IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 9TH DAY OF DECEMBER 2014/18TH AGRAHAYANA, 1936

WP(C).No. 11622 of 2006 (H)

PETITIONER(S):

K.S.VENUGOPALAN, OPERATOR,
TRAVANCORE COCHIN CHEMICALS LTD.
RESIDING AT SHYAM NIVAS, KAYANTIKKARA, MUPPATHADOM
P.O., ERNAKULAM DISTRICT.

BY ADVS.SRI.B.RAMACHANDRAN
SMT.JOLIMA GEORGE
SMT.P.N.INDU

RESPONDENT(S):
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1. INCOME TAX OFFICER,
   INCOME TAX OFFICE, I.S.PRESS ROAD, COCHIN - 18.

2. THE PERSONAL MANAGER,
   TRAVANCORE COCHIN CHEMICALS LTD., MANJUMMAL
   ERNAKULAM DISTRICT.

R, BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
R, BY ADV. SRI.JOSE JOSEPH, SC FOR IT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-12-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.11622/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF DECLARATION FORM DATED 20.2.2006.

EXT.P2: COPY OF FORM NO.12C DATED 20.2.2006.

EXT.P3: COPY OF STATEMENT OF ACCOUNT OF HOUSING LOAN FROM UNION BANK OF INDIA MANJUMMEL BRANCH FOR THE PERIOD OF 1.4.2005 TO 31.3.2006.

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11622 OF 2006 (H)

Dated this the 9th day of December, 2014

<u>J U D G M E N T</u>

The petitioner is an assessee under the Income Tax Act, 1961. He is also an employee of the Travancore Cochin Chemicals Limited. It is the case of the petitioner that he had availed a loan from the Union Bank of India in an amount of Rs.5 lakhs in the year 2002. As per the terms of the loan agreement, he was obliged to effect repayment of Rs.4,400/- every month for a period of 20 years. It is his case that while, initially, his employer, namely, the Travancore Cochin Chemicals Limited was taking into consideration the payments made by him every month towards repayment of the loan amount, while deducting tax at source from the payments made to him, from 2006 onwards the said employer began to deduct tax at source on the entire amount paid to him by way of salary. This was pursuant to an instruction received by the employer, that the petitioner was not entitled to a deduction in respect of the amounts paid by him by way of monthly repayments since the house was in the joint names of the petitioner and his wife, and the facility for deduction of the repayment amounts from the taxable income was available only if the house constructed using the loan amount was in the name of the petitioner alone. It was aggrieved by the action of the employer, in deducting higher amounts at source from the payments made to the petitioner, that he approached this Court through the present writ petition seeking inter alia a direction to the respondents to assess the petitioner for income tax only after deducting the monthly instalments recovered from the salary of the petitioner towards housing loan repayment.

2. A statement has been filed on behalf of the 1st respondent wherein it is pointed out that the deduction of tax at source in a lower amount can be permitted only if the petitioner is entitled to the benefit of exemption under Section 80C (2) (xviii) of the Income Tax Act. In the case of the petitioner, it is contended, that he was not entitled to the benefit of deduction under Section 80C (2) (xviii) and it was under those circumstances that the employer was obliged to deduct tax on the entire payments effected to the petitioner by way of salary.

3. I have heard Sri.B.Ramachandran, the learned counsel appearing on behalf of the petitioner as also Sri.Jose Joseph, the learned Standing counsel appearing on behalf of the Income Tax Department.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that this is a case where the employer of the petitioner was obliged, in terms of the Income Tax Act, to deduct tax at source on payments effected to the petitioner by way of salary. The petitioner has a definite case that in the initial period after availing the loan, the employer had deducted lesser amounts by way of tax deducted at source from payments effected to the petitioner and that this was done taking note of the fact that the petitioner would be entitled to a deduction in respect of the amounts paid by him towards monthly repayment of the loan to the bank. It would appear that, thereafter, the employer began to deduct tax at source on the entire payments made to the petitioner by way of salary. This was because the eligibility of the petitioner to claim deduction in terms of Section 80C (2) (xviii) was held to be doubtful, in view of the fact that the house that was constructed using

the loan was in the joint names of the petitioner and his wife. Whatever may be the treatment given to the claim for deduction in the assessment of the petitioner under the Income Tax Act, in the writ petition, the grievance is with regard to the deductions effected by the employer in terms of the Income Tax Act, while effecting payments to the petitioner by way of salary. The said deductions, by way of tax deducted at source, are made by the employer pursuant to his obligation under the Income Tax Act and, whatever tax is deducted at source is credited to the account of the Income Tax Department and the said payments would be given credit to while completing the individual assessment of the petitioner. In that view of the matter therefore, if any amount has been deducted in excess from the payments effected to the petitioner, the petitioner is not seriously aggrieved because he would get credit of the same in his assessment under the Income Tax Act. Thus, while I see no reason to grant any relief as sought for by the petitioner in the present writ petition and therefore, dismiss the same, I make it clear that, if any deductions have been effected by the employer by way of tax deducted at source under the Income Tax Act, and the amounts credited to the Income Tax Department, then the Department shall take this fact into account while completing the assessment of the petitioner under the Income Tax Act. In the said assessment of the petitioner, if it is found that excess amounts have been deducted from the payments made to the petitioner, which are in excess of his tax liability under the Income Tax Act, then the excess amount of tax collected from the petitioner, shall be refunded to him.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp