IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22759 of 2015

Date of Decision: 2.11.2015

Ram Niwas

....Petitioner.

Versus

Chief Commissioner of Income Tax, Panchkula and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Sudhanshu Makkar, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for setting aside and modifying the impugned order dated 9.10.2014 (Annexure P-15) passed by respondent No.1 vide which the application of the petitioner to waive the interest charged under Sections 234A and 234B of the Income Tax Act, 1961 (in short “the Act”) for the assessment years 1988-89 to 1996-97 has been partly declined by respondent No.1 in exercise of its powers under Section 119 (2)(a) of the Act.

2. A few facts relevant for adjudication of the instant petition as narrated therein may be noticed. Smt. Sunder Bai, the predecessor-in-interest of the petitioner, was an assessee of the Income Tax

Department and she had expired on 7.9.2008. She is being represented by her legal heir-Ram Niwas, the petitioner herein. The assessee was owner in possession of the land measuring 29 kanal 9 marlas, situated within the revenue estate of village Bhiwani Lohar, Tehsil and District Bhiwani. Government of Haryana vide notification dated 4.6.1986 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") followed by notification dated 15.4.1987 under Section 6 thereof acquired the land of the assessee for the development and utilization of land as residential and commercial area. The award was passed on 10.11.1987 awarding compensation amounting to ₹ 57,500/- per acre (i.e. ₹ 11.81 per square yard) of the land acquired pertaining to nehri category. The assessee accepted the payment of compensation amount of ₹ 2,99,112.20 under protest. Being dissatisfied with the award, the assessee filed a reference under Section 18 of the 1894 Act. The said reference was decided by the District Judge, Bhiwani vide award dated 14.10.1993 (Annexure P-1) who enhanced the amount of compensation to ₹ 125 per square yard. Besides this, the landowners were held entitled to recover 30% solatium on the amount increased along with interest at the rate of 9% per annum for the 1st year from the date of taking possession of the land and at the rate of 15% per annum for the subsequent period till the date of payment. Thereafter, award dated 14.10.1993 (Annexure P-1) was challenged by the assessee before this Court by way of RFA No. 777 of 1994. State of Haryana also challenged the said award by filing RFA No. 1140 of 1994. This Court decided a bunch of appeals vide RFA No. 947 of 1994 including the appeals in question and vide orders dated 18.2.1999 (Annexures P-3 to P-5, respectively) reduced the enhanced rate of ₹ 125/- to ₹ 79.98 per square yard. Some of the landowners challenged the order, Annexure P-5, passed by this Court before the Supreme Court and the Apex Court vide order dated 12.11.2002 (Annexure P-6) passed in Civil Appeal No. 7139 of 2001 upheld the order of this Court. The Land Acquisition Collector issued Form 16-A on 22.5.2001 (Annexure P-7) after deducting TDS amounting to ₹ 74,981/- and ₹ 2,24,943/- on 3.12.1995 and 29.2.1996, respectively. Thereafter, the Assessing Officer issued notices dated 22.5.2001 and 19.3.2002 (Annexure P-8 Colly) under Section 148 of the Act for the assessment years 1988-89 to 1996-97 to the assessee for filing the returns. In pursuance thereto, the assessee filed returns on 29.1.2001 for the assessment years 1991-92 to 1995-96 and on 29.5.2002 for the assessment years 1988-89, 1989-90 and 1996-97. After the decision of the Apex Court in Civil Appeal No. 7139 of 2001 on 12.11.2002, the assessee filed revised returns on 23.1.2003 for all these assessment years by reducing the income by 20% approximately. For the assessment year 1990-91, the original return was filed on 23.1.2003. The Assessing Officer vide assessment orders dated 23.1.2003 (Annexure P-9 Colly) calculated the total amount of interest on enhanced compensation at ₹ 26,77,877/- for the assessment years in question and after reducing 20%, it was determined at ₹ 21,81,710/-. Accordingly, the demand notices and challans were issued to the assessee by allowing proportionate adjustment of the TDS amount of ₹ 2,99,924/- deposited by the Land Acquisition Collector. Interest was also ordered to be charged under Sections 234A and 234B of the Act. The assessee could not pay the advance tax during the accounting period relevant to each assessment year under consideration due the decision of the Apex Court which came later on and even the returns were filed after due date of filing of the returns. The assessee filed applications dated 7.1.2004 (Annexure P-12 Colly) before respondent No.1 for waiver of interest in terms of CBDT notifications dated 2.5.1994 (Annexure P-10) and dated 23.5.1996 (Annexure P-11). When no action was taken, the assessee sent reminders dated 6.1.2006 (Annexure P-13) and dated 24.10.2009 (Annexure P-14). Respondent No.1 vide order dated 9.10.2014 (Annexure P-15) waived off the interest charged under Section 234A of the Act for the assessment years 1988-89 to 1996-97 till 31.5.2001 and the interest under Section 234B of the Act has been waived off for the period upto 29.2.1996 only. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The matter here relates to waiver of interest charged against the assessee under Sections 234A and 234B of the Act.

5. Respondent No.1 while waiving of interest under Section 234A of the Act noticed that the TDS certificate was issued to the assessee on 29.5.2001 and, therefore, the assessee was prevented by reasonable cause not to furnish the returns within time due on account of unavoidable circumstances. The assessee was, thus, held entitled to waiver of interest charged under Section 234A of the Act upto 31.5.2001 for the assessment years 1988-89 to 1996-97. The relevant portion of the order reads thus:-

> "6.1. As mentioned above, the TDS Certificate was issued to the assessee on 29.05.2001. Thus, there is merit in the contention of the assessee that returns of income for the assessment years under consideration

could not be furnished within time due to unavoidable circumstances. The returns of income could only be filed after the receipt of TDS Certificate. In the present case the returns of income were filed on the dates mentioned in para 5. Thus, the assessee's case for waiver of interest charged u/s 234A of the I.T. Act upto 31.05.2001, i.e. the end of the month during which T.D.S. Certificate was issued is covered under para 2 (e) of the CBDT Notification dated 23 May, 1996.

Sr. No.	Asstt. Year	From	To
1.	1988-89	July 1988	May 2001
2.	1989-90	July 1989	May 2001
3.	1990-91	July 1990	May 2001
4.	1991-92	July 1991	May 2001
5.	1992-93	July 1992	May 2001
6.	1993-94	July 1993	May 2001
7.	1994-95	July 1994	May 2001
8.	1995-96	July 1995	May 2001
9.	1996-97	July 1996	May 2001

7. To conclude, for the asstt. years 1988-89 to 1996-97 interest charged u/s 234A of the I.T. Act is waived till 31.05.2001. Interest charged u/s 234B of the IT Act is waived for the period up to 29.02.1996.

> The Assessing Officer is directed allow relief accordingly."

6. Interest charged under Section 234B of the Act was waived by respondent No.1 as the enhanced compensation and interest thereon was received by the assessee much after the due date for depositing the advance tax and for furnishing the returns of income for the assessment years 1988-89 to 1996-97. It was recorded that in such circumstances, the assessee could not have anticipated or determined the interest income that had accrued to him under the orders of the Land Acquisition Court prior to disbursement by HUDA on 13.12.1995 and 29.2.1996. On that basis, respondent No.1 held the assessee entitled to waiver of interest charged under Section 234B of the Act for the assessment years 1988-89 to 1995-96 upto 29.2.1996, with the following observations:-

> "6. The facts of the assessee's case have been considered in the light of the Notifications cited supra and submissions made on behalf of the assessee. It is assessee much after the due date for depositing the advance tax and for furnishing the returns of income for the assessment years 1988-89 to 1996-97. The assessee possibly could not have anticipated or determined the interest income that accrued to him by virtue of the order of the District & Sessions Judge, Bhiwani and its determination as well as disbursement by HUDA on 13.12.1995 and 29.02.1996. The returns of income for the assessment years 1988-89 to 1996-97 were filed by the assessee mentioned in para 4.1. Thus, the relevant income for the assessment years

under consideration was disclosed in the returns of income filed by the assessee and the tax attributable to such income was also paid. Accordingly, the assessee fulfills the conditions laid down in CBDT's Notification dated 2.5.1994. However as per para ii(b) of the said Notification the assessee is entitled to waiver of interest charged u/s 234B of the IT Act, 1961 from the first day of April of the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed. In the present case the last disbursement was made by HUDA on 29.02.1996. Therefore, the assessee is entitled to waiver of interest charged u/s 234B of the IT Act upto 29.02.1996, as under:-

Sr. No.	Asstt. Year	From	To
1.	1988-89	01.04.88	29.02.96
2.	1989-90	01.04.89	29.02.96
3.	1990-91	01.04.90	29.02.96
4.	1991-92	01.04.91	29.02.96
5.	1992-93	01.04.92	29.02.96
6.	1993-94	01.04.93	29.02.96
7.	1994-95	01.04.94	29.02.96
8.	1995-96	01.04.95	29.02.96

7. Learned counsel for the assessee-petitioner could not demonstrate that there existed any illegality or perversity in the approach of respondent No.1 which may warrant interference by this Court. The discretion had been rightly exercised by respondent No.1 and no error could be pointed out in the impugned order dated 9.10.2014 (Annexure P-15). Accordingly, finding no merit in this writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 2, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**