

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.27345 of 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

M/s.Santuka Agencies

... Petitioner

-Versus-

Income Tax Officer, Ward-2(2), Cuttack
and others

... Opp. Parties

For Petitioner : M/s. B. Panda,
B.B. Sahu & B. Panda

For Opp. Parties : Mr. A.K. Mohapatra,
Senior Advocate

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA
AND**

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgement:31.08.2012

B.N. Mahapatra,

This writ petition has been filed with a prayer to direct opp. party no.1-Income Tax Officer, Ward-2(2) Cuttack and opp. party no.2-Addl. Commissioner of Income Tax, Range-2, Cuttack for issuance of refund voucher in favour of the petitioner at the earliest with interest @12% per annum on the ground that the action of opp. party nos.1 and 2 are contrary to the provisions of the statute.

2. The petitioner's case in a nutshell is that the petitioner filed its return of income on 01.09.2003 for the assessment year

2003-04 claiming refund of Rs.1,70,691/-. The total tax payable in respect of the income disclosed in the return was Rs.1,14,800/- as against which the tax of Rs.2,15,491/- was deducted at source and advance tax amounting to Rs.70,000/- was paid. Thus against the tax liability of Rs.1,14,800/-, Rs.2,85,491/- was paid for the assessment year 2003-04. Therefore in the return form under Annexure-1 and in the statement of income under Annexure-2, the petitioner claimed refund of Rs.1,70,691/-. Despite filing several representations, since no refund is granted to the petitioner, the present writ petition is filed claiming the above relief.

3. Mr. B. Panda, learned counsel for the petitioner submitted that the refund due to the petitioner is to be paid along with interest @ 12% as provided under Section 243 of the Income Tax Act. If the refund is not granted within a period of three months from the end of the month in which the total income is determined under the Act or in any other case from the end of the month in which the claim for refund is made under Chapter XIX of the Income Tax Act, the Central Government shall pay the assessee simple interest at the rate of 12% per annum on the amount directed to be refunded. Under the scheme of Income Tax Act, once the return is filed, the same is to be processed under Section 143 (1) of the Income Tax Act. After the return is processed, question of refund arises on the basis of return and then refund is made to the assessee. In the instant case, till date no proceeding either under Section 148 or under the provisions of the

Income Tax Act has been initiated in respect of the return filed for the assessment year 2003-04. Therefore, the refund of Rs.1,70,691/- claimed in the return should have been refunded to the petitioner with interest as the said amount has not been granted to the petitioner. The petitioner sent two reminders dated 18.7.2008 and 25.7.2008 requesting opp. party no.2 to expedite the matter and make payment of the refund due to the petitioner. In spite of receipt of the reminders, opp. party nos.1 and 2 had kept mum and maintained silence over the issues and in the process, the matter has been delayed for pretty long period. Thus, the petitioner felt harassed. Since excess amount of tax has been paid through TDS and by way of advance tax than what is due from the petitioner, the petitioner is legally entitled to get refund of the excess amount, but the same has been illegally denied to the petitioner by the opp. parties.

4. Mr. A.K. Mohapatra, learned Senior Standing Counsel appearing on behalf of the opp. parties referring to the counter affidavit filed by opp. party nos.1 to 3 submitted that the claim of the petitioner for refund is barred by time and it is not maintainable. The allegation of the petitioner regarding any apparent inaction and recalcitrant attitude of the Income Tax Authorities relating to non-issue of the refunds claimed for the assessment year 2003-04 amounting to Rs.1,70,691/- is totally baseless. From the annexures appended to the writ petition, it is found that on behalf of the petitioner for the first time a letter was addressed to the Addl. CIT,

Range-2, Cuttack on 16.07.2008 received in the office on 18.07.2008 claiming that the refund for Rs.1,70,691/- was not received by the assessee till 16.07.2008. Under the provisions of the Income Tax Statute, a return of income filed for the assessment year 2003-04 has to be processed under Section 143(1) of the Income Tax Act, 1961 by March, 2005. As per the existing administrative regulation, any refund claimed which is found lawfully payable by the Income Tax Department to the tax payers exceeds Rs.1 lakh, it has to be approved by the Range Officer before the refund amount is paid to the assessee. From the registers and records available in the office of the ITO, Ward-2(2), Cuttack, it transpires that necessary action had been duly taken by the Assessing Officer/Range Officer for processing the return of income and to obtain administrative approval for refund of amount exceeding Rs.1 lakh in the case of M/s.Santuka Agencies for the assessment year 2003-04. From verification of return of income filed by the partnership firm on 01.09.2003 along with copies of TDS certificates, computation of total income statement, tax audit report, P & L Account, balance sheet for the financial year 2002-03, it transpires that as per the TDS certificates the assessee had earned gross interest income of Rs.11,01,577/- on which TDS was made by the payer for Rs.11,567/-. Similarly the assessee had executed contract works for gross amount of Rs.1,57,531/- from which TDS was made by the contractee amounting to Rs.3,310/-. Further the TDS certificates in respect of commission payment revealed that the

gross commission amount was Rs.17,31,891/- from which the payer had deducted TDS for Rs.96,514/-. The sum total of TDS amount was Rs.2,15,491/- and the sum total of receipts under the head interest, contract works and commission taken together amounted to Rs.29,90,999/-. The verification of tax audit report and P & L Account enclosed to the return of income filed shows no separate head of receipts in the credit side of the P & L Account in respect of interest income of Rs.11,01,577/- and contractual works receipts of Rs.1,57,531/-. The commission amount credited to the P & L Account shows total commission of Rs.18,35,783/- whereas as per TDS certificate the commission amount was Rs.17,31,891/-.

5. Mr. Mohapatra further submitted that at the relevant time the Assessing Officer and the Range Officer had preliminary belief that the P & L Account having not reflected separately income under the head 'Interest' and contractual receipts, there was an escapement of income assessable to tax. Accordingly, the Assessing Officer, ITO, Ward-2(2), Cuttack had written a letter to M/s.Santuka Agencies, Dolamundai, Cuttack vide letter No.ITO/W-2(2)/CTC/2004-05 dated, Cuttack, dated the 1st June, 2004 requesting him to furnish the details of TDS certificate for processing his return for issue of refund. The said letter was received by M/s.Santuka Agencies on 01.07.2004 through Notice Server. In response to the said notice, the petitioner did not furnish any clarifications called for by the Assessing Officer. It is further submitted that the Assessing Officer had reasons to believe

that interest income and contract receipts were not disclosed in the return filed for which a noting was made in the records for issue of notice under Section 148 of the Income Tax Act, 1961. However, there is no evidence available on records regarding actual service of the notice under Section 148 of the Income Tax Act, 1961 on the assessee except the service of letter dated 1.6.2004 on the petitioner on 1.7.2004.

It was submitted that since the assessee having not complied with clarifications called for by the Assessing Officer as per letter served on 1.7.2004 prima facie the assessee was not entitled to any credit of TDS on the ground that corresponding income of Rs.11,01,577/- towards interest income and contract receipts of Rs.1,57,531/- had not been disclosed in the P & L Account. In other words, the TDS amount of Rs.1,15,667/- from such interest income and TDS from contract receipts of Rs.3,310/- were not prima facie admissible.

6. Mr. Mohapatra further submitted that the petitioner has an alternative efficacious remedial measure available right now to produce relevant reconciliation of gross receipts from interest income, gross receipt from contract works and gross receipt from commission as per TDS certificate with the figures shown in the P&L Account for the financial year 2002-03. After submission of such clarifications/supporting documents, it can be ascertained as to whether the entire TDS amount is available to the assessee's credit or

only a part of the TDS can be allowed corresponding to the gross turnover which has been disclosed in the P&L Account. No action on the petition filed by the petitioner on July, 2008 i.e. after five years from the date of filing of the return would be taken by the Assessing Officer as the return filed on 1.9.2003 could not be readily available.

7. On the rival contentions of the parties, the question that arises for consideration of this Court is to whether the petitioner-assessee is entitled to get refund of Rs.1,70,691/- as claimed in its return filed on 01.09.2003 for the assessment year 2003-04 along with interest as provided under the Income Tax Act, 1961 and the Income Tax Authorities are not justified in not granting the refund claimed by the petitioner.

8. The undisputed facts are that the petitioner filed its return for the assessment year 2003-04 claiming refund of Rs.1,70,691/-.

9. The petitioner's case is that the income chargeable on his return income is Rs.1,14,800/- as against which Rs.2,85,491/- was paid (Rs.2,15,491/- and Rs.70,000/- through TDS and advance tax respectively). Therefore, the petitioner is entitled to get refund of Rs.1,70,691/-. Since no refund was paid, the petitioner sent reminders to the authorities on 18.7.2008 and 25.7.2008 respectively requesting opp. party no.2 to expedite the matter and make payment of the refund due to the petitioner for the period as stated above. In the writ petition, the petitioner has not explained why he remained

silent from the date of filing of return from 1.9.2003 till July, 2008 when he made representation. The petitioner has also not explained why it belatedly approached this Court in October, 2011. On the ground of delay and laches, though this writ petition is liable to be dismissed, we are not doing so in view of the averments made in paragraph 10 of the counter affidavit filed by the Income Tax Department to the effect that the petitioner has an alternative efficacious remedial measure available right now to produce relevant reconciliation of gross receipts from interest income/from contract works/from commission as per TDS certificate with the figure shown in P & L Account for the financial year 2003-04 and after submission of such clarification/supporting documents it can be ascertained about petitioner's entitlement to get the amount of refund on the basis of TDS certificate.

10. Section 237 of the Income Tax Act speaks about refund.

The said Section reads thus:-

“If any person satisfies the [Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.”

Plain reading of this Section makes it clear that a person is entitled to claim refund of tax, if the tax paid by him or on his behalf for any assessment year exceeds the tax which he is liable to pay for that assessment year.

Section 237 further stipulates that only if any person satisfies the assessing officer that he is entitled to a refund then such refund shall be granted. Therefore where there is a dispute as to the entitlement of assessee to get refund, the assessing officer has to cause necessary enquiry and after giving opportunity to the assessee shall come to a conclusion. Though there is no specific provision empowering the assessing officer to investigate such a claim, such a power is implicit and inherent in the assessing officer as would be evident from a plain reading of Section 237.

11. The Allahabad High Court, in the case of ***Babu Ram Chandra Bhan and another V. Income-Tax Officer and another***, reported in (1991) 190-Income Tax Reports-260 while considering the provision of Section 237 held that a person becomes entitled to refund only when he satisfies the Assessing Officer that a certain amount is due to him. This satisfaction necessarily involves an inquiry where there is a dispute as to the entitlement to the amount to be refunded. While there is no specific provision empowering the Income-tax Officer or the Assessing Officer to investigate such a claim, such a power is implicit and inherent in him as would be evident from a reading of section 237 of the Income-tax Act, 1961.

12. In the instant case, specific case of the opp. parties is that on verification of tax audit report and P & L Account it reveals that there is no separate head of receipts in the credit side of the P & L Account in respect of interest income of Rs.11,01,577/- and contract

works receipts of Rs.1,57,531/- in relation to which the TDS certificate has been submitted and refund is claimed. The further discrepancy is that the commission amount credited to the P & L Account shows total commission of Rs.18,35,783/- whereas as per TDS certificate the commission amount was Rs.17,31,891/-. Therefore, the assessing officer had written a letter to the petitioner vide letter No.ITO/W-2(2)/CTC/2004-05 dated 01.06.2004 to clarify the discrepancy. For better appreciation, the said letter dated 01.06.2004 is extracted hereunder.

“To
M/s.Santuka Agencies
Dolamundai, Cuttack.

Sir,

Sub:- Claim of refund for the A/Y.2003-2004-Matter
regarding.

While processing your return for issue of refund, it is observed that TDS certificates enclosed with the return indicate your receipts under the heads interest, contract and commission. But P & L A/c submitted with the return does not indicate any interest income and contract receipts. In this connection, your Authorized Representative was requested to furnish the details of interest income and contract receipts. But nothing has been heard so far. You are once again requested to furnish the details within three days from the date of receipt of this letter, failing which report as deemed appropriate will be submitted to the Joint Commissioner of Income Tax, Range – 2, Cuttack.

Yours faithfully,
Sd/-
(U.C. Satpathy)
Income Tax Officer,
Ward-2(2), Cuttack.”

13. Opp. parties in paragraph 7 of their counter affidavit stated that the said letter was received by M/s.Santuka Agencies, Dolamundai, Cuttack on 1.7.2004. There is no material evidence on record to show that the assessee had produced any reconciliation statement of interest and contractual receipts as per TDS certificate compared to turnover credited in the P & L Account as per the audited statement.

No rejoinder was filed by the petitioner denying the facts stated in paragraph 7 of the counter affidavit.

14. In view of the provisions of Section 237 of the Income Tax Act and averments made in paragraphs 6 and 7 of the counter affidavit, it cannot be said that there is any laches on the part of opp. parties-Department in not granting refund to the petitioner as claimed in its return.

15. At this juncture, it is relevant to reproduce the relevant portion of paragraphs 10 and 13 of the counter affidavit.

“10.....The assessee having not apparently complied with the clarifications called for vide letter dated 01.06.2004 served on the assessee on 01.07.2004, the Income Tax authorities could not give credit to the entire TDS claimed in so far as there was no mention in the P & L Account about any interest income or income from execution of contract works and also on account of discrepancy between commission income shown in the P & L Account and gross commission received as per TDS certificates. In this context the petitioner has an alternative efficacious remedial measure available right now to produce relevant reconciliation of gross receipts from interest income/gross receipt from contract works/gross receipt from commission as per TDS certificates with the figures shown in the P & L Account for the financial year 2002-2003. After submission of such

clarifications/supporting documents it can be ascertained as to whether the entire TDS amount is available to the assessee's credit or only a part of the TDS claim can be allowed corresponding to the gross turnover which has been disclosed in the P & L Account.

13.....It is reiterated here that the assessee has an option to file the clarifications called for by the Assessing Officer about the reconciliation of interest income as per TDS certificate/contractual receipts as per TDS certificate/commission receipts as per TDS certificate vis-à-vis amount credited in the P & L Account for the financial year 2002-2003 before the jurisdictional Assessing Officer with supporting books of accounts and documents and necessary action shall be taken by the present Income Tax authorities on the basis of such evidences which may be furnished. The petitioner has an alternative efficacious measure to redress its grievances by producing the clarifications called for by the Assessing Officer in June, 2004 with supporting books of accounts."

16. In view of the above, we direct the petitioner to appear before opp. party no.1-Income Tax Officer, Ward-2(2), Cuttack within a period of four weeks from today. If the petitioner appears before the Assessing Officer and satisfies him with supporting documents about his entitlement to get refund in terms of Section 237 of the Income Tax Act, the Assessing Officer is directed to grant refund immediately along with interest in accordance with law.

17. With the aforesaid observations and directions, the writ petition is disposed of.

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B.N. Mahapatra,J.

V. Gopala Gowda, C.J.

I agree.

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Chief Justice.