IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 12242 of 2008 (G)

PETITIONER(S):

M/S.UNION AIR PRODUCTS PVT.LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, MR.A.G.NAIR
UNION AIR HOUSE, VALANJAMBALAM, COCHIN-16.

BY ADV. SRI.P.GOPINATH MENON.

RESPONDENT(S):

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1. ASSISTANT COMMISSIONER OF INCOMETAX
   CIRCLE-1(3), RANGE-1, ERNAKULAM

2. CHIEF COMMISSIONER OF INCOMETAX
   KOCHI.

R1 & 2 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12242 of 2008 (G)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1A : TRUE COPY OF THE ORDER OF THE DISTRICT INDUSTRIES CENTRE, ERNAKULAM DECLARING THE PETITIONER COMPANY AS A SICK UNIT.

EXT.P2A : TRUE COPY OF THE INTIMATION UNDER SECTION 143(1) OF THE INCOME TAX ACT.

EXT.P3A : TRUE COPY OF THE LETTER ADDRESSED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P4A : TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P5A : TRUE COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT.

EXT.P6 : A TRUE COPY OF THE LETTER DT. 25.1.2003 FROM THE KERALA STATE COOPERATIVE BANK TO THE PETITIONER.

ANNEXURE A : TRUE COPY OF THE PETITION.
ANNEXURE B : TRUE COPY OF THE RELEVANT PAGE.
ANNEXURE C : TRUE COPY OF THE RELEVANT PAGE OF PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.3.2001.
ANNEXURE D : TRUE COPY OF THE RELEVANT PAGE OF COMPUTATION STATEMENT.

RESPONDENTS' EXHIBITS :

EXT.R2A: TRUE COPY OF THE PETITION.
EXT.R2B : TRUE COPY OF THE RELEVANT PAGE OF THE PROFIT & LOSS ACCOUNT.
EXT.R2C : TRUE COPY OF THE RELEVANT PAGE OF PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.3.2001.
EXT.R2D : TRUE COPY OF THE RELEVANT PAGE OF COMPUTATION STATEMENT.

(TRUE COPY)

P.B.SURESH KUMAR, J.

W.P. (C) No.12242 of 2008

Dated 16th January, 2015.

J U D G M E N T

Ext.P5 order passed by the second respondent in exercise of the powers conferred on him by the Central Board of Direct Taxes under Clause (a) of Sub Section 2 of Section 119 of the Income Tax Act,1961, hereinafter referred to as `the Act' for short, is under challenge in this writ petition.

2. The petitioner is a company incorporated under the Companies Act. It is an assessee under the Act on the file of the first respondent. The petitioner had availed a few term loans from the Kerala State Industrial Development Corporation and the State Co-operative Bank for setting up its industrial unit. According to them, on account of the increase in the cost of production, it had incurred recurring losses and ultimately its unit became a sick industry. It is stated that consequently, the financial institutions referred to above have waived the interest charged in its term loan accounts and on receipt of confirmation from the financial institutions, the excess debit of interest amounting to Rs.89,49,503/- was

written back in the profit and loss account of the petitioner for the year 2000-2001 as an extra-ordinary item. On account of the inclusion of the said extraordinary item, the net profit of the petitioner for the assessment year 2001-02 increased from Rs.3,72,400/- to Rs.64,22,169/- and consequently, the petitioner had to pay book profit tax as provided for under Section 115JB of the Act. However, in the intimation issued to them by the first respondent under Section 143(1) of the Act, the petitioner was directed to pay a sum of Rs.1,22,244/- towards interest under Section 234B of the Act and a sum of Rs.39,003/- towards interest under Section 234C of the Act also. Since the profit reflected in the books of accounts of the petitioner for the said year was solely on account of the reversal of interest charged by the financial institutions on the term loans availed by them, they had preferred a representation to the second respondent seeking waiver of the interest charged on them under Sections 234B and 234C of the Act. Ext.P4 is the representation submitted by the petitioner before the second respondent in this connection, invoking the power of the second respondent under Section 119 (2) (a) of the Act. Ext.P4 representation was rejected by the second respondent as per Ext.P5 order, holding that he is authorised to waive interest only in the class of cases and incomes specified in the circulars issued for that purpose by the Central Board of Direct Taxes and that the case of the petitioner does not come under the specified class of incomes and cases specified in the circulars in this connection by the Central Board of Direct Taxes. As stated above, it is aggrieved by the said decision of the second respondent, this writ petition is filed.

3. Heard Adv.P.Gopinath Menon, the learned counsel for the petitioner and Adv.Jose Joseph, the learned Standing Counsel for the respondents.

4. The learned counsel for the petitioner strenuously contended that the confirmation of waiver of interest was received from the financial institutions concerned only after the time stipulated for payment of advance tax and therefore, the second respondent ought to have allowed the waiver of interest claimed by the petitioner. He has also contended, relying on the decision of the Karnataka High Court in **Kwality Biscuits Ltd. v. Commissioner of Income Tax** [2000 Vol.243 ITR 519] that the book profit can be determined only after the end of the relevant assessment year and therefore, the assessee has no liability to pay interest under Sections 234B and 234C of the Act for non-payment of advance

tax on the book profit. In the alternative, the learned counsel also pointed out that the unit of the petitioner has still not revived from its sickness and therefore, prayed for an opportunity to pay the interest dues in instalments, if the contentions are not acceptable.

5. Section 119 (1) and 119(2)(a) of the Act reads thus :

> "119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:
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> Provided that no such orders, instructions or directions shall be issued -
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> (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
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> (b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.
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> (2) Without prejudice to the generality of the foregoing power,-
>
> (a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections [115P, 115S], [115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115 WK,] [139], 143, 144, 147, 148, 154, 155, [158BFA] [sub-section (1A) of section 201, sections 210, 211, [234A, 234B], 234C], 271 and 273 or otherwise), general or

> special orders in respect of any class of incomes [or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;"

It is clear from Section 119(1) and 119(2)(a) of the Act that the statute had conferred authority to waive interest payable under Sections 234A, 234B and 234C of the Act only on the Central Board of Direct Taxes and it is based on the general or special orders issued by the Board, the other income tax authorities are exercising the power of waiver. It is also clear from the aforesaid Sections that the income tax authorities other than the Board are empowered and authorised to waive interest only in accordance with the guidelines, principles and procedures specified by the Board in general or special orders issued by the Board. The classes of incomes and cases in which the Chief Commissioner of Income Tax is authorised to waive interest under Sections 234A, 234B and 234C of the Act as per the circulars issued by the Central Board of Direct Taxes as indicated in Ext.P5 order, read thus:

> "(a) Where, during in the course of search and seizure operations, books of account etc. were seized and the CCIT/DGIT concerned is satisfied on the facts and circumstances of the case, that the delay in furnishing return was for reasons beyond the control of the assessee, and is not attributable to him.
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> (b) Where any income chargeable to tax under any head of income other than "Capital gains" which was received or accrued after the date of first or subsequent instalment of advance tax, which was neither anticipated nor contemplated by the tax payer and on which advance tax was paid by the tax payer after the receipt of such income and the DGIT or CCIT is satisfied that this is a fit case for waiver of interest chargeable u/s.234C;
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> (c) Where, as a result of any retrospective amendment of law or the decision of the Supreme Court after the end of the relevant previous year, certain receipts which were hitherto treated as exempt, become taxable. Since no advance tax would normally be paid in respect of such receipts during the relevant financial year, penal interest is levied for the default in payment of advance tax"

As stated above, the second respondent is empowered and authorised to waive interest payable by the petitioner under Sections 234B and 234C of the Act only if the case of the petitioner falls under any of the three classes of cases referred to above. Going by the averments in the writ petition, the case of the petitioner would not come under classes (a) and (c). Coming to class (b), there is nothing on record show as to when the financial institutions have intimated to the petitioner their decision to waive the interest charged on the petitioner. In the absence of any material as to the time at which the petitioner received intimation concerning the waiver of interest granted by the financial institutions, I am unable to consider the question as to whether the case of the petitioner would fall under class (b) referred to above. The contention raised by the learned counsel for the petitioner that since the book profit cannot be determined before the end of the relevant assessment year, the assessees are not obliged to pay interest under Sections 234B and 234C of the Act for non-payment of advance tax on the book profit also cannot be accepted, for, the question whether the petitioner is liable to pay interest under Sections 234B and 234C of the Act is not the issue in this case. As noticed above, the issue in this case is as to whether the second respondent is justified in declining the request made by the petitioner for waiver of interest in exercise of his authority under Section 119 of the Act. The decision relied on by the learned counsel for the petitioner is also not a decision rendered in the context of the authority of the income tax officers to waive interest under section 119 the Act. In the aforesaid circumstances, Ext.P5 order of the second respondent is perfectly in order.

6. Coming to the request made by the petitioner for

payment of the balance amount due by way of interest in instalments, it is noticed that the petitioner had already remitted the tax levied on them. In the said circumstances, I am of the view that the petitioner can be permitted to pay the balance amount due, less the interest already paid by them in six monthly installments commencing from 1st of February, 2015. Since the matter is pending before this Court from 8.4.2008, I am of the view that the petitioner shall be absolved from the liability to pay interest for the period during which the writ petition was pending before this Court, and it is ordered accordingly.

The writ petition is disposed as above.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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