Reserved on : 02.03.2016
Delivered on : 08.03.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.11386 of 2004

R.Kothandaram ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax V,
121, Mahatma Gandhi Road,
Chennai - 34.

2.The Assistant Commissioner of Income Tax,
Business Range XV,
121, Mahatma Gandhi Road,
Chennai - 34. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the orders passed by the 1st respondent in C.No.CC.V/24(87)/2002-2003 dated 31.03.2004 for the assessment years 1991-92 to 95-96 and quash the same and to direct the 1st respondent to waive the interest levied under Sections 234A, 234B and 234C of Income Tax Act 1961.

For Petitioner : Mr.Muthappan

For Respondents: Mr.T.Ravikumar,
Senior Standing Counsel

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the orders passed by the 1st respondent dated 31.03.2004 for the assessment years 1991-92 to 1995-96 and to quash the same and to direct the 1st respondent to waive the interest levied under Sections 234A, 234B and 234C of Income Tax Act 1961.

2.It is the case of the petitioner that his father late Ragava Reddy, who was looking after his tax affairs under the professional guidance of the Chartered Accountant, had not defaulted in filing his returns nor did he have any arrears of tax till 1991-92. According to the petitioner, there has been no single instance of any default by him prior to 1991-92. Further according to the petitioner, he was totally dependent on his father and on the guidance of the auditor for his tax affairs. The petitioner's father died in the year 1991 and had written a Will appointing R.Krishnan, Chartered Accountant as Executor of the Will. However, the Will was not probated by the Executor, which led to series of disputes among the family members in relation to the property matters. The Chartered Accountant also failed to prepare the statement of accounts and did not submit the returns for the aforesaid period. According to the petitioner, there was dispute between him and his brother and his brother had turned against him. Due to the strained relationship with his brother, he did not inform him about the VDIS (Voluntary Disclosure of Income Scheme) Declaration and about the payment of the tax thereon. The petitioner also accepted the assessment order and paid the entire tax of Rs.9,51,202/-. Thereafter, he applied for waiver of interest before the 1st respondent. The 1st respondent levied interest under Sections 234A, B and C of the Act. The 1st respondent also rejected the application for waiver of interest on the ground that he was not empowered to grant waiver.

3.The learned counsel appearing for the petitioner, in support of his contentions, relied upon the unreported judgment dated 27.02.2007 made in W.P.No.19996 of 2003 [M/s.N.Haridas and Co., 4/2, Mandapan Cross Road, Kilpauk, Chennai -10] wherein a Division Bench of this Court had set aside the impugned order by which the respondent Income Tax Department refused to grant waiver of interest.

4.The learned counsel appearing for the respondents submitted that under Notification F.No.400/234/95-IT(B) dated 23rd May 1996 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 AO. The reduction or waiver of interest under Section 234A or Section 234B or Section 234C can be considered.

5.The learned counsel for the respondents, in support of his contentions, relied upon the judgment reported in (2001) 171 CTR 0001 [Commissioner of Income Tax Vs. Anjum M.H.Ghaswala & Ors.] wherein the Hon'ble Supreme Court held that interest for default in furnishing return of income, default in payment of advance tax and interest for deferment of advance tax are mandatory in nature.

6.On a perusal of the judgment relied upon by the learned counsel for the petitioner made in W.P.No.19996 of 2003 [M/s.N.Haridas and Co., 4/2, Mandapan Cross Road, Kilpauk, Chennai -10], the Managing Partner of the petitioner Firm fell ill and subsequently died and hence, the petitioner could not pay the tax as demanded. The Division Bench held that the levy of interest by the respondent, without considering the unavoidable circumstances, is erroneous.

7.In the case on hand, the petitioner has stated that his accounts were being taken care by his father, who died in the year 1991, but the Voluntary Disclosure of Income Scheme came into force in the year 1997 only. Therefore, by stating that his father was looking after the tax affairs of the petitioner and that there was strained relationship between his brother, cannot be a ground to waive the interest, which was rightly imposed by the 2nd respondent. In the absence of any acceptable reason given by the petitioner, the ratio laid down by the Division Bench of this Court cannot be applied to the facts and circumstances of the present case. In that case, the Managing Partner of the Firm fell ill and subsequently, he died due to brain cancer and hence, the petitioner Firm could not pay the tax as demanded. In the case on hand, the petitioner has thrown the blame on his father and his brother for not paying the tax in time. Therefore, in the absence of any acceptable reason shown by the petitioner, the 1st respondent had rightly rejected the petition. The impugned order passed by the 1st respondent is just and proper.

8.In these circumstances, I do not find any reason to interfere with the order passed by the 1st respondent. The Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Commissioner of Income Tax V,
121, Mahatma Gandhi Road,
Chennai - 34.

2.The Assistant Commissioner of Income Tax,
Business Range XV,
121, Mahatma Gandhi Road,
Chennai - 34.

+1cc to Mr.M. Muthappan, Advocate, S.R.No.14564
+1cc to Mr.T. Ravikumr, Advocate, S.R.No.14620

KGK(CO)
EU(17/03/2016)