IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.37062 of 2015
and M.P.No.1 of 2015

M/s.Premier Distilleries P.Ltd
Rep by its Managing Director
377 Anna Salai
Puducherry 605 001 [Petitioner]

Vs

1 The Principal Commissioner of
Income Tax
Income Tax Department
Deivanayagam Pillai Thottam Muthialpet
Puducherry 605 003

2 The Joint Commissioner of Income Tax
Puducherry Range Income Tax Department
Puducherry

3 The Deputy Commissioner of Income Tax
Puducherry Circle Income Tax Department
Puducherry

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the 1st respondent in C. No.9127A(108)/PCIT/PDY/2015-16 and quash the impugned order dated 13.10.2015 in cancelling the penalty imposed u/s 221 (1) of the Income Tax Act 1961 relating to the Assessment Year 2014-15.

For petitioner	:	Mr.A.S.Sriraman
For respondents	:	Mr.T.Pramod Kumar Chopda, SPC

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Panel Counsel for the respondents.

2. This writ petition is filed under Article 226 of the Constitution of India, challenging the order dated 13.10.2015, in and by which the plea for cancellation /deletion of the penalty imposed u/s 221 (1) of the Income Tax Act 1961 relating to the Assessment Year 2014-15, was rejected.

3. The petitioner Company is engaged in the business of manufacture of Indian made foreign liquor and the return of income for the year ended 31.03.2014 relating to assessment year 2014-15 was filed on 31.12.2014, disclosing the taxable total income at Rs.1,92,45,470/-. The self assessment tax under Section 140 A of the Act, amounting to Rs.65,43,850/- remained payable which triggered the proceedings under Section 221(1) of the Act on the issuance of a show cause notice for the purpose of levy of penalty for non payment of outstanding tax. The petitioner Company sought adjournment vide their letter dated 12.02.2015 for the show cause notice dated 06.02.2014 issued by the 3rd respondent. However, the 3rd respondent, proceeded to levy penalty vide his order dated 11.03.2015, exparte, by recording that the assessee company has not filed any details and also has not paid the self assessment tax. Aggrieved over the said order, the petitioner preferred a revision petition before the 1st respondent in terms of Section 264 of the Act for cancellation of penalty imposed. At this juncture, it is pertinent to point out that the petitioner Company has remitted the self assessment tax of Rs.46,00,000/- on 14.03.2015 and Rs.19,32,225/- on 24.04.2015. The petitioner has filed their written submissions on 06.10.2015 during the hearing granted to them. However, by the impugned proceedings, the 1st respondent has rejected the same. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the 1st respondent is erred in sustaining the levy of penalty under Section 221(1) of the Act, without considering sufficient cause shown for the belated payment of self assessment tax under Section 140 A of the Act for the assessment year in question and without assigning proper reasons. He would further add that non consideration of second proviso to Section 221(1) of the Act would vitiate the decision of the 1st respondent to sustain the levy of penalty. He would further add that the 1st respondent has failed to appreciate the unreasonable approach of the 3rd respondent in passing the exparte penalty order even though it was brought to his notice and thus there is gross violation of principles of natural justice. That apart, according to the learned counsel, the 1st respondent is wrong in recording the findings in this regard in paragraph Nos.9 & 10 of the impugned order, without assigning proper reasons and justification. The learned counsel for the petitioner also drawn the attention of this Court to the several

Judgments of the various High Courts in support of his contention.

Based on the above, the learned counsel for the petitioner has prayed for allowing of the writ petition.

4. On the other hand, the learned Senior Panel Counsel, appearing for the respondents has made his arguments in support of the impugned order.

5. After considering the submissions made by the learned counsel on either side and perusing the materials available on record, this Court finds force in the submissions of the learned counsel for the petitioner.

6. In view of the above, the impugned order dated 13.10.2015 is set aside and the matter is remitted back to the 1st respondent for passing orders afresh. It is made clear that the petitioner is permitted to file their objections within a period of four weeks from the date of receipt of a copy of this order and on such filing, the 1st respondent is directed to consider the same and thereafter pass orders on merits and in accordance with law, after due opportunity to the petitioner.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1 The Principal Commissioner of
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Income Tax Department
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Puducherry 605 003

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Puducherry Range Income Tax Department
Puducherry

3 The Deputy Commissioner of Income Tax
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Puducherry

+1 cc to Mr.S.Sridhar Advocate sr.68531
+1 cc to Mr.T.Pramodkumar chopda Advocate sr.69482

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