IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.24152 of 2004

R.Anandakumar .. Petitioner

..Vs..

The Chief Commissioner of Income Tax
Tiruchirappalli. .. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in C.No.932(49)/CCIT/TRY/2002-03 dated 30.03.2004 and quash the same in so far as it is against the petitioner and further direct the respondent to grant waiver of interest under sections 234B and 234C of the Income Tax Act, 1961 for the assessment year 1989-90.

For Petitioner : Mr.N.Quadir Hoseyn
For Respondent : Mr.Joseph George.M
for Mr.J.Narayaswamy
Standing Counsel

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O R D E R

Heard Mr.N.Quadir Hoseyn, learned counsel for the petitioner and Mr.Joseph George.M, learned counsel appearing for the respondent.

2.In this Writ Petition, the petitioner challenges the order passed by the respondent dated 30.03.2004, in so far as it denies the waiver of interest chargeable under sections 234B and 234C of the Income Tax Act, 1961 (in short 'Act').

3.As there was a proposal to levy interest under three provisions viz. Sections 234A, 234B and 234C of the Income Tax Act, 1961 for the assessment year 1989-90, the petitioner sought for waiver. The application submitted by the petitioner for waiver of interest under Section 234A was favourably considered by the respondent and the respondent found that the petitioner was a student till 1990 and only after he finished his studies, he involved himself in the business activities of the firms, in which he was a partner and came to know of the fact that due to the delay in getting the share income particulars from the firms, there was a delay in filing his individual return of income for the assessment year 1988-89 to 1991-92. Further, it is stated that as soon as he received share income particulars, he filed return of income on 28.07.1994 voluntarily. The said explanation given by the petitioner was found acceptable and reasonable cause for delay in filing the Return of Income and therefore, the respondent waived the interest charged under section 234A of the Act. However, for the interest under sections 234B and 234C of the Act, the authority did not refer to the reasons given by the petitioner nor his objections for waiver, but, stated that the circumstances mentioned in the Notification dated 23.05.1996, are not satisfied, for the petitioner being entitled for waiver of interest under sections 234B and 234C of the Act.

4.More or less identical case was considered by the Hon'ble Division Bench of Gujarat High Court in the case of VINODCHANDRA C.PATEL v. CIT[(1994) 121 CTR(Guj) 160:(1995) 211 ITR 232 (Guj)], wherein the Hon'ble Division Bench pointed out that when 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 the return of income, ordinarily, such circumstances would also qualify to be considered to be unavoidable circumstances responsible for the delay in the late payment of taxes. Referring to the Notification dated 23.05.1996, it was pointed out that the powers conferred on the Chief Commissioner of Income Tax/ Director General of Income Tax to waive interest charged under sections 234A, 234 B or 234C of the Act and the classes of cases of classes of income specified in para 2 of the said order. It was pointed out that condition precedent is that reduction or waiver of such interest can be ordered only after the assessee has filed the return of income for the relevant assessment year and paid the entire tax due on the income as assessed except the amount of interest for which reduction or waiver has been requested for.

5.After noting the factual circumstances in the said case, it was pointed out that if the circumstances have been considered to be unavoidable circumstances for the purpose of waiver of interest under section 234A, in the facts of the case, the same would have to be considered as unavoidable circumstances for the purpose of reduction/waiver of interest under sections 234B and 234C as well. Accordingly, whatever waiver granted under section 234A, shall also be extended with regard to waiver of interest under sections 234B and 234C of the Act.

6.As noticed above, the respondent was satisfied with the fact that the petitioner has made out a case for waiver of interest under section 234A of the Act and the respondent recorded that it is a reasonable cause for delay in filing the return of income. Applying the reasons assigned by the Hon'ble Division Bench of the Gujarat High Court, this Court is of the view that the same reasoning should be adopted while considering the claim of waiver of interest under sections 234B and 234C of the Act.

7.In the light of the above, the Writ Petition is allowed, the impugned order is set aside and the respondent is directed to grant waiver of interest under sections 234B and 234C of the Act for the assessment year 1989-90. No costs.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

To

The Chief Commissioner of Income Tax
Tiruchirappalli.

+1 cc to Mr.N.Quadir,advocate,sr.50665.

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krd 23/9

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