

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 23RD DAY OF SEPTEMBER 2016/1ST ASWINA, 1938

WP(C).No. 17664 of 2013 (G)

PETITIONER :

PALA MARKETING CO-OP. SOCIETY LTD
P.B.NO.33, PALA, KERALA,
REPRESENTED BY ITS ASSISTANT
SECRETARY JOSEPH THOMAS.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENTS :

1. THE COMMISSIONER OF INCOME TAX
KOTTAYAM-686001.
2. JOINT COMMISSIONER OF INCOME TAX
(ASSESSMENT), SPECIAL RANGE,
KOTTAYAM - 686001.

R1 & R2 BY SRI.P.K.R.MENON, SC
BY SRI.JOSE JOSEPH, SC,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

bp

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1: TRUE COPY OF THE ORDER DATED 1-8-2000
- P2: TRUE COPY OF THE ORDER DATED 17-11-2006 ISSUED BY
CENTRAL BOARD OF DIRECT TAXES.
- P3: TRUE COPY OF THE JUDGMENT IN WP(C) 21977/2007 AS
REPORTED IN 2008 (1)KLT 589.
- P4: TRUE COPY OF THE ORDER OF REFUND DATED 11-2-2008
ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX
- P5: TRUE COPY OF THE ORDER DATED 11-11-2008 ISSUED BY
THE COMMISSIONER OF INCOME (APPEALS) .
- P6: TRUE COPY OF THE ORDER DATED 13-1-2011 IN ITA
50/COCH/2009.
- P7: TRUE COPY OF THE ORDER DATED 14-3-2011 IN ITA
33/2011 ON THE FILES OF THIS HONOURABLE COURT.
- P8: TRUE COPY OF THE MEMORANDUM OF REVISION PETITION
FILED BEFORE THE COMMISSIONER OF INCOME TAX,KOTTAYAM
DATED 3-5-2011
- P9: TRUE COPY OF THE ORDER IN THE NO.C.NO.CIT-
KTM/TECH/264/01/2011-12 DATED 25-5-2013.

RESPONDENT(S) ' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.M.SHAFFIQUE, J

W.P.C.No.17664 of 2013

Dated this the 23rd day of September 2016

J U D G M E N T

This writ petition is filed challenging Ext.P9 by which the Commissioner of Income Tax by order dated 25/03/2013 rejected an application filed under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') inter alia observing that there was justification on the part of the authorities to have rejected the assessee's request for interest under Section 244A of the Act. Petitioner also sought for a direction to the respondents to pay interest on refund as provided under Section 244A of the Act from 01/04/1997.

2. The short facts involved in the writ petition would disclose that the petitioner, being a Primary Co-operative Society, was assessed to income tax for the assessment year 1997-98. After the mandatory audit under Section 64 of the Kerala Co-operative Societies Act, the returns could be filed only on 01/02/2000. It is stated that the Society had paid advance tax of Rs.10 lakhs and Tax Deducted at Source (TDS) amounting to Rs.47,957/-.

3. When the return was filed, the taxable income was found to be nil and therefore the petitioner became eligible for refund of Rs.10,47,957/- as provided under Section 247 of the Act. Application for refund was filed before the assessing authority on 01/02/2000. However, the same was rejected on the ground that the return was filed belatedly, in terms of Ext.P1 order dated 01/08/2000. Petitioner filed an application under Section 119(2) (b) of the Act before the Central Board of Direct Taxes (CBDT) seeking condonation of delay in filing the returns, which came to be rejected as per Ext.P2 order dated 17/11/2006. WP(C) No. 21977/2007 was filed challenging Ext.P2 order. By judgment dated 26/11/2007, this Court condoned the delay and observed that the petitioner was entitled for refund under Section 237 of the Act. The assessing authority was directed to process the claim for refund. The assessing authority passed an order dated 11/02/2008 directing refund of Rs.10,47,957/- However, it was observed that the assessee is not entitled for interest under Section 244A. Petitioner challenged the order before the Commissioner of Income Tax (Appeals) which came to be dismissed as per Ext.P5 order dated 11/11/2008. Further, appeal

was filed before the Income tax Appellate Tribunal and the matter was remitted back to the assessing officer to consider the claim under Section 244A(b) read with Explanation (2) of the Act by virtue of order dated 13/01/2011 (Ext.P6). The order of remand was challenged by the petitioner before this Court filing ITA No.33/2011 which was disposed of with an observation that the petitioner was entitled to seek revision before the Commissioner of Income Tax, pursuant to which the petitioner filed a revision which came to be rejected in terms of Ext.P9.

4. The main contention urged by the petitioner is that once the delay in filing the return has been condoned, it becomes a valid return and therefore grant of interest is consequential. Though there is a provision under Section 244A(2) that interest could be denied if the delay is attributable to the assessee, once the return is accepted and refund is ordered, such an approach is clearly illegal. This aspect of the matter had been completely ignored while passing the impugned orders.

5. Statement has been filed on behalf of the 1st respondent inter alia supporting the stand taken in the matter. It is stated that the petitioner could claim interest on the refund

amount in terms of 244A(1) only if the delay in issuing refund could not be attributable to the petitioner. It is stated that there is delay on the part of the assessee in filing the return which requires to be excluded while a claim for interest has been processed. It is stated that the assessee has already received the refund to the extent found eligible, as directed by the High Court and within the time limit stipulated by the High Court in WP(C) No. 21977/2007 and therefore the petitioner is not entitled for any claim.

6. Learned counsel for the petitioner placed reliance on the judgment in **Sandvik Asia Ltd. v. Commissioner of Income Tax and Others** [(2006) 2 SCC 508] and the judgment in **Commissioner of Income tax, Bhopal v. H.E.G.Limited** [(2010) 15 SCC 349].

7. On the other hand, the learned Standing Counsel for the respondents relied upon the judgment in **Commissioner of Income Tax v. Gujarat Fuoro Chemicals** [(2013) 358 ITR 291 (SC)] and the judgment of this Court in **M.Ahammadkutty Haji v. Chief Commissioner of Income Tax and Others** [(2007) 288 ITR 304 (Ker.)]

8. In **Sandvik Asia Ltd.** (supra), the Apex Court was considering the question whether the assessee is entitled to compensate by the Income Tax Department for the delay in payment of the amount due. The substantial question which had arisen for consideration was whether on a proper interpretation of the provisions of the Act, an assessee was entitled to be compensated for the delay in paying any amount due, even if such amount comprised of interest. In fact, such a question does not arise for consideration in the present writ petition. However, the Apex Court held at paragraph 30 to 34 as under:

“30. *In our view, the Act recognises the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law, the Revenue must compensate the assessee.*

31. *At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that Section 237*

of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that Section 240 of the Act, which provides for refund by the Revenue on appeal, etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of "any amount" becoming due to an assessee.

32. *The Delhi High Court in Goodyear India Ltd. case held that an assessee is entitled to further interest under Section 244 of the Act on interest under Section 214 of the Act which had been withheld by the Revenue. The case of the Revenue was that interest payable to an assessee under Section 214 of the Act was not a refund as defined in Section 237 of the Act and hence no interest could be granted to the assessee under Section 244 of the Act. The Court held that for this purpose Section 240 of the Act was relevant which referred to refund of "any amount becoming due to an assessee" and that the said phrase would include interest and hence the assessee was entitled to further interest on interest wrongfully withheld. It is also important to appreciate that the Delhi High Court also referred to the Gujarat High Court decision in D.J. Works*

case and read it as taking the same view. This supports the view of the appellant on the correct reading of the Gujarat decision.

33. *As already noticed in the paragraph supra, the Madras High Court in Needle Industries (P) Ltd. case has also interpreted the phrase “any amount” in the same manner when considering the provisions of Section 244(1-A) of the Act, which also uses the same phrase in the context of interest payable by the Revenue. In express terms the Court held that the expression referred not only to the tax but also to interest. The Court agreed with a similar view taken by the Kerala High Court in Ambat Echukutty Menon. Both these were cases where the Court was called upon to decide whether further interest was payable by the Revenue on interest which had to be repaid to the assessee.*

34. *In our opinion, the appellant is entitled to interest under Section 244 and/or Section 244-A of the Act in accordance with the terms and provisions of the said sections. The interest previously granted to it has been computed up to 27-3-1981 and 31-3-1986 (under different sections of the Act) and its present claim is for compensation for*

periods of delay after these dates.”

9. In **H.E.G.Limited** (supra), the Apex Court was considering the meaning of the words “any amount due” in Section 244A. It was held that interest component on TDS would partake the character of “amount due” under Section 244A. That was a case in which the TDS was 45,73,528/-. It is held at paragraph 5 as under:

“5. In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted refund, namely, TDS of Rs 45,73,528 and tax paid after original assessment of Rs 1,71,00,320. The Department contends that the words “any amount” will not include the interest which accrued to the respondent for not refunding Rs 45,73,528 for 57 months. We see no merit in this argument. The interest component will partake of the character of the “amount due” under Section 244-A. It becomes an integral part of Rs 45,73,528 which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest

under Section 244-A of the Income Tax Act. Therefore, on both the aforestated grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs 45,73,528. The principal amount of Rs 45,73,528 has been paid on 31-12-1997 but not of interest which, as stated above, partook the character of "amount due" under Section 244-A."

10. Going by the judgments relied upon by either side, I am of the view that the liability to pay interest on refund arises from the date when claim for refund is made with all necessary particulars. As already indicated, Section 244A(2) imposes a restriction on payment of interest when the procedure for refund is on account of the delay attributed to the assessee. In the case on hand, what is to be looked into is whether the delay in refund was due to a cause attributable to the assessee. The facts involved in the case would disclose that the return of income for the assessment year 1997-98 was filed only on 01/02/2000 on account of delay in auditing. Return was filed belatedly and thereby it was rejected. Thereafter an application was filed under Section 119(2)(b), seeking for condoning the delay in filing the

return, was rejected and ultimately the matter reached this Court wherein this Court had directed the delay to be condoned. There cannot be two ways to look at it. Admittedly, there had been delay on the part of the assessee which had given rise to a situation to condone the same. Delay has been condoned only for the purpose of accepting the return. But it cannot be stated that the delay was not attributable to the assessee. Even if such instances where the delay is condoned, still when it is attributable to the assessee, there is justification on the part of the Commissioner to deny interest under Section 244A(2). Therefore, I do not find any error in the impugned orders passed by which the claim for interest has been rejected.

The writ petition is, therefore, dismissed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr