having been found to be illegal by the Appellate Authority and such view having been upheld till the High Court, there was no justification for the respondent to either retain the amount or the interest accrued thereupon. It is submitted that such amount would be construed as property of the petitioner and capital attracts interest and therefore the amount was liable to be refunded along with interest. Argument has been raised that the conduct of respondent No.2 in the facts and circumstances of the case amounts to undue enrichment and on the ground of parity itself, petitioner is entitled to the same very rate of interest on the amount that had been withheld without any justification as was charged by respondent No.2 in the demand notice and which ultimately had been set aside.

Per contra, Mr. Tarun Veer Singh Lehal, Advocate for contesting respondent No.2 has submitted that there is no provision under the Act under which interest would be payable on the amount of pre-deposit deposited by the petitioner for availing the remedy of appeal. Further contended that since the dispute regarding amount of property tax to be paid by the petitioner was pending adjudication before the Appellate Authority, second Appellate Authority and thereafter before the High Court, the same was not released as the matter was *sub judice*. Yet another submission raised by counsel is that the petitioner had all along raised a demand for refund of the amount and not that for interest and as such the principle of estoppel would apply and on this count alone, the instant writ petition ought to be dismissed.

We have heard counsel for the parties at length and have perused the pleadings on record.

Section 84-A of the Act deals with appeals in respect of tax on building and land. The provisions reads as under:

> ***"Section 84-A. Appeal in respect of tax on building and land -*** *(1) Any person, aggrieved with the decision(s), made under sub-section (4) of section 68 and section 68-A, may file an appeal within a period of thirty days before the Regional Deputy Director, who, after affording an opportunity of hearing to the parties, shall pass an order, in writing, within a period of thirty days.*
>
> *(2) No appeal shall be entertained under sub-section (1) unless the amount of tax is paid.*
>
> *(3) If an order under sub-section (1), modifies the decision in appeal, the Executive Officer, may file an appeal to the Director within a period of thirty days of such order, who shall pass an order, in writing, as he deems fit, within a period of thirty days of filing of such appeal, and the order passed in appeal shall be final.*
>
> *(4) No stay shall be granted against the order appealed against under sub-section (1)."*

A bare perusal of the provision would make it clear that an appeal shall be entertained only if the amount of tax is deposited by way of pre-deposit. This is the mandate of the provision.

In the facts of the present case, the assessee at the stage of filing of an appeal had deposited the entire tax amount. The appeal of the petitioner/assessee came to be allowed by the Appellate Authority on 14.10.2015. It is at this stage that the petitioner become entitled to a refund as regards the pre-deposit. Merely, for the reason that respondent No.2 was further pursuing the matter before the second Appellate Authority and thereafter before the High Court, there would be no legal sanction for the pre-deposit to be retained. Counsel for the contesting respondent has not adverted to any such provision under the Act which would entitle respondent No.2 to retain the pre-deposit even after the statutory appeal preferred by an assessee under Section 84-A of the Act, has been allowed. The action, as such, of respondent No.2 in having not refunded the pre-deposit amount/enhanced tax demand beyond 14.10.2015 i.e. the date the appeal of the assesee was allowed, is illegal.

Even otherwise, the claim of the petitioner in equity stands established. After the decision of the Appellate Authority dated 14.10.2015 in favour of the assessee, respondent No.2 filed an appeal before the second Appellate Authority which was dismissed on 09.12.2015. Inspite thereof, the pre-deposit/enhanced tax amount was not being refunded. Petitioner not only made a representation but even served a legal notice for release of the amount in question. Having evoked no response, petitioner was constrained to file CWP-15648-2016 seeking refund and such petition was disposed of on 04.08.2016 directing respondent No.2 to take a decision on the claim. Still respondent No.2 did not respond. Ultimately, it was only upon the petitioner having filed a contempt petition that the pre-deposit came to be refunded vide two cheques dated 03.05.2018 and 18.05.2018 respectively. The 2nd respondent having enjoyed the amount of excess tax which it was not entitled to have, there is no reason why the assessee should be deprived of the benefit of interest which otherwise he was entitled to if he had deposited the said amount in a bank or invested in the market.

The Hon'ble Supreme Court of India in **Corporation Bank Vs. Saraswati, (2009) 1 SCC 540** held that it is the duty of the State to Act reasonably having regard to the equality clause contained in Article 14 of the Constitution of India and the State is bound to refund excess tax collected.

Respondent No.2 is an instrumentality of the State Government. The submission advanced that interest would not be payable as there is no provision under the Act is wholly mis-conceived. The amount of pre-deposit that the petitioner had made was towards complying with the mandate of the provision governing filing of a statutory appeal. The appeal having been decided in favour of the assessee, the pre-deposit amount has to flow back to the assessee. This is an inherent right that would be vested in the hands of the assessee. Such situations where a welfare State/ State instrumentality retains excess amount and then raises a plea that it would refund such amount belatedly and that too, without interest was not contemplated by the legislature otherwise a provision to grant interest would have been inserted in the Act. Concededly, counsel for respondent No.2 has not been able to point out any legal embargo in such regard. Rather the consistent view taken by the Courts is that whenever the State or its instrumentality acts arbitrarily and there is a delay in refunding the amount which it was not entitled to retain, the liability of paying interest be fastened.

Even though the petitioner is claiming interest @ 18 % in the instant petition, yet we find that the ends of justice would be met if respondent No.2 is directed to release interest @ 9% w.e.f. 01.12.2015 i.e. about two weeks after the decision taken by the Appellate Authority in favour of the assessee and upto the date when the actual refund was made over to the petitioner.

Ordered accordingly.

The necessary exercise of calculation of interest and release of amount be completed and released to the petitioner within a period of four weeks from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

03.08.2022
harjeet/vs

(i) Whether speaking/reasoned? Yes/No

(ii) Whether reportable? Yes/No