IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.25844 of 2016

S.Gaffar Khan
S/o. late A.Sattar Khan
Proprietor of M/s.Kareem Bedi Factory,
Sam's Court, Phase II,
No.50/88, P.A. Koil Street,
Arumbakkam, Chennai - 600 106. ...Petitioner

Vs.

1. The Commissioner,
Commissioner of Income Tax,
Income Tax Department,
"Aayakar Bhavan"
Nungambakkam High Road,
Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Non Corporate Circle - 6,
Chennai. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, in view of the letter issued by the respondent vide reference letter No.C.No.127/refunds/PCIT-9/2015-2016, dated 12.10.2015 and to direct the respondents to grant payment of the refunds order passed by the Income Tax Settlement Commission, dated 30.07.1999, with interest.

For Petitioner : Mr.S.Sundar
For Respondents : M/s.Hema Muralikrishnan

O R D E R

Heard Mr.S.Sundar, learned counsel appearing for the petitioner, and M/s.Hema Muralikrishnan, learned counsel, accepting notice for respondents. With the consent on either side, the Writ Petition is taken up for final disposal.

2. The petitioner has sought for issuance of a writ of mandamus to direct the respondents to effect refund, pursuant to the order passed by the Income Tax Settlement Commission, Chennai, dated 30.07.1999.

3. The petitioner case is that, he is the son of A.Sattar Khan, the Proprietor of M/s.Kareem Bedi Factory, and after his demise, the petitioner claims to be looking after the administration and financial aspects of the Factory. The Central Excise Department initiated action against the Factory, for non payment of full excise duty, and from the suppression of production and sales, revealed by the Central Excise Department, the Income Tax Department found that there were suppression of income. Assessment was made for the period from 1986-87 to 1990-91. The petitioner filed an application before the Income Tax Settlement Commission, Additional Bench, Chennai, which passed the order, dated 30.07.1999, whereby, a direction was issued to refund Rs.11,17,178/-, with interest under Section 244 A of the Income Tax Act, 1961 to the petitioner. However, the respondents have not chosen to refund the amount till date, inspite of several representations and reminders. It appears that, as no action was initiated by the respondents, effecting refund, the petitioner caused a legal notice to the first respondent, requesting him to look into the matter, and expedite the refund along with interest, who in turn, addressed the second respondent, vide letter, dated 12.10.2015, to take appropriate action, and report the action taken. Till date, the second respondent has not initiated any action, and the matter has been allowed to remain in cold storage. This has necessitated the petitioner to approach this Court, by way of this Writ Petition.

4. The facts of this case will clearly show that the zeal, with which, the tax was collected, has not been shown to effect the refund, in spite of the order passed by the Settlement Commission. It is seen from the order passed by the Settlement Commission that the Settlement Application was filed by the petitioner's father, who is no more. If the order of the Settlement Commission has become final and valid, and there is no other impediment, then, obviously, the legal heirs of the petitioner, who filed the application before the Settlement Commission, are entitled for refund in terms of the order of the Commission. If there are any other issue, by now, the second respondent should have sent a reply to the petitioner. However, keeping the matter in cold storage, cannot be appreciated.

5. In the light of the above, there will be a direction to the second respondent to consider the petitioner's request, and afford an opportunity of personal hearing to the petitioner, and

take note of all the facts and pass appropriate orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

6. The Writ Petition is disposed of accordingly. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sd

To

1. The Commissioner,
Commissioner of Income Tax,
Income Tax Department,
"Aayakar Bhavan"
Nungambakkam High Road,
Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Non Corporate Circle - 6,
Chennai.

+3 CC to. Mr. S. Sundar, Advocate, Sr.48998
+1 CC to Mr. T. Ravikumar, Advocate Sr.48799

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RJ (CO)
MD : 14/09/2016