IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5621 of 2016

Date of Decision: 22.3.2016

Rajnish Bhatia and others

....Petitioners.

Versus

Union of India and another

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Avneesh Jhingan, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of Mandamus directing respondent No.2 to issue refund of ₹ 11,04,046/- along with interest.

2. On 6.10.1999, the residence as well as business premises of the petitioners were searched by the Central Excise Department and the goods and cash amounting to ₹ 10,25,000/- were seized. The Excise Department vide letter dated 16.3.2000 informed the Income Tax Department regarding the seizure of the aforesaid cash amount who initiated proceedings under Section 132A of the Income Tax Act, 1961 (in short "the Act"). A notice dated 25.4.2001 under Section 158BC of the

Act was issued. The Assessing Officer vide order dated 26.3.2001 (Annexure P-1) treated the said income from undisclosed sources for the block period of 1.4.1989 to 30.3.2000 and made additions of ₹ 10,25,000/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who vide order dated 28.5.2003 (Annexure P-2) deleted the said addition. Against the order, Annexure P-2, the department filed an appeal before the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal"). The assessee also filed cross objections before the Tribunal. The Tribunal vide order dated 25.8.2006 allowed the appeal and dismissed the cross-objections of the assessee. The assessee took the matter before this Court by filing ITA No. 593 of 2006 and this Court vide order dated 18.8.2010 (Annexure P-3) remanded the matter back to the Tribunal for re-adjudication and fresh decision in accordance with law. However, during the pendency of the matter before the Tribunal after remand from this Court, Shri Brij Mohan Bhatia had expired on 8.12.2011 as per death certificate dated 21.12.2011 (Annexure P-4). The Tribunal vide order dated 27.8.2015 (Annexure P-5) dismissed the appeal of the department as well as the cross objections filed by the assessee. The petitioners vide application dated 5.10.2015 (Annexure P-6) applied for refund along with interest, but to no effect. Thereafter, the petitioners sent reminders dated 9.2.2016 and 17.2.2016 (Annexure P-7 Colly) to respondent No.2, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners have moved an application dated 5.10.2015 (Annexure P-6) followed by reminders dated

9.2.2016 and 17.2.2016 (Annexure P-7 Colly) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the application dated 5.10.2015 (Annexure P-6) followed by reminders dated 9.2.2016 and 17.2.2016 (Annexure P-7 Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of two months from the date of receipt of certified copy of the order. It is further directed that in case it is found that the petitioners are entitled to the amount, the same be paid to them by respondent No.2 within next one month, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

March 22, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**