THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.17276 of 2004

O R D E R: (per Hon'ble Sri Justice Dilip B.Bhosale)

This writ petition by the assessee, under Article 226 of the Constitution of India, is preferred against the order dated 29.01.2004 passed by the Commissioner of Income Tax-VI, Hyderabad whereby her application for waiver of interest for the assessment years 1992-93 and 1993-94, under sub-section (2A) of Section 220 of the Income Tax Act, 1961 (for short 'the Act') had been rejected.

A search under Section 132 of the Act was conducted on 07.04.1993 in which it was revealed that the petitioner-assessee was not assessed to tax. She admitted, when examined under Section 132 (4) of the Act, that she had earned Rs.46,00,000/- by selling the plots of land at Banjara Hills, Hyderabad. Though she had filed return on 13.07.1994 declaring the above income, she did not pay the tax on the same. It was further revealed that the assessee was owner of 3063 Sq.Yards of land bearing plot No.395 at Jubilee Hills, Hyderabad, and she was also in possession of another 2505 Sq.Yards of land adjacent to this plot. She purchased 3063 Sq.Yards of land for a sum of Rs.41,000/- from Jubilee Hills Co-operative House Building Society Ltd. This was all revealed during the search. Accordingly, the Assessment Order was passed for the assessment year 1993-94 on 25.03.1996 raising the total demand of Rs.53,29,138/- and for the assessment year 1992-93 a sum of Rs.3,84,727/-. It has come on record that the assessee had preferred an appeal against the demand of Rs.53,29,138/- before the Commissioner of Income Tax where she got relief of Rs.6,15,000/-. It has also come on record that after the assessee had filed Return on 13.07.1994, she entered into an agreement with M/s.Image Chit Fund Private Limited on 02.11.1995 for sale of the property and received the total sum of Rs.22,00,000/-. In May, 1995 she had also given some property as collateral security by way of depositing title deeds to M/s.Prudential Co-operative Bank Ltd., Secunderabad for availing O.D. facility of Rs.60,00,000/- for a Company of which her husband-Sri D.Sudhakar Reddy was the Managing Director.

In this backdrop, the Commissioner of Income Tax had considered the petition filed by the assessee for waiver of interest and for the reasons recorded in paragraphs 14, 15 and 16 of the order, dismissed the same. Paragraphs 14, 15 and 16 read thus:

> "14. We have to see whether the assessee satisfies all these three conditions so that the waiver of interest can be considered sympathetically. No doubt, payment of Interest u/s.220 (2) (or for that matter any tax) would cause hardship to any assessee. But whether the hardship would be genuine or not is the question to be decided. Unlike other taxes, income-tax is to be paid out of the income earned and therefore there cannot be any hardship to anybody in paying income-tax. If the tax is not paid in time, simple interest has to be paid. If an assessee has earned the income assessed and instead of paying taxes, if she has used the income for constructing a palace, should the Revenue waive the interest, saying that it would cause hardship? No, it can not.
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> 15. We have to also see whether the default in the payment of the amount was due to the circumstances beyond the control of the assessee. No doubt apparently the assessee does not seem to have any regular income. But where did the income earned go? If she is a simple housewife without any source of income, how did she acquire such a big property whose present market value would be not less than Rs.6 Crores? Where from she got money to start constructing a palace of Rs.61.50 lakhs? What did she do with Rs.60 lakhs borrowed from the Bank and another Rs.22 lakhs taken from Image Chit Fund (P) Ltd? Above all, where does she get money to file writs in the High Court in order to stall the auction? I am of the view that the assessee is pretending to be a person of no means before the Department even though she has lot of resources. Therefore, I hold that the default in the payment was not due to the circumstances beyond the control

of the assessee.

16. The last condition to be satisfied for waiver of interest is that the assessee should have co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him. On going through the Assessment Order, I have no reason to come to the conclusion that the assessee had not co-operated in any inquiry relating to the asst. However, I cannot say the same in respect of the proceedings for the recovery of the tax due from the assessee. The number of Writ Petitions filed and the number of auction dates fixed by the Tax Recovery Officer would show that the assessee has been frustrating the recovery proceedings initiated by the Department. Therefore, it cannot be said that the assessee satisfied any of the three conditions mentioned u/s.220 (2A) and therefore I dismiss the petition."

From perusal of the record, it is clear that the assessee had not paid the tax on the Return of income, and therefore, the matter was referred to the Tax Recovery Officer and the Tax Recovery Officer attached the property and made a sale proclamation on 20.01.1997. The dates of the auction were postponed on several occasions i.e. 19.02.1997, 12.03.1997, 10.01.2001, 09.02.2001, 01.03.2001, 18.09.2003 and 22.10.2003. On the basis thereof, the Commissioner has rightly observed that the assessee did not co-operate in the proceedings for recovery of the amount due from her. We are also satisfied that the assessee made all efforts to prolong the recovery proceedings and did not
co-operate for its conclusion expeditiously. The record also reveals that even though the assessee had earned Rs.46,00,000/-, she did not file Return and pay taxes. She had also acquired a huge plot of land in Jubilee Hills and had mortgaged said property to the Bank and obtained Rs.60,00,000/- as OD facility and had withdrawn the said amount. She also had entered into an agreement for sale of properties acquired by her in Jubilee Hills and took the advance of Rs.22,00,000/-. In this backdrop, the reasons recorded by the Commissioner in paragraphs 14, 15 and 16 of the order for rejecting

the assessee's petition for waiver of interest cannot be faulted.

Sub-section (2A) of Section 220 of the Act confers on Commissioner the power to reduce or waive the amount of interest paid or payable by an assessee under sub-section (2), subject to satisfaction/compliance of conditions prescribed in clauses (i) to (iii) thereunder. The first clause provides that if payment of such amount would cause genuine hardship to the assessee the Commissioner can waive the amount of interest; secondly, if default in the payment of the amount was due to circumstances beyond his control, and lastly if the assessee has co-operated in the inquiry relating to the assessment/proceedings for recovery of the amount due from him. Having regard to the facts of the case, the assessee cannot be stated to have complied the conditions stipulated under sub-section (2A) of Section 220 of the Act.

In the circumstances, the Writ Petition is dismissed. No order as to costs.

At this stage, the learned counsel appearing for the petitioner seeks twelve (12) weeks' time to enable the petitioner to pay the remaining interest amount. This Court, while admitting the writ petition, had directed the petitioner to deposit 25% of the amount of interest, which we are informed, she deposited within the stipulated time. In view thereof, the petitioner is allowed to deposit the remaining 75% of the amount within a period of twelve (12) weeks from today.

Miscellaneous petitions pending in the writ petition, if any, also stand disposed of.

Dilip B.Bhosale, J

A.Ramalingeswara Rao, J

28th January, 2015.
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