IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 17TH DAY OF DECEMBER 2014/26TH AGRAHAYANA, 1936

WA.No. 535 of 2012

AGAINST THE JUDGMENT IN WP(C) NO.3436/2008 OF THE HIGH COURT OF KERALA DATED 09-12-2011

APPELLANTS/RESPONDENTS:

1. THE COMMISSIONER OF WEALTH TAX
   COCHIN.

2. THE WEALTH TAX OFFICER
   WARD-1, MATTANCHERRY.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/PETITIONER:

MR.NAZIM ZACHERIA
M/S.ABAD FISHERIES, COCHIN-682 002.

BY ADV. SRI.P.BALAKRISHNAN (E)
BY ADV. SRI.MOHAN PULIKKAL
BY ADV. SRI.K.S.MENON (K)
BY ADV. SRI.R.ANAS MUHAMMED SHAMNAD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-12-2014, ALONG WITH WA. 550/2012 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

K.T.SANKARAN & P.D.RAJAN, JJ.

W.A.Nos.535, 550, 990, 991, 992, 993, 994, 999, 1011, 1030, 1032, 1119, 1121, 1146, 1231, 1232 &1251 OF 2012

Dated this the 17th day of December, 2014

JUDGMENT

K.T.Sankaran, J.

The question involved in these Writ Appeals is whether the assessee is entitled to interest under Section 34A(4B)(a) of the Wealth-Tax Act, 1957, (hereinafter referred to as the 'Act') when the assessee had submitted return of self assessment.

2. The learned Single Judge held that the assessee was entitled to interest on refund of wealth-tax, which is under challenge in these Writ Appeals filed by the Revenue.

3. The assessee made self assessment and filed returns. The returns were processed under Section 16(1) and they were accepted. However, the Assessing Officer issued notice under

Section 16(2) for scrutiny assessment. The assessee filed revised returns thereafter. Assessment orders were passed by the Assessing Officer without looking into the revised returns. Appeals were filed against the assessment orders. The Appellate Authority set aside the assessments, which was reversed in the appeals filed by the Revenue. The assessee filed Wealth-Tax Appeals before the High Court. The High Court set aside all the orders and directed the Assessing Officer to re-do the assessment.

4. The orders passed by the Assessing Officer after remand were challenged by the assessee in appeals before the First Appellate Authority and those appeals were allowed. Accordingly, the Assessing Officer gave effect to the appellate orders and ordered refund of wealth-tax paid by the assessee in excess of the tax assessed. The claim of the assessee for interest on refund was rejected by the Assessing Officer, which was confirmed by the Commissioner in Revision. The order passed by the Commissioner was under challenge in the Writ Petitions. As stated earlier, the Writ Petitions were allowed holding that the assessee was entitled to interest on refund of tax paid in excess.

5. Section 14 of the Wealth-Tax Act mandates furnishing of return by the assessee setting forth particulars of net wealth and such other particulars as may be prescribed. Section 15 of the Wealth-Tax Act provides for furnishing of revised return in case any omission or wrong statement is discovered, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Section 15B(1) provides that where any tax is payable on the basis of any return furnished under Section 14 or Section 15, the assessee shall be liable to pay such tax together with interest payable under any provision of the Act for the delay in furnishing the return and the return shall be accompanied by proof of payment of the tax and interest. Section 15B(2) provides that after the regular assessment under Section 16 has been made, any amount paid under sub-section (1) of Section 15B shall be deemed to have been paid towards the regular assessment. Section 16(1)(i) of the Act provides for an intimation to be sent to the assessee if any tax or interest is found due on the basis of the return under Section 14 or Section 15. Such intimation shall be deemed to be a notice of demand under

Section 30 of the Act. Sub-clause (ii) of sub-section (1) of Section 16 provides that if any refund is due on the basis of return, it shall be granted to the assessee and an intimation to that effect shall be sent to the assessee. Regular assessment is provided under sub-sections (3) and (5) of Section 16 of the Act.

6. Going by the above scheme, if a return is submitted on self assessment and if any tax or interest is found due from the assessee, he shall be duly intimated. Similarly, if the assessee has overpaid the tax, it shall be refunded to the assessee and an intimation to that effect shall be sent to him. The scheme of the Act is for prompt consideration of self assessment and demand of short-payment or refund of excess.

7. Chapter VIIA of the Wealth-Tax Act, 1957 deals with refunds. Sub-section (4B) of Section 34A of the Act reads as follows:

> "**34A. Refunds.--** ....
>
> (4B) (a) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of sub-section, be entitled to receive, in

addition to the said amount, simple interest thereon calculated at the rate of 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 the 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 30 is paid in excess of such demand.

(b) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, 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.

(c) Where as a result of an order under sub-section (3) or sub-section (5) of section 16 or section 17 or section 23 or section 23A or section 24 or section 25 or section 27 or section 29 or section 35 or any order of the Wealth-tax Settlement Commission under sub-section (4) of section 22D, the amount on which interest was payable under clause (a) 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 30 and the provisions of this Act shall apply accordingly.

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

8. The contention raised by the Revenue is that in view of the Explanation to clause (a) of sub-section (4B) of Section 34A, the liability to pay interest would arise only in a case where a notice of demand was issued under Section 30 of the Act. If this contention is accepted, payment of interest will have to be restricted to only cases where a notice of demand was issued under Section 30 of the Act.

Section 30 of the Act provides that "when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable". For the issuance of a notice under Section 30, the pre-requisite is an order passed under the Act. But refund under sub-section (4B) of Section 34A would arise not only in a case where a demand is made under Section 30 of the Act, but it covers an amount of refund due as provided under clause (ii) of sub-section (1) of Section 16 as well. A refund under clause (ii) of sub-section (1) of Section 16 would not be in a case where a demand notice was issued. But the refund occurs on the ground that excess amount was found paid on consideration of the return. In other words, sub-section (4B) covers every situation where a refund becomes necessary under the provisions of the Wealth-Tax Act and in such cases, simple interest as provided therein would be payable. The Explanation relates to the second part of sub-section (4B), i.e., with respect to the period from which the interest is to be computed. In a case covered by Section 16(1)(ii), it is not necessary to compute any period since what is relevant is the date of payment and the date of refund. In such cases, where it is not necessary to seek the aid of Explanation to sub-section (4B) of Section 34A, the question of issue of a demand notice as a pre-condition does not arise at all. In short, the claim for interest cannot be defeated in the case on hand by seeking aid of the Explanation referred to above.

9. With respect to refund and interest payable on refund, the nature of assessment is not very relevant. The assessee may submit return on self assessment. Some others may submit return belatedly. Yet some others may not file it at all. In some cases scrutiny becomes necessary. But in some other cases, scrutiny as provided under Section 16(2) does not arise since the self assessment is accepted under Section 16(1) itself. If the benefit of interest on refund is confined only to cases where an order is passed by the Assessing Officer and a consequent demand is made from the assessee, then it would have the effect of depriving that benefit to a person who has volunteered and filed the return on self assessment. Such a restrictive interpretation is not contemplated under sub-section (4B) of Section 34A of the Act.

For the aforesaid reasons, we do not find any ground to interfere with the judgment passed by the learned Single Judge. The Writ Appeals are, accordingly, dismissed.

(K.T.SANKARAN)
Judge

(P.D. RAJAN)
Judge

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