

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.18103 and 18148 of 2003
WPMP.Nos.22585 and 22639/2003

M/s.Shanthi Hatcheries, represented by its
Partner R.Krishnamurthy, Palladam
Coimbatore
both WPs

Petitioner in

Vs

The Director General of Income Tax (Inv)
No.108, Mahatma Gandhi Road,
madras -34
in both WPs

Respondents

Prayer:-These Writ Petitions are filed to issue a Writ of
Certiorarified Mandamus to call for the records of the
Respondent in F.No.2006 (130) 2000-2001 and to quash the
impugned order dated 28.1.2003 and to direct the Respondent to
grant relief for the assessment years 1996-97 and 1997-98.

For Petitioner : M/s.Subbaraya Aiyar
Padmanabhan

and Ramani

For Respondent : Mr.T.Pramodkumar
Chopda, SC

ORDER

These Writ Petitions are filed to issue a Writ of
Certiorarified Mandamus to call for the records of the
Respondent in F.No.2006 (130) 2000-2001, to quash the impugned
order dated 28.1.2003 and to direct the Respondent to grant
relief for the assessment years 1996-97 and 1997-98.

2. The case of the Petitioner is that the
Petitioner is a Partnership Firm and is engaged in the
business of poultry farming and hatcheries. The relevant
assessment years are 1996-97 and 1997-98 and the corresponding
accounting year ended on 31.03.1996 and 31.03.1997. For all
the years, the Petitioner filed income tax returns and
claimed deduction under Section 80 IA of the Income Tax Act,
1961 and the same were accepted under Section 143(1)(a),
thereby, the Petitioner enjoyed the reliefs under Section 80 IA

of the said Act viz. (1) for the assessment year 1996-97, Rs.83,844/- and (2) for the assessment year 1997-98, Rs.1,51,145/-. Later the Assessing Officer sent a show cause notice under Section 154 of the said Act, stating that the deduction was given wrongly and directed the Petitioner to send objections to the show cause notice. The Petitioner also sent a reply dated 27.5.1999 and claimed deduction under Section 80 JJ of the said Act, which was rejected on the ground that the assessee did not claim relief in the returns filed, in view of the decision of the Honourable Supreme Court reported in 237-ITR-174 (CIT Vs. Shri Venkateswara Hatcheries P Limited), which was rendered on 24.3.1999 reversing the earlier judgement of the Andhra Pradesh High Court reported in 174-ITR-231. Accordingly, the Assessing Officer levied interest under Sections 234B and 234C of the said Act viz. (1) for the assessment year 1996-97, Rs.11,226/- and (2) for the assessment year 1997-98, Rs.44,724/-. Aggrieved by the order of levy of interest under Sections 234B and 234C, the Petitioner filed a waiver petition to the Respondent, contending that as per the Board Circular in F.No.400/234/95-IT(B) dated 23.5.1996, which squarely covers the facts of the case, the Petitioner is entitled to waiver of interest levied under Section 234B and 234C of the Act. However, the Respondent, without considering the real scope of the said Circular, by the impugned order, rejected the waiver petition. Hence, these Writ Petitions have been filed for the reliefs as stated above.

3. The learned counsel for the Petitioner contended that once the Honourable Supreme Court declares law, it is binding on all the assessees and merely because it is not assessee's own case, it is not correct to say that only the assessee, falling within the jurisdiction of the High Court whose order has been reversed by the Honourable Supreme Court, can claim waiver of interest and that during the relevant accounting period, there was no contra judgement and later, on the basis of the decision of the Honourable Supreme Court, the Petitioner was subjected to higher tax and that the liability which arose subsequently was beyond the control of the Petitioner and hence, the Petitioner could not be penalized.

4. The learned Standing Counsel for the Respondent submitted that the liability to pay interest arose as a result of the decision of the Honourable Supreme Court reversing the order of the Andhra Pradesh High Court and not because of the reversal of any decision given by the jurisdictional High Court of Madras and hence, the assessee is not entitled to waiver of interest levied under Sections 234B and 234C of the said Act, as claimed and accordingly, the petition for waiver of interest filed by the Petitioner was rightly rejected.

5. This court heard and considered the submissions

the materials placed on record.

6. The short facts in a nutshell are that the Petitioner filed income tax returns for assessment years 1996-97 and 1997-98 and claimed deduction under Section 80 IA of the Income Tax Act, 1961 and the same were accepted under Section 143(1)(a). The Assessing Officer sent a show cause notice under Section 154 of the said Act, stating that the deduction was given wrongly and directed the Petitioner to send objections to the show cause notice. The Petitioner also sent a reply dated 27.5.1999 and claimed deduction under Section 80 JJ. However, the Assessing Officer levied interest under Sections 234B and 234C, against which Petitioner filed a waiver petition to the Respondent, which was rejected by the impugned order.

7. The issue of waiver of interest has been settled in a catena of decisions of various High Courts as well as the Honourable Supreme Court.

8. In similar circumstances, the High Court of Karnataka, in 2013-355-ITR-87-Karnataka (UB Global Corporation Limited Vs. Chief Commissioner of Income Tax), has held as follows:-

"14. Viewed in this perspective, the decision of the High Court or Supreme Court need not be in the case of the assessee. In other words, the decision of incidence and applicability of Income Tax under the Act, need not necessarily be in the case of the assessee, but could be in any other case i.e. of any other assessee or otherwise. As long as the decision covers the field of Income Tax legislation, as may be applicable to any assessee, 'would be a circumstance for reduction of waiver of interest under Section 234 A to C as the case may be."

9. In 2006-203-CTR-Guj-48 (Devarsons (P) Limited Vs. U.P.Singh), it has been held as under:-

"6. It is apparent from the facts of the case that the respondent has failed to give any reason for retaining the interest to the extent of Rs.1 lakh, while holding that, in the circumstances, interest charged under section 234B of the Act should be waived partly under clause (d) of the Circular No. F.No.400/234/95-IT(B) dated 23/5/1996 reported in (1997) 225 ITR (Statute) 101. The reason about non-availability of a judgement of jurisdictional high court cannot be termed to be a valid reason in the facts of the case, considering that the amendment, though by Finance Act, 1990, was made retrospectively applicable from 1-4-1967. "

10. In 2004-188-CTR-Guj-449 (Bhanuben Panchal and Chandrikaben Panchal Vs. Chief Commissioner of Income Tax), it has been held thus:-

"7. It is thus clear that clauses (a) to (a) all state the circumstances beyond the control of the assessee and they may be considered as the species or illustrations of unavoidable circumstances or circumstances beyond the control of the assessee which is the genus contained in clause (e) providing that where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the assessing officer, waiver of interest can be considered. It appears to the court that when the circumstances leading to delay in filing of return of income are also the circumstances resulting into late payment of taxes and when the same set of circumstances are considered to be unavoidable circumstances responsible for the delay in filing of the return of income, ordinarily such circumstances would also qualify to be considered as unavoidable circumstances responsible for the delay in late payment of taxes."

11. In 258-2002-ITR-751 (Sita Holiday Resorts Limited Vs. Chief Commissioner of Income Tax and others), the Delhi High Court has held as under:-

"However, in order to mitigate the hardships in deserving cases, the Board, in exercise of powers conferred under clause (a) of sub-section (2) of Section 119 of the Act, has issued a Circular/Notification No. 400/234/95-IT/B dated 23-5-1996, empowering the Chief Commissioner and the Director General, Income Tax, to waive or reduce the interest chargeable under Section 234B and two other sections in the class of cases or class of incomes, specified in paragraph 2 thereof for the period and to the extent the Chief Commissioner/Director General deem fit, subject to fulfilment of the conditions enumerated therein. "

12. In view of the settled law, as has been laid down in the decisions cited supra, the impugned orders are set aside and the matters are remanded back to the Respondent for fresh consideration in the light of the decisions cited supra. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity to the Petitioner.

13. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected MP are closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

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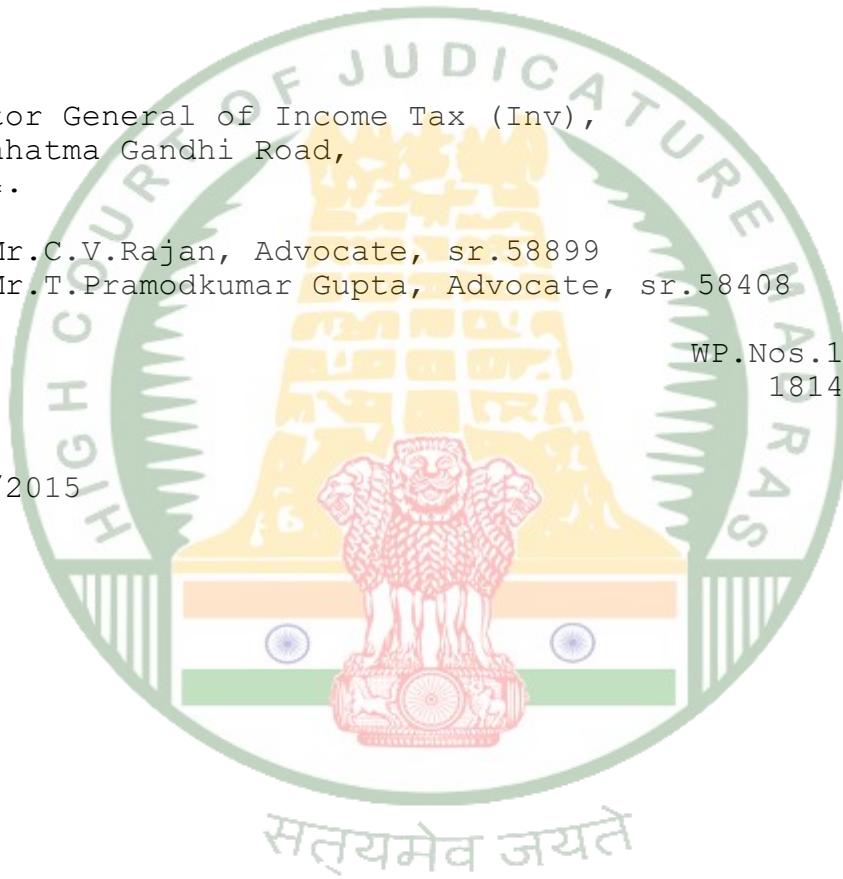
The Director General of Income Tax (Inv),
No.108, Mahatma Gandhi Road,
Chennai 34.

+1 cc to Mr.C.V.Rajan, Advocate, sr.58899

+1 cc to Mr.T.Pramodkumar Gupta, Advocate, sr.58408

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18148 of 2003

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