(2011) 11 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3782 of 2008 (A.Y. 1994-95)

Dariyave Singh Karnawat APPELLANT

Vs

Chief CIT and Ors RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:
Income Tax Act, 1961 — Section 115WJ, 119(2), 139(4), 199, 206C

Citation : (2012) 209 TAXMAN 145

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The petitioner, an income tax assessee, has prayed in this writ petition that excess TDS (Tax Deducted at Source) by LIC on maturity of policies paid to him, in his case amounting to Rs. 19,083 for the assessment year 1994-95 was initially not refunded as per return of income filed by him as there was delay of four days only in filing such return income, which was due to be filed on or before 31-3-1996, u/s 139(4) of the Act, but the same was filed on 4-41996. Learned Chief Commissioner of the Income Tax, Udaipur, vide order Annexure 4 dated 14-112005 condoning the said delay of four days, in his power delegated upon it u/s 119(2) (b) of the Act, condoned the said delay, and directed the assessing authority to admit the claim of refund of Rs. 19,083 after due verification of TDS certificates and evidence of other tax payments, if any. However, the said authority, Chief Commissioner of Income Tax, added the impugned part in the said order that ''no interest will be paid on the belated refund''.

2. Being aggrieved by the said impugned part, the petitioner-assessee tried his luck by filing representation before the Central Board of Direct Taxes, New Delhi also vide Annexure-5 dated 29-7-2006, however, the said request was turned-down vide Annexure-8 dated 25-10-2006. The petitioner-assessee thereafter approached this Court by filing present writ petition on 24-7-2007.

3. Learned counsel for the petitioner, Mr. Deelip Kawadia, submitted that the petitioner-assessee was not at fault at all and the minor delay in filing return of income itself was condoned by the Chief Commissioner of Income Tax, Udaipur and once such return of income was treated as regularly filed with such condonation of delay, there was no justifiable reason to deny interest on such refund of excess TDS in his case. He drew the attention of the Court towards sections 244 and 244A of the Act, which are reproduced herein below for ready reference.

244 - Interest on refund where no claim is needed.

(1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the assessing officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee simple interest at fifteen per cent per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

244A- Interest on refunds.

(1)Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:

(a)where the refund is out of any tax paid u/s 115WJ or collected at source u/s 206C or paid by way of advance tax or treated as paid u/s 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of on half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted.

4. On the other hand, learned counsel for the revenue, Mr. K.K. Bissa relying upon a decision of Kerala High Court in the case of M. Ahammadkutty Haji Vs. Chief Commissioner of Income Tax and Others, submitted that on the belated refunds, no such interest could be granted to the assessee.

5. Having heard learned counsels for the parties, this Court is of the opinion that present writ petition deserves to be accepted and allowed. The refund in question was granted to the assessee on 6-12-2005 for the assessment year 1994-95, after about 10 years of filing of his returns. The return of income with such claim of refund was filed by the assessee on 4-4-1996. The delay of four days was 4/5 condoned by the learned Chief Commissioner of Income Tax himself in exercise of his powers u/s 119(2) of the Act. The refund provisions contained in section 244 stipulate interest on refund where no claim is needed @ 15% per annum on the amount of refund due from the date immediately following the expiry of period of three months to the date on which refund is granted; whereas section

244A envisages that where the refund is out of any tax collect at source u/s 206C of the Act, the interest shall be calculated @ ''% every month, viz. 6% p.a. The tax deducted at source from the insurance maturity value of the assessee in the present case by the Life Insurance Corporation of India was undoubtedly advance payment of tax on his behalf and refund claim made in the return filed by the assessee, require no further claim to be made by him; and, therefore, in the opinion of this court, section 244 of the Act would apply in the present case, which envisages processing of refund claims where no such claim is required to be made by the assessee.

6. The revenue clearly admits its liability to make refund of the excess TDS in the present case and fact that said refund has been granted to the assessee with a delay of about ten years, is attributable to the revenue itself and not the petitioner-assessee. Therefore, in the present case, the assessee would be entitled to interest @ 15% per annum u/s 244 of the Act on the said excess TDS of Rs. 19,083. Accordingly, this writ petition is allowed and the 5/5 impugned part of the order Annexure-4 dated 14-11-2005 passed by the Chief Commissioner of Income Tax, Udaipur, which stipulates that no interest will be paid on the belated refund, is quashed and the revenue is directed to compute and make payment of such interest on the aforesaid refund (Rs.19,083) @ 15% per annum from 1-1-1998 till the actual date of refund since the application seeking such refund was filed by the assessee on 6-10-1997 (Annexure-1), which ought to have been decided within a reasonable period of three months. No costs.

