IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2017

Coram

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

Writ Petition Nos.7658 and 7659 of 2003
and
W.P.M.P.No.9848 of 2004

M/s.Misons Leathers Limited,
13, Kumarappa Street,
Periamet, Chennai - 600 003.
Rep by its Director
Sri. A.Md.Anwar Basha ...Petitioner in both WPs

Vs.

1.The Commissioner of Income Tax,
Tamil Nadu IV,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Circle IV (3),
Chennai - 600 034. ...Respondents in both WPs

Prayer in W.P.No. 7658 of 2003: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Manadamus, to call for the records of the petitioner on the file of the second respondent in GIR No MI-64/95-96 and quash the impugned order, dated 08.04.2002 and consequently direct the second respondent to extend the benefit of the KVSS, 1998 for the Assessment year 1995-96.

Prayer in W.P.No. 7659 of 2003: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Manadamus, to call for the records of the petitioner on the file of the first respondent and quash the impugned order, dated 28.07.2000 and consequently, to direct the first respondent to grant the benefit of the KVSS, 1998 for the Assessment year 1995-96.

In both WPs

For Petitioner : Mr.S.Sridhar

For Respondents : Mrs.Hema Murali Krishnan
Standing Counsel

COMMON O R D E R

Heard Mr.S.Sridhar, the learned counsel appearing for the petitioner, and Mrs.Hema Murali Krishnan, the learned Standing Counsel for the respondents.

2. The petitioner has filed the Writ Petition in W.P.No.7658 of 2003, challenging the order passed by the second respondent, dated 08.04.2002, withdrawing the benefit of the Kar Vivadh Samadhan Scheme (KVSS). Insofar as the other Writ Petition is concerned, viz., W.P.No.7659 of 2003, the same has been filed seeking to quash the order passed by the first respondent, dated 28.07.2000, whereby, the petitioner has been directed to pay a sum of Rs.76,090/- and consequently, to direct the first respondent to grant the benefit of the KVSS, 1998 for the Assessment year 1995-96.

3. The only reason for withdrawing the benefit of KVSS is by alleging that the petitioner has not paid the amount demanded within due date. Admittedly, the declaration filed by the petitioner was processed and an order in Form No.3 dated 06.05.1999 was issued, certifying that the petitioner paid the full tax arrears, as demanded in the order, dated 19.03.1999, and therefore, the petitioner is entitled for immunity from instituting any proceeding for prosecution under the Income Tax Act, 1961. Subsequently, it appears that, on account of some mistakes, committed in the calculation, Revision Form 2A, dated 28.07.2000 was issued, stating that the petitioner has to pay further sum of Rs.76,090 for being entitled to KVSS Scheme. The notice in Revised Form 2 A, was received by the petitioner on 03.08.2000, and within 30 days from the receipt of the same on 31.08.2000, the petitioner has paid the said sum. However, the second respondent would state that the amount was not paid within 30 days from the date of the revised certificate. Similar is the stand taken in the counter affidavit by the respondents at para 10.

4. The elementary principle is that, limitation can be computed only from the date of receipt of the order or the proceeding. A mere passing of order by an Officer and keeping it on his file will not be sufficient, but the order should be communicated to the assessee or the person aggrieved. Therefore, this Court finds that the petitioner has complied with the condition and paid the money within a period of 30 days from the date of receipt of the Revised Form Notice. Hence, the impugned orders have been passed on a thorough misconception of the legal position.

5. For the aforesaid reasons, the petitioner is entitled to succeed in these Writ Petitions. Accordingly, both the Writ Petitions are allowed and the impugned orders are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax,
Tamil Nadu IV,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Circle IV (3),
Chennai - 600 034.

+1 cc to M/s.Hema Muralikrishnan Advocate sr 47174
+1 cc to M/s.Sridhar Advocate sr 47386

Writ Petition Nos.7658 and 7659 of 2003

mg(co)
aa20/07/2017