

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

THURSDAY, THE 04TH DAY OF JUNE 2020 / 14TH JYAISHTA, 1942

WP(C).No.10972 OF 2020(V)

PETITIONER/S:

PAIVA MANUFACTURING CO.
(AAKFP7972J), 43/591-M(1), CHITTOOR ROAD, CEMETRY
JUNCTION, COCHIN - 682 018, REPRESENTED BY ITS
MANAGING PARTNER SHRI TONY PAIVA.

BY ADV. SMT.NISHA JOHN

RESPONDENT/S:

- 1 THE INCOME TAX OFFICER
NON-CORP. WARD - 1(4), K. R. BUILDINGS, I.S.PRESS
ROAD, COCHIN - 682 018.
- 2 THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRALISED PROCESSING CENTRE, P. B. NO.2, ELECTRONIC
CITY POST OFFICE, BANGALORE - 561 100.
- 3 THE COMMISSIONER OF INCOME TAX (APPEALS) -III
28/243, POORNIMA BUILDING, NEAR MANORAMA JUNCTION,
PANAMPILLY NAGAR, KOCHI - 682 036.

OTHER PRESENT:

SRI JOSE JOSEPH SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 4th day of June 2020

The petitioner, a manufacturing company, carrying on the business of a partnership firm in the year 2008 has approached this court for quashing of the ex-parte assessment orders Exts.P2 and P4 for the assessment years 2012-13 and 2013-14. The skeleton facts of the case are that the petitioner filed income tax return for the year 2012-13 as Nil. They were uploaded the income tax file through electronic system, which is evidenced from Ext.P1. Return was processed under Section 143(1) of the Income Tax Act. Accordingly, an order was issued by the department ie., the Central Processing Centre, (CPC of the Income Tax Department at Bangalore) on 9th May 2013. Upon receipt of the order, it was noticed that the brought forward losses to the extent of Rs.22,94,096/- was not considered and profit of Rs.21,05,953/- for the same assessment year had been set off against the brought

forward losses, w reflected in the Annexure to the return submitted by the petitioner. All these facts are evidenced from the order dated 9th May 2013, Ext.P2.

2. On acquiring the knowledge, the petitioner availed the remedy of Section 154 of the Income Tax Act, by submitting a rectification application dated 5th June 2013, Ext.P4. However for the next assessment year ie., 2013-14 filed the return, under Section 139 of the Act within the time and claimed the brought forward losses to the extent of Rs.1,88,143/-. A sum of Rs.11,88,143/- was adjusted against the proper assessment year 2013-14. But the petitioner was astonished to notice the intimation under Section 143(1), whereby the adjustment of brought forward losses to the extent of Rs.1,01,633/- was not considered.

3. Learned counsel appearing on behalf of the petitioner submits that the aforementioned mistake is evidenced by Ext.P4. The department, vide Ext.P5, raised the demand of Rs.7,37,950/- and Rs.38,530/- for the assessment years 2012-13 and 2013-14 respectively.

Petitioner filed a detailed reply dated 18th March 2019, Ext.P6 but no opportunity had been given and despite the receipt of the reply again a similar notice dated 11th February 2020, Ext.P7 reiterating the demand indicated in Ext.P5 was issued by the respondent. He submitted that as per the information downloaded from the income tax site on 18th February 2020, the rectification application is forwarded to the Jurisdictional Assessing Officer but no action has been taken.

4. Learned counsel appearing on behalf of the Income Tax Department submits that he has not received the copy of the petition and therefore he is unable to obtain the instructions or rendered assistance to this Court.

5. Having heard the learned counsel for the parties, appraised the paper book and noticing the fact which are not in dispute particularly, Ext.P9 dated 18th February 2020, which reveals the pendency of the rectification application which stands transferred to the Jurisdictional Assessing Officer. The grievance of the petitioner can be vindicated

by issuing directions to the first respondent to take a call on the rectification application and to decide the same within a period of 45 days from the date of receipt of the copy of the order. Till then, the demand raised vide notices Exts.P5 and P7 is ordered to be kept in abeyance. However, it is made clear that the petitioner is at liberty to assail the outcome of the decision of the rectification petition, if he so chooses, in accordance with law.

The writ petition stands disposed of. Liberty is granted to the Income Tax Authority to move appropriate application in case the averments of the writ petition are found to be false or incorrect.

Sd/-

AMIT RAWAL

JUDGE

sab

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE INCOME TAX RETURN FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR THE A. Y. 2012-13.
- EXHIBIT P2 TRUE COPY OF THE INTIMATION U/S 143(1) DATED 9.5.2013 ISSUED BY THE CENTRAL PROCESSING CENTRE, BANGALORE.
- EXHIBIT P3 TRUE COPY OF REVISED RETURN DATED 5.6.2013 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE INTIMATION DATED 6.10.2014 RECEIVED BY THE PETITIONER FROM THE CENTRAL PROCESSING CENTRE, BANGALORE FOR 2013-14.
- EXHIBIT P5 TRUE COPY OF THE NOTICE DATED 12.03.2019 RECEIVED BY THE PETITIONER FROM THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE REPRESENTATION DATED 18.03.2019 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE NOTICE DATED 11.02.2020 RECEIVED BY THE PETITIONER FROM THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE REPLY DATED 17.02.2020 GIVEN BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE INTIMATION DOWNLOADED FROM THE SITE OF THE INCOME TAX DEPARTMENT.