IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37955 of 2003 & W.P.M.P.No.46085 of 2003

Late Shri C.R.K.Swamy,
Rep. by Legal Heir, Mr.C.R.K.Arokiaraj. ... Petitioner

Vs.

1.Income Tax Officer,
Ward V(3), Chennai-600 034.

2.The Commissioner of Income Tax,
Tamil Nadu-VI, Chennai-600 034. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings on the file of the first respondent and quash the order of the first respondent dated 19.07.2002 and consequently direct the first respondent to grant interest under Section 244(2) of the Income Tax Act, 1961, on the refund due to the petitioner withheld by the Department under Section 241 of the Income Tax Act, 1961.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel

O R D E R

Heard Mr.M.P.Senthil Kumar, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing counsel appearing for the respondents.

2.The petitioner has filed this writ petition challenging the order passed by the second respondent dated 19.07.2002, rejecting the petitioner's claim for interest under Section 244 (1A) of the Income Tax for the period from 01.04.1993 to 12.07.2002.

3.The undisputed facts are that the Income Tax Officer, Ward No.I(2), Tambaram, passed an order giving effect to the order of the Tribunal in ITA 4131/Mds/89 for the assessment year 1985-86 dated 31.03.1992, wherein the total refund due has been worked out to Rs.7,53,171/- including interest under Section 244(1A) from 01.03.1991 to 30.11.1002 and after adjusting the tax demanded for the assessment year 1985-86 and 1986-87, amounting to Rs.3,07,921/-, the balance refund was worked out to Rs.4,45,250/-, then the penalty demands for the years 1985-86 and 1986-87 were deducted and the balance refund was worked out to Rs.4,02,298/- and this was withheld under Section 241 of the Income-tax Act. After entire proceedings got cleared, the amount which was withheld was to be paid to the petitioner in this writ petition.

4.The issue is whether the petitioner is entitled for interest. The petitioner is the legal heir of late C.R.K.Swamy, who was the assessee, in terms of Section 244(1) of the Act. When refund was due to the assessee in pursuance to the order referred to under Section 240 of the Act, the Assessing Officer did not grant the refund within a period of three months from the end of the month in which the said order is passed, the Central Government shall pay to the assessee simple interest at 15% per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

5.Thus, the assessee was entitled for payment of interest from 01.04.1993 till the date, when the refund is granted. The assessee passed away on 03.06.1999 and the Assessing Officer informed the legal heir to produce all the necessary records to enable him to pass an order to refund the amount and whom the amount to be refunded. However, the legal heir of the deceased assessee took substantial time for compliance of the same and the refund was ultimately granted only on 12.07.2002.

6.It is to be seen as to whether the petitioner, who is the legal heir of the deceased assessee, is entitled for interest under Section 244(1) of the Act and the interest is payable from the end of the month, in which such an order was passed, withholding the refund order. The refund was quantified by order dated 14.12.1992 and withheld by the same order. Therefore, if the order withholding is not revoked within a period of three months, from the expiry of the period of three months, the assessee is entitled for interest. The statute does not give any discretion to the Assessing Officer to refuse to grant interest, as it is automatic. Thus, the petitioner would be entitled for payment of simple interest at 15% from 01.04.1993 onwards. The petitioner's claim for interest is till 12.07.2002 (i.e.) the date on which the refund cheque was issued. However, this plea cannot be accepted for the simple reason that the petitioner was unable to produce all the records before the Assessing Officer to show in whose name the refund is to be granted, since the assessee died on 03.06.1999. Therefore, this Court is inclined to restrict the claim till the date of demise of the assessee (i.e) 03.06.1999.

7.Accordingly, this Writ petition is partly allowed and the respondent is directed to pay interest at the rate of 15% per annum in terms of Section 244(1) of the Act from 01.04.1993 to 03.06.1999. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income Tax Officer,
Ward V(3), Chennai-600 034.

2.The Commissioner of Income Tax,
Tamil Nadu-VI, Chennai-600 034.

+1cc to Mr.Dhilip George, Advocate, S.R.No.53192
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.52906

W.P.No.37955 of 2003

GN(06/10/2017)