IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.10.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.34963 of 2023

P.Murali
Legal Heir of Late P.Dhanalakshmi. ...Petitioner

Vs.

The Income Tax Officer,
Non-corporate Ward II (3)
Room No.205, 2nd Floor,
Tower-II, BS.N.L. Buildings,
16, Greams Road,
Chennai – 600 006. ...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent in F.No.AJFPD5496D/NCW 11 (3)/2023-24 dated 03.10.2023 and to quash the same as illegal, arbitrary and against the principles of natural justice and further, to direct the respondent to refund the further interest of Rs.9,66,350/- at once.

For Petitioner : Mr.A.Chandrasekaran
for Mr.K.Soundararajan
For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel

Order

The challenge in this Writ Petition is to the order passed by the respondent dated 03.10.2023, whereby, the petitioner's claim for interest towards refund was negatived by the respondent in the Rectification Petition.

2. Mr.A.Chandrasekaran, learned counsel appearing for the petitioner would submit that in the present case, a family property was sold in the Financial Year 2004-05, out of the sale proceeds, the petitioner's mother is entitled to 1/5th share, which would come around Rs.62,26,175/-; that since the property sold was an agricultural property, question of payment of tax towards capital gain would not arise, however, Section 148 Notice was issued, fearing action would be taken against her, consequent to the said notice, a sum of Rs.16,00,000/- was paid on 15.02.2013, Rs.9,03,550/- on 28.03.2013 and a sum of Rs.3,45,310/- at the time of filing of return of income; that against the issuance of Section 148 notice and the consequential assessment order, the co-owners of the property filed an

Appeal before the Income Tax Appellate Tribunal (ITAT) and ITAT, vide judgment dated 18.02.2014 passed an order declaring the property as agricultural property, and therefore, the question of payment of tax towards capital gain would not be attracted; that the said law laid down by the ITAT squarely applicable to the petitioner's mother's case, the petitioner mother filed a Revision Petition under Section 264 of the Act before the Principal Commissioner of Income Tax, Chennai, however, the Commissioner rejected the Revision Petition by an order dated 18.07.2014, and challenging the said order, the petitioner's mother filed a Writ Petition before this Court in W.P.No.27073 of 2014 and this Court vide order dated 27.02.2020 disposed of the Writ Petition and remanded the matter to the respondent for fresh consideration; that thereafter, the Commissioner of Income Tax/Revisional Authority allowed the Revision Petition on 09.03.2021, with a direction to the Assessing Officer to make re-assessment. The Assessing Officer passed an order dated 30.06.2021, sanctioning refund, however, in the calculation sheet, the respondent has mistakenly shown the tax paid amount as Rs.28,46,891/- as against the actual payment of Rs.28,48,860/-.

2.1 The learned counsel contended that the respondent while dealing with the Application for refund, is bound to give the details of calculation, as to how, the refund claim was dealt with and on what basis, calculation was made. But, the order dated 30.06.2021 passed by the Assessing Officer towards the claim for refund is bereft of such particulars, which necessitated the petitioner to file Rectification Petition on 06.07.2021 followed by a Reminder on 07.06.2023, however, the respondent by virtue of the impugned order, failed to consider the petitioner's claim for interest. According to the learned counsel the petitioner is entitled to 12% interest from the date of filing of the revision i.e. from 31.03.2014 onwards till the date of the Rectification Petition. Therefore, the learned counsel prayed for allowing the Writ Petition.

3. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondent would submit that the respondent-Department arrived at the interest based on the applicability of the provision of the Act, and in this regard, he referred to the averment set out in para No.8 of the counter affidavit, which reads as follows:-

i) The impugned order in PAN AJFPD5496D (Din & Letter No.TBA/COM/F/17/2023-24/1056723458(1) dated 03.10.2023 was passed by placing reliance under Section 244 A(2) of the Income Tax Act.

ii) As the assessee has been given excess interest, the rectification petition filed by the assessee was rejected.

iii) to v) In the assessee's case, no addition were made by the Department. The Income returned by the assessee in response to notice issued under section 148 was only accepted. Based on the Hon'ble ITA decision in the case of Shri C.K.Ramachandran, Shri C.K.Lakshmanan and Shri C.K. Theerthagiri, the assessee filed Petition under Section 264 before the Commissioner of Income Tax and the income returned by the assessee got reduced only by giving effect to the order passed under Section 264 on 09.03.2021. As the refund is determined by giving effect to 264 order, interest under Section 244 A for the delay in claim of refund attributable on the part of the assessee was rejected.

I submit that the income returned by the petitioner got reduced by giving effect to the order passed under section 264 on 09.03.2021. The reduction in income returned resulted in refund. As the delay in claim of refund is attributable on the part of the assessee, interest under section 244A for the delay in claim of refund attributable on the part of the petitioner is not allowable as per the provisions of section 244 A (2) of the income. "

4. I have given due considerations to the submissions made on either side and perused the materials available on record.

5. In the present case, it is seen that the petitioner's mother, P.Dhanalakshmi was the joint owner of the agricultural lands situated at Poonamallee Village. The petitioner's mother along with her brothers sold the agricultural lands, and out of the sale proceeds, the petitioner's mother is entitled to 1/5th share, which comes around Rs.62,26,175/-. The petitioner's transactions were considered as taxable "capital gains' and Section 148 notice was issued by the respondent-Department treating the income as taxable income. The petitioner's mother, who was under the impression that she was liable to pay the capital gains, failing which, action would be taken against her, filed a revised return of income on 07.02.2013, disclosing the sale proceeds received by way of agricultural lands and paid tax dues, i.e. a sum of Rs.16,00,000/- on 15.02.2013, Rs.9,03,550/- on 28.03.2013 and a sum of Rs.3,45,310/- at the time of filing of return of income; So far as the co-owners are concerned, viz., the brothers of the petitioner's mother, who were similarly placed like that of the petitioner's mother filed an Appeal before the Income Tax Appellate Tribunal (ITAT) and ITAT, vide judgment dated 18.02.2014 passed an order declaring the property as agricultural property, and therefore, the payment of tax towards capital gain would not be attracted.

5.1 Thus, in the light of the order passed by the ITAT, the property sold by the petitioner was declared as an agricultural property, which is exempted from payment of tax towards capital gain, and therefore, the petitioner is not liable to pay any tax, entitled for refund. However, it appears that the respondent, while determining the refund along with interest, has made certain calculations, but, the details of calculation, as to on what basis, the interest for such refund was determined is not discussed in the order, and according to the petitioner, respondent-Department, while computing the interest, in the calculation sheet, has mistakenly shown the tax paid amount at Rs.28,46,891/-, which is as against the actual payment of

Rs.28,48,860/-. Though the petitioner filed a Petition seeking for such rectification dated 07.06.2023 filed on 08.07.2023, the same came to be dismissed by means of the impugned order dated 03.10.2023 on the ground that as per the provisions of the Section 244 A (2) of the Act, if the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (petitioner in this case), the delay so attributable to him shall be excluded from the period, for which, the interest is payable.

5.2 However, this Court is unable to accept the reason assigned in the impugned order for denial of the petitioner's claim.

5.3 Admittedly, in the present case, the petitioner is not liable to pay any tax towards capital gain for sale of the agricultural property. However, the respondent proceeded against the petitioner by issuing a notice under Section 148 of the Income Tax Act, 1961 and the petitioner on receipt of such notice, paid the tax dues. Subsequently, by virtue of the order passed by ITAT, dated 18.02.2014, wherein, it is declared that the property sold by the petitioner is an agricultural property, and therefore, the same is exempted from payment of tax towards capital gains, the petitioner, being a beneficiary of such order, approached the respondent-Department by way of Revision on 31.03.2014. The Revisional Authority, instead of considering the petitioner's Revision Application in the light of the order passed by the ITAT, again, wrongly rejected the said Application, aggrieved against which, the petitioner filed W.P.No.27073 of 2024, and this Court disposed of the Writ Petition vide order dated 27.02.2020, and remanded the matter back to the respondent to pass a speaking order in terms of the decision taken by the Tribunal in the case of the petitioner's siblings, and in compliance of the order passed by this Court in the Writ Petition, the Revision Authority/ Principal Commissioner of Income Tax again considered the petitioner's claim and allowed the Revision Petition on 09.03.2021, with a direction to the Assessing Officer to make re-assessment. In pursuance of such direction, though the Assessing Officer passed an order dated 30.06.2021, granting refund, however, committed an error in determining the interest, which necessitated the petitioner to approach this Court by way of present Writ Petition.

5.4 Thus, in the present case, it is seen that the impugned order came to be passed negativing the petitioner's claim for interest by stating that in terms of Section 244 A (2) of the Act, if the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (petitioner in this case), the delay so attributable to him shall be excluded from the period, for which, the interest is payable, but the respondent failed to take into considering that only due to the faults committed on their side, (i.e. Department) in having failed to deal with the petitioner's case with abundant caution, the petitioner is now facing loss. Further, this Court is of the view that there cannot be a straight jacket formula in all such cases, where, the assessees are claiming for refund/interest.

6. Accordingly, this Court passes the following order :-

i) The impugned order dated 03.10.2023 is set aside. The matter is remanded to the respondent for re-consideration, in which case, respondent is directed to consider the petitioner's claim for interest and pass orders towards release of the interest amount from the date of filing of the Revision Petition i.e. 31.03.2014 till the date of payment i.e. On

31.10.2024, with interest at the rate of 6% p.a. after deducting a sum of Rs.4,51,800/- (since the said amount has already been refunded to the petitioner) within a period of eight weeks from the date of receipt of a certified copy of this order.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2024

sd

Index : yes/no
Neutral Citation : yes/no

To
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Krishnan Ramasamy,J.,

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