IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 6482 of 2005

Between:

M/s Sri Krishna & Co., Rep. by its Managing Partner Mr. R. Sudharsan,
S/o C. Raghavachari, aged 52 years, D.No. 6-1-130/2, Padmarao Nagar,
Secunderabad - 500 061.

..... PETITIONER

AND

1 The Deputy Commissioner of Income Tax, Circle-I (I),

CR Building, M.G. Road, Vijayawada - 520 002.
2 The Branch Manager, ICICI Bank, Swarnambigai Plaza,
Omalur Main Road, Near Bus Stand, Salem, Tamilnadu.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction more particularly one in nature of Writ of mandamus declaring that the action of First Respondent in collecting the amount due and payable by the M/s Sri Krishna & Co. (New Firm) from the account Petitioner lying with the Second Respondent as illegal, arbitrary, without jurisdiction and in violation of principles of natural justice and consequently direct the respondents 1 and 2 herein to refund the amount of Rs.4,04,535/- with interest and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.P.R.PRASAD

Counsel for the Respondent No.1: MR.J.V.PRASAD

Counsel for the Respondent No.2: ----------

The Court at the admission stage made the following ORDER: (per BRSR, J)

It is evident from the material papers filed by the petitioner-company that it had already made a representation dated

28-02-2005 to the 1st respondent-Deputy Commissioner of Income Tax, Circle-1 (I), Vijayawada with reference to the garnishee notice dated 18-02-2005 issued under Section 226(3) of the Income Tax Act, 1961 (for short "the Act"). The sum and substance of the objections raised by the petitioner as well as the contentions raised in this writ petition are that the petitioner-company is not liable to pay any amounts whatsoever to the Department. It is stated that M/s. Sri Krishna & Co. (new firm) has been dissolved with effect from 01.04.1988 on take over of its business as a going concern by M/s. CR Steel & Tubes Private Limited on closing hours of business on 31-03-1988. The constitution of the firm consisted of HUFs as partners whereas the constitution of M/s. Sri Krishna and Company (the petitioner in this case) is that of individuals.

Though the petitioner-company is aware of the notice dated

18-02-2005 issued under Section 226 of the Act, the same is not filed before us and it is stated that it is not served upon the petitioner-company but it came to know about the same only through the bank when the said amounts were deducted by the

bank from out of the account held by the petitioner in compliance with the notice dated 18-02-2005.

It is not possible to express any opinion whatsoever on the question of liability of the petitioner in this writ petition. Suffice it to direct the 1st respondent-Deputy Commissioner of Income Tax, Circle-I (1), Vijayawada, to dispose of the representation
dated 28-02-2005 filed by the petitioner forthwith, preferably, within a period two weeks by passing a speaking order which shall be communicated to the petitioner in order to enable it to avail the remedies, if any, available in law if such an occasion arises. It is needless to direct the 1st respondent to furnish a copy of the garnishee order also to the petitioner.

The writ petition shall accordingly stand disposed of.

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(B.SUDERSHAN REDDY, J)

15th APRIL, 2005.

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(C.V.RAMULU, J)

Note: furnish copy by 19-04-2005.

B/o

kvni/ks

To

1 The Deputy Commissioner of Income Tax, Circle-I (I),

CR Building, M.G. Road, Vijayawada - 520 002.

2 The Branch Manager, ICICI Bank, Swarnambigai Plaza,
Omalur Main Road, Near Bus Stand, Salem, Tamilnadu.

3 Two CD copies.