(2013) 04 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 594 of 2013

Montecarlo Ltd. APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2014) 222 TAXMAN 145

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Judgement

Akil Abdul Hamid Kureshi, J.—Heard learned counsel for final disposal of the petition.

Petitioner has challenged an Order dated 23rd June 2010 passed by the respondent No. 1 u/s 220(2) of the income tax Act, 1961 ["Act" for short]. The petitioner has also challenged demand notice of Rs. 2,22,468/- towards interest, pursuant to impugned order dated 23rd June 2010. The petition arises in the following factual background. The petitioner is a private limited company incorporated under the Companies Act and regularly assessed to tax. For the Assessment Year 2006-07, the petitioner filed its return of income on 21st January 2007 declaring nil income. The Assessing Officer framed scrutiny assessment on 19th December 2008 raising a tax demand of Rs. 44,49,365/-. Immediately upon receipt of such assessment order, the petitioner wrote a letter dated 1st January 2009 [in warded into the office of the Income Tax on 9th January 2009] and stated as under:

We are in receipt of assessment order u/s. 143(3) dated 19.12.2008 for A.Y 2006-07 together with demand notice according to which an amount of Rs. 44,78,867/- is shown as payable by us.

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It is further submitted that as per the return of income filed electronically on

20.08.2008 for A.Y 2008-09, the assessee is entitled to income tax refund of Rs. 2,28,14,850/-. We would request you to kindly process the said return u/s. 143(1) and the refund arising therefrom may please be adjusted against the demand for A.Y 2006-07 and the balance of the refund may please be issued to the assessee at your earliest.

2. Once again, on 12th January 2009, the petitioner wrote a letter to the Income Tax Officer and stated as under:

Without prejudice to the above, it is further submitted that as per the return of income filed by the assessee for A.Y 2008-09, it is entitled to refund of Rs. 2,28,14,850/-. You are requested to kindly process the said return which was filed on 20.08.2008 may kindly be processed and the refund may be adjusted against the demand. In this context, your kind attention is invited to the Supreme Court judgment in the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, as under:

The Act recognizes the principle that a person should be taxed only in accordance with law and hence where excess amount of tax are collected from an assessee or any amount is wrongly withheld without authority of law, the revenue must compensate.

It is, therefore requested to kindly process the return of income for A.Y 2008-09 and resultant refund may be adjusted against the demand for A.Y 2008-09 and the balance of the refund may please be issued to the assessee at your earliest.

In the meantime, it is further requested that no coercive action for recovery of the demand may kindly be taken against the assessee when the excess tax collected to the tune of Rs. 2,28,14,850/- for A.Y 2008-09 is refundable to the assessee.

3. It is undisputed that the respondents did not act on the petitioner''s request for adjustment of the refund for about five months. Ultimately, however, under an intimation dated 21st May 2009 u/s 143(1) of the Act for A.Y 2008-09, the income tax Officer while accepting the claim of the petitioner of refund of Rs. 2,42,98,887/-, adjusted the petitioner''s tax liability of Rs. 44,78,867/- for the A.Y 2006-07 from the said amount. Since there was delay of about five months in the process, the income tax Officer issued a demand notice u/s 220(2) of the Act and sought interest @ 1% per month for a total duration of five months on the sum of Rs. 44,49,365/- for the period between January 2009 to May 2009. He calculated such interest at Rs. 2,22,468/-. Pursuant to such order, the income tax Officer also issued a demand notice for recovery of the said sum of Rs. 2,22,468/-. It is this demand of the income tax authorities of the interest on the principal tax payable by the petitioner for the Assessment Year 2006-07, that the petitioner has raised grievance in this petition.

4. Case of the petitioner is that soon after receipt of the assessment order for the AY 2006-07, the petitioner requested for adjustment of the refund available to

the petitioner for A.Y 2008-09. The petitioner would get thirty days'' time to pay tax due since the offer for adjustment was made within such period, the petitioner cannot be termed as an assessee in default. The petitioner therefore contends that the levy of interest on the principal sum of tax payable by the petitioner for a period of five months when the adjustment was not done, is illegal.

5. On the other hand, case of the Department is that when the petitioner offered adjustment of the refund, his right to seek refund was not yet crystallized. The amount being substantial, needed proper verification of TDS certificates, etc. This was done while processing the petitioner''s return for AY 2008-09. Interest was therefore rightly charged.

6. Having thus heard learned counsel and having perused the documents on record, we are of the opinion that the respondents have correctly raised interest demand for the period in question. It is, of course, true that soon after receipt of the assessment order for A.Y. 2006-07, the petitioner communicated to the respondents that his refund for A.Y. 2008-09, which is in excess of Rs. 2 Crores, be adjusted towards the tax demand for AY 2006-07. However, on such date, neither the computation of the refund payable to the petitioner under the return filed for the AY 2008-09 nor its right to seek such refund had been crystallized. The return for the A.Y 2008-09 was not yet processed. Only upon accepting such return; with or without any modification, that the income tax authorities can ascertain whether and if so what refund is payable to the petitioner. Till this exercise was completed, there was no question of accepting the petitioner''s offer for adjusting the refund payable against the tax due. Since the refund claimed by the petitioner was sizeable, the authorities required reasonable time to process the same and as is pointed out by the affidavit-in-reply to verify various details; including the TDS certificates. We do not see any unreasonable delay on the part of the Department in doing so. Counsel for the petitioner submitted that Section 245 of the Act permits the appropriate authority to adjust refund payable to an assessee towards the tax demands. When the petitioner had itself voluntarily offered such adjustment, the same ought to have been done in terms of the provisions contained in Section 245 of the Act. Had the petitioner''s claim for refund crystallized into an indefeasible right, such contention was perhaps possible to be accepted. In the present case, as already observed, such right had not yet been crystallized. In the result, petition is dismissed.