IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.17004 of 2019 and
WMP.Nos.16565 of 2019

M/s.SMS Labs Services Private Limited
Represented by its Managing Director
Mrs.Sharadha Murali.
.. Petitioner

vs.

1.Principal Commissioner of Income Tax-6
Chennai
602, 6th Floor, Wanaparthy Block
Aayakarbhawan, 121, M.G.Road
Nungambakam
Chennai - 600 034.

2.Deputy Commissioner of Income Tax,
CPC
Post Bag No.2
Electronic City Post Office
Bangalore - 560500.
.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned order in No.6120/264/PCIT-6/2017-18/382 dated 11.02.2019 and quash the same, consequently direct the 1st respondent to restore petition for revision under Section 264 of Income Tax Act, 1961 and pass orders allowing claim of refund of Rs.10,18,014/- and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.K.Thiyagarajan
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel (Income Tax)

ORDER

Mr.K.Thiyagarajan, learned counsel on record for writ petitioner is before this Court. Mr.A.P.Srinivas, learned Senior Standing Counsel (Income Tax) accepts notice on behalf of both the respondents.

2. With consent of learned counsel on both sides, main writ petition itself is taken up and is being disposed of.

3. Entire matter turns on a narrow compass. Petitioner is a private limited company, but learned counsel for writ petitioner submits that it is a very closely held company, wherein members of one family are on the board. It is also submitted that one Mr.G.Murali was the Managing Director of the company, but he died suddenly on 10.06.2015 and on the date of the death he was only 50 years old. It is submitted that being a closely held company, the company was in disarray owing to such untimely demise.

4. Under such circumstances, the company filed an application under Section 264 of 'Income Tax Act, 1961' ('IT Act' for brevity), seeking to revise intimation under Section 143(1) of IT Act 27.02.2016. There is no disputation that such a petition under Section 264 of IT Act ought to have been filed on or before 15.03.2017 as stipulated in sub-section (3) of Section 264 of IT Act. To be noted, the assessment year concerned is 2015-16.

5. However, revision petition under Section 264 of IT Act was ultimately filed only on 29.01.2018 with a delay of about nine months.

6. Reason given for the delay is, sudden demise of Managing Director of the closely held company, details of which have been alluded to supra.

7. There is no disputation or disagreement before this Court that first respondent has power to condone the delay under proviso to sub-Section (3) of Section 264 of IT Act.

8. A perusal of proviso to sub-Section (3) of Section 264 reveals that there is no cap. In other words, Section 5 of the Limitation Act is not excluded and the first respondent has power to condone delay without any restriction qua length of time.

9. Under aforesaid scenario, considering the peculiar facts and circumstances of the case on hand, this Court is of the view that ends of justice would be served, if the revision sought for by the writ petitioner under Section 264 of IT Act is heard out on merits by condoning delay.

10. In other words, this Court is of the view that it is a fit case for condonation of delay which this Court is informed is around nine months.

11. To be noted, under normal circumstances, this Court would have put the writ petitioner on terms. However, owing to the peculiar facts and circumstances of instant case, i.e., untimely demise of the Managing Director of a closely held company at the age of 50 years, this Court passes the following order:

a) order dated 11.02.2019 bearing reference No.6120/264/PCIT-6/2017-18/382 made by the first respondent is set aside.

b) consequently, delay in filing revision under Section 264 of IT Act for assessment year 2015-16 by writ petitioner stands condoned.

c) as a further consequence, the first respondent shall consider the revision filed by the writ petitioner under Section 264 of IT Act on merits and pass orders, in accordance with law, within four weeks from the date of receipt of a copy of this order.

12. Writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vsm

To

1.Principal Commissioner of Income Tax-6
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2.Deputy Commissioner of Income Tax,
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+1 CC to Mr.K.Thiyagarajan, Advocate sr 50450.
+1 CC to Mr.A.P.Srinivas, Advocate sr 50385.

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RSV(CO)
SP(10/07/2019)