IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25555-2021
Date of Decision:-22.03.2023

Pawan Kumar ....Petitioner

vs.

ITO 5 (5), CHD AND ORS. ...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- **Pe**titioner in person.

Ms. Gauri Neo Rampal, Sr. Standing counsel
For the respondent.

Ritu Bahri, J.

The present petition under Article 226/227 of the Constitution of India is for issuance of writ in the nature of mandamus, for issuance of direction to the respondents to give effect to CIT (A) order dated 26.02.2020 (P-3) and to grant of the consequential refund of Rs.5,95,200/- as per ROI, Rs.71,400/- as per deposit by the petitioner and Rs.34,361/- as per attachment from Bank with interest to the petitioner (P-8)

Petitioner was an employee of M/s HMT Ltd Tractor Division, Pinjore and received the following monetary benefits given under the Voluntary Retirement Scheme on closure of HMT Tractor Division Ropar:-

ITEMS	***Amount in Rs.***
Gross Salary	***Rs.4,98,385/-***
Voluntary Retirement Scheme	***Rs.35,70,360/-***
Gratuity Earned	***Rs.10,00,000/-***
Leave Encashment	***Rs.3,55,052/-***

The petitioner filed his return of income on 11.07.2016 declaring his total of Rs.37,91,590/-. The petitioner claimed credit of TDS to the tune of Rs.9,91,351/-. The return of income was processed under Section 143 (1) of the Income Tax Act, 1961 (for short 'Act 1961'), vide order dated 20.11.2017 wherein credit of TDS to the tune of Rs.9,91,351/- was claimed. The amount refundable was Rs.3,56,730/-. However, the petitioner revised the return of income on 21.03.2018 and declared total income of Rs.7,21,230/- by claiming exemption under Section 10 (10B) of the Act 1961 and sought refund of Rs.9,38,220/- and credit of TDS to the tune of Rs.9,91,351/-.

The assessment was framed vide order dated 15.10.2019 (P-1) and the exemption claimed by the petitioner under Section 10 (10B) of the Act 1961 was rejected but the permissible exemption under Section 10 (10C) of the Act 1961 to the tune of Rs.5,00,000/- was granted and addition of Rs.30,70,360/- was made. The assessment resulted into demand of Rs.16,55,384/-.

The petitioner challenged order dated 15.10.2019 before CIT (A)-I, Chandigarh on 18.10.2019 on the following grounds i.e

> *"1. 1. The action of the Ld. AO in passing a perverse order and not allowing exemption boing VRS received from employer HMT on closure as claimed u/s 10(108) is legal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case,*
>
> *2. Amount received as VRS compensation is deemed to be retrenchment as per explanation of Section10(108). As per Explanation 1 to section 2(19AA), undertaking shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination theroof not constituting a business activity*

> *3. The package announced by Govt. of India in their Pross release is a special package as per second proviso of Section 10(108) as Government is more than 99 percent shareholder in the company,*

2. More than 99 percent is Government Shareholding as per HMT Annual Report 2017-18. So rules of Govt. Company are applicable, Article 265 of Constitution of India roads No tax shall be levied or collected except by the authority of law.
3. More than 99 percent is Government Shareholding as per HMT Annual Report 2017-18 So rules of Govt. Company are applicable. Article 265 of Constitution of India reads No tax shall be levied or collected except by the authority of law.
4. Tax is deducted at sources. The appellant reserves his right to add alfor modify withdraw any grounds of appeal. The above grounds of appeal are without prejudice to each other."

The appeal was partly allowed on 26.02.2020 (P-3) as ground no 1 (2), 1(2) and 1 (3) was allowed and ground no 2 to 4 were dismissed.

Thereafter, vide order dated 06.08.2020 (P-4), rectification was done by the Assessing Officer for the same income. The petitioner also filed CPGRAMS grievance dated 18.12.2020 (P-5), which was closed on 09.02.2021 with the remarks to direct the concerned AO to upload copy of order in which refund is determined or particulars of refund i.e date of order, amount and current status of refund.

On notice of the petition, a short reply dated 20.10.2022 has been filed on behalf of the respondents admitting the fact that the petitioner was employee of HMT Tractors, Pinjore but it has been stated that the Assessing Officer considered the grievance of the petitioner and vide order dated 11.06.2020 (R-1) passed the order of rectification and allowed the credit of TDS amounting to Rs.9,91,351/- and re-computed the tax liability.

Further the Assessing Officer, pursuant to order dated 26.02.2020 (P-3) gave appeal effect, vide order dated 03.06.2020 (R-2) and determined the refund to the tune of Rs.8,73,380/-. The appeal effect order clearly shows the bifurcation of the amount which includes interest under Section 244A of the Income Tax Act 1961 and adjustment of the refund already issued.

It has been further stated that the petitioner in original filed return on 11.07.2016 (R-3) and in the revised return filed on 21.03.2018 (R-4) under the heading ***"Bank Account in which refund, if any, shall be credited"*** mentioned Punjab National Bank. The petitioner did not validate the said Bank account on the Income Tax Portal and has been raising grievances. The petitioner finally validated the said bank account on 04.01.2022 and the refund has been issued on 28.01.2022 and credited to the Bank account on 04.02.2022 by CPC system. The petitioner himself is responsible for the delay and is thus estopped from claiming interest. The screen shot of Income Tax Portal showing validation of Bank account is attached as R-5.

The petitioner has not filed any replication to the reply filed by the respondent.

Heard.

Even though the assessing officer gave effect to CIT (A) order dated 26.02.2020 (P-3) by passing an order dated 03.06.2020 (R-2), the question for consideration in the present writ petition would that the petitioner was required to deposit the amount.

It is not in disputed that the petitioner has not validated his bank account but this amount could not be kept by the respondent-department. Reference at this stage can be made to Section 244A of the Act 1961, which reads as under:-

> **244A.** (1) [29][Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be

entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—

(*a*) where the refund is out of any tax [30]**[** *paid under section 115WJ or***]** [31][collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of [32][one-half per cent] for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [33][under [34] **[***sub-section (1) of section 115WE or***]** sub-section (1) of section 143 or] on regular assessment;

(*b*) in any other case, such interest shall be calculated at the rate of [35][one-half per cent] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under [36] **[***sub-section (3) of section 115WE or section 115WF or section 115WG or***]** [37][sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.]

The following proviso shall be inserted to sub-section (4) of section 244A by the Finance Act, 2005, w.e.f. 1-4-2006 :

Provided *that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.*

A bare reading of the above said provision shows that the assessee is entitled to receive the simple interest on the amount due to the assessee. In the present case, the petitioner filed the return on 11.07.2016 and thereafter filed the revised return on 21.03.2018 by claiming exemption under Section 10 (10B) of the Act 1961 and sought refund of Rs.9,38,200/ and credit to the tune of Rs.9,91,351/-. The petitioner preferred an appeal, which was allowed on 26.02.2020 (P-3) and vide order dated 03.06.2020 (R-3), the Assessing Officer, pursuant to order dated 26.02.2020, determined the refund to the tune of Rs.8,73,380/-. The order dated 26.02.2020 was given effect by the Assessing Officer which shows the bifurcation of amount, which includes interest under Section 244A of Act 1961 and adjustment of refund already issued.

In the present case, the assessment order is of the year 2016 and refund has been credit to the petitioner on 03.06.2020. Thus, the petitioner had right of interest, which has been deposited by him, in view of Section 244A of the Act 1961. The only ground taken by the respondent for not giving interest to the petitioner is that the petitioner did not validate his bank account on the Income Tax Portal and he finally validated the said bank account on 04.01.2022 and thus the refund has been issued on 28.01.2022 and credited to the Bank account on 04.02.2022 by CPC system. The petitioner himself is responsible for the delay and is thus estopped from claiming interest.

This ground cannot be made a ground to deny interest to the petitioner, in view of Section 244A of the Act 261. The petitioner has a right of interest of claiming interest. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Sadvik Asia Ltd vs. Commissioner of Income Tax-I, Pune and others, decided on 27.01.2006 passed in Civil (Appeal) No. 1337-1340-2005*** wherein the main issue was that whether the assessee is entitled to be compensation by the Income Tax Department for delay in paying to the assessee amounts admittedly due to it?. The appeals were allowed and the respondents were directed to pay the simple interest @9% from 31.03.1986 to 27.023.1998 within one month from today failing which the department shall pay the penal interest @15% per annum for the above said period.

Applying the ratio of the above mentioned judgment to the facts of the present case, the present petition is allowed and direction is given to the respondents to pay simple interest @9% w.e.f 11.07.2016 till the payment is made. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

(AMARJOT BHATTI)
JUDGE

22.03.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No