IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.8198 of 2004

M/s.Indian Commerce and Industries
Company P Limited, Chennai-108
Petitioner

Vs

1.The Income Tax Settlement Commission
Additional Bench, Chennai-35

2.The Deputy Commissioner of Income Tax
Company Circle II(3), Chennai-34

Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in Settlement Application No.21/1/14/88-IT and quash the impugned order dated 26.9.2003 made in the miscellaneous petition and to direct the 1st Respondent to waive the interest of Rs.58,49,221/- charged under Section 220(2) of the Income Tax Act, 1961 exercising its Power under Section 220(2A) of the Income Tax Act,1961.

For Petitioner : Mr.T.N.Seetharaman

For Respondent : Mr.T.Pramod Kumar Chopda, Senior Standing Counsel

ORDER

In this Writ Petition, the Petitioner seeks to quash the impugned order dated 26.9.20013 of the 1st Respondent, rejecting the claim of the Petitioner for waiver of interest, levied under Section 220(2) of the Income Tax Act, 1961.

2. The facts, which are necessary for disposal of this Writ Petition are follows:-

a. The Petitioner, a private limited Company, is carrying on the business of construction of factory buildings by structural steel and registered under the Indian Companies Act and an assessee under the Income Tax Act, 1961. The

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Petitioner made an application on 28.3.1989 under Section 245C (1) of the Act before the 1st Respondent for settlement of its case for the assessment year 1986-87 and the 1st Respondent, by order dated 23.5.1990, directed to proceed with the case and passed a final order dated 20.10.1993, granting immunity from penalty and prosecution in respect of the matters covered by the settlement and charging interest under Section 139(8) for the said assessment year. In the mean time, the 2nd Respondent passed an assessment order dated 30.3.1989 under Section 143(3) of the Act, determined the total income and tax leviable on the Petitioner for the assessment year 1986-87. On receipt of the order dated 20.10.1993, the 2nd Respondent passed an order dated 21.12.1993, giving effect to the order of the 1st Respondent, adopting the total income as determined by the 1st Respondent at Rs.1,70,87,900/- and the tax payable was computed at Rs.94,20,531/- and as directed by the 1st Respondent, interest was added under Section 215 of the Act, to the tune of Rs.10,59,806/- and thus, the total demand was determined at Rs.1,04,80,337. The 2nd Respondent passed another order dated 21.12.1993 under Section 220(2) of the Act, charging interest of Rs.58,49,221/- for the period from 1.5.1989 to December 1993 and adjusting a refund of Rs.55,649/-, the balance interest payable was determined at Rs.57,93,572, without considering the petitioner's objection dated 16.12.1993. However, the 1st Respondent proceeded to charge interest as stated above. As against the order of the 2nd Respondent, levying interest under Section 220(2), the Petitioner preferred a miscellaneous petition dated 18.1.1994 before the 1st Respondent for waiver of interest, which was rejected by order dated 22.2.1995 for want of jurisdiction.

b. Thereafter, the Petitioner filed a petition on 16.3.1995 before the Commissioner of Income Tax under Section 264, denying liability to pay interest, which was rejected by orders dated 23.6.1995 and 2.10.1995. Then, the 2nd Respondent issued show cause notices dated 21.10.1995 and 15.11.1995, calling upon the Petitioner to pay the interest. As against the said orders of the Commissioner of Income Tax, the Petitioner filed WP.Nos.16575 and 16576 of 1995, wherein the impugned orders were set aside by order dated 16.6.2003, stating that the 1st Respondent had power to consider the application for waiver of interest and directing him to dispose of the matter. Thereafter, the 1st Respondent, by the impugned order dated 26.9.2003, rejected the relief of waiver of interest claimed by the Petitioner on the ground that none of the conditions for waiver of interest was satisfied. Hence, this Writ Petition has been filed for the relief as stated above.

3. The learned counsel for the Petitioner contended that the 2nd Respondent had already recovered the interest without awaiting the outcome of the miscellaneous petition filed

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before the 1st Respondent and that the 1st Respondent did not take into account the relevant circumstances prevailing at the time of the relevant assessment year, before rejecting the claim of waiver of interest and that the Respondents erred in holding that the Petitioner did not satisfy none of the conditions set out in Section 220(2A) of the Act and prayed for quashing of the impugned order.

4. The learned Standing Counsel for the Respondents, by filing a counter affidavit, contended that there was no cooperation on the part of the Petitioner in pursuing the matter and taking into account the conduct of the assessee, the circumstances of the case and the manner in which the payment was delayed and that none of the conditions set out in 220(2A) of the Act was fulfilled by the Petitioner, it was rightly held that the assessee did not deserve for waiver of interest, as claimed and hence, prayed for dismissal of this Writ Petition.

5. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

6. According to the Petitioner, the conditions mentioned in Section 220(2A) of the Act for waiver of interest are fully satisfied and hence, the Petitioner is entitled for waiver of the entire interest charged under the said Section. On the other hand, it is the contention of the Respondents that none of the conditions set out in Section 220(A) of the Act was fulfilled by the Petitioner and hence, the Petitioner shall not be entitled for waiver of interest.

7. Therefore, the question that arises for consideration is as to whether the Petitioner fulfilled the conditions of Section 220(2A) of the Income Tax Act, 1961 for waiver of interest.

8. The conditions of Section 220(2A), based on which the claim of the Petitioner for waiver of interest was rejected by the impugned order, are as follows:-

> 2A. Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that;
>
> (i) Payment of such amount has caused or would cause genuine hardship to the applicant.
>
> (ii) Default in the payment of the amount on which interest has been paid or was payable was due to

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circumstances beyond the control of the applicant; and

(iii)the Applicant has co-operated in any inquiry relating to the assessment or any proceeding leading to recovery and payment.

9. In so far as the condition (i) is concerned, the Respondent filed a chart before the 1st Respondent showing the profit and loss account for five years (1998-1999 to 2002-2003), which clearly indicated that the net profit of the Petitioner has come down in these years, thereby pointing out that the payment of interest would cause hardship to the Petitioner at the relevant point of time when the relief was sought for. Since the demand of tax and interest of Rs.1,67,77,289/- under Section 220(2) constitutes 98.18% of the total income determined by the 1st Respondent at Rs.1,70,87,900/-, here also the payment of interest under Section 220(2) would cause genuine hardship to the Petitioner. Therefore, the view of the 1st Respondent that it would not cause genuine hardship is totally unjustified on the facts of the case. The mere statement of the Respondents that the petitioner is a wealth-tax assessee is not a relevant circumstance to establish that the payment of interest amount would cause genuine hardship to the petitioner.

10. In respect of the condition (ii), there was delay in determining the correct income and the Petitioner was required to pay the tax only after the quantification of the income by the 1st Respondent by its final order under Section 245(4) and thus, the default in payment of the tax was beyond the control of the Petitioner.

11. With regard to condition (iii), it is averred by the Petitioner in the affidavit that in the order made by the 1st Respondent under Section 245D(4) of the Act, it was stated that "considering the cooperation extended by the applicant, we would grant immunity from penalty and prosecution in respect of matters covered by this settlement." Hence, the question of non-cooperation on the Petitioner does not arise.

12. It is seen from the above that it cannot be said that the Petitioner did not satisfy the said conditions, as contended by the Respondents. On the other hand, the learned standing counsel for the Respondents, except merely saying that none of the conditions are fulfilled by the Petitioner, neither during the course of the arguments nor in the counter affidavit, is not able to justify the finding that the Petitioner did not satisfy the conditions set out in Section 220(2A) of the Act, by giving valid reasons and proper evidence. In other words, the Petitioner met with hardship by such imposition of interest,

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default in payment of tax was beyond the control of the Petitioner and that the Petitioner had cooperated in enquiry relating to the assessment and the proceedings for recovery of tax.

13. In the case on hand, it is apparent that the demand of tax and interest constitutes 98.18% of the total income arrived at by the 1st Respondent, which is on the higher side. Though the interest is leviable under the provisions of the Act, the assessing officer is required to take note of the bona fides of the assessee also, that too when the Petitioner made an alternative plea of partial waiver of interest. Even during the pendency of the settlement application, the Petitioner paid the entire tax and the 2nd Respondent had already recovered the interest without awaiting the outcome of the miscellaneous petition filed before the 1st Respondent.

14. In Harbans Kaur v. CWT (1997-224 ITR 418:90 Taxman 398), the Honourable Supreme Court has held that if the conditions are satisfied, the Commissioner has the discretion to reduce the amount of penalty or waive the entire penalty.

15. In J.Jayalalitha vs Commissioner Of Income Tax (2000 244 ITR 74 Mad:1999 107 TAXMAN 476 Mad), it has been held as under:-

> "In the view I have taken, it is not necessary to consider various allegations made by the petitioner in the affidavit and reply-affidavit as well as the statements made by the respondents in the counter-affidavit. However, it must also be mentioned here that certain new facts are stated in the counter-affidavit filed by the Deputy Commissioner, Central R (2), Chennai, and it is well-settled that the order impugned has to be tested on the reasoning stated in the order and it is not permissible to improve the order by placing new facts in the counter-affidavit. Further, I am unable to accept the submission of the learned counsel for the petitioner that this Court under article 226 of the Constitution should grant the relief as prayed for in the applications filed by the petitioner. In my view, the proper course would be to remit the matter to the Commissioner of Income-tax to reconsider the matter de novo and consider the applications in accordance with law.

16. In view of the above reasons and discussions and in the light of the decisions cited supra, the impugned order is set aside and the matter is remanded back to the Respondents for fresh consideration. The Respondents are directed to pass orders afresh, after giving opportunity to the Petitioner, on merits

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and in accordance with law, expeditiously.

17. With the above directions, this Writ Petition is disposed of. No costs.

-s/d-
Assistant Registrar(CSIII)

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Sub-Assistant Registrar

Srcm

To:

1.The Income Tax Settlement Commission
Additional Bench,
488-489, Anna Salai Chennai-35

2.The Deputy Commissioner of Income Tax
Company Circle II(3),
Ayakar Bhavan 121, Uthamar Gandhi Salai,
Chennai-34
+1 cc to Mr.T.N.Seetharaman, Advocate sr.69534
+1 cc to Mr.T.Pramodkumar Chopda, Senior Standing Counsel for Income Tax Department sr.68484

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