IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition-7207 of 2003 (O&M)
Date of decision:- 06.12.2016

Ram Saran

...Petitioner

Versus

Chief Commissioner of Income Tax, Haryana, Panchkula.

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL, JUDGE

Present:- Mr. Alok Mittal, Advocate, for the petitioner.
Mr. Tajender K. Joshi, Advocate,
for the respondent.

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioner has challenged the orders passed by the respondents insofar as they have imposed interest under sections 234-A and 234-B of the Income Tax Act, 1961 (for short 'the Act').

2. This is an unusual case with unusual facts. The petitioner's case is that he has actually filed the returns and paid the tax even before the due dates.

3. The petitioner owned land which was acquired under the Land Acquisition Act, 1894. An award dated 05.07.1990 was made. The petitioner applied for the enhancement of compensation under section 18 of the Land Acquisition Act. By an order and judgment dated 05.03.1997, the Additional District Judge/Reference Court enhanced the compensation. On 29.09.1998 a voucher was issued for the release of the

enhanced amount. The enhanced amount was credited to the petitioner's account on 03.10.1998.

4. On 13.10.1998 the petitioner's account was attached by the respondents under section 281-B of the Act. This resulted in attachment of a Fixed-Deposit Receipt (FDR) in the name of the petitioner for a sum of Rs.20 lacs. It is important to note that the attachment was made to recover the tax dues of only ₹ 11 lacs.

5. A TDS certificate dated 11.11.1998 was issued by the Land Acquisition Officer in respect of the interest components on the enhanced compensation. This TDS certificate was received by the petitioner on 18.11.1998.

6. In paragraph-5 of the petition, it is specifically averred that the Commissioner of Income Tax advised the petitioner to pay the tax on interest on year to year basis. In other words the petitioner was advised by the Commissioner of Income Tax to pay the tax on the amount received from the Land Acquisition Officer spread over from the period 05.07.1990 i.e. the date of the award. The averment is not denied.

7. It is of vital importance to note that on 21.12.1998, the petitioner addressed a letter to the respondents calling upon them to recover his liability from the account that was attached on 13.10.1998 as aforesaid. The respondents received the letter on 23.12.1998. On 29.12.1998 the Income Tax Officer addressed a letter to the bank in that

regard. The amount was credited to the Income Tax Officer on 07.01.1999.

8. On 08.01.1999, the petitioner in accordance with the advice/instruction of the Commissioner of Income Tax filed returns under section 139 for the assessment years 1991-92 to 1999-2000.

9. Interest under section 234(C) was waived in its entirety. The question is whether the petitioner ought in these circumstances to be made liable for interest under section 234-A and 234-B of the Act. The respondents exempted the interest under section 234-A till 30.11.1998. This was in view of a circular dated 02.05.1994 issued by the CBDT under section 119(2)(a) of the Act. The respondents, therefore, made the petitioner liable for interest from 01.12.1998 till 07.01.1999 i.e. the date on which the account of the Income Tax Officer was credited with the tax dues. Even if the petitioner was made liable to pay interest it should have been only upto 23.12.1998 i.e. the date on which the respondents received the petitioner's letter dated 21.12.1998 calling upon the respondents to adjust the tax dues against his account attached on 13.10.1998. As a matter of fact the petitioner was liable to file returns only upon the receipt of the amount on account of the enhanced compensation which was on 03.10.1998. Thus the petitioner was liable to file his return for the assessment year 1999-2000 by 31.07.1999. The petitioner infact filed the returns for all the years on 08.01.1999 which the

respondents accepted and acted upon. It would be unfair now for the respondents to raise a contention that those returns are non-est. The question, therefore, of the petitioner being liable to pay interest under section 234-A does not arise.

10. This brings us to the interest levied under section 234-B of the Act. This interest has also been waived till 30.09.1998. It is important to note that waiver of interest under section 234-C in its entirety and partial waiver under sections 234-A and 234-B was pursuant to the petitioner's representation to the Chief Commissioner of Income Tax, Haryana under section 119(2)(a) of the Act. The partial waiver is purportedly in exercise of the powers under section 119(2)(a) of the Act.

The interest under section 234-B of the Act is on account of the delay in payment of advance tax. The interest is now sought to be levied for the period 01.10.1998 to 07.01.1999. Here again the interest could be charged at the highest only upto 23.12.1998 the date on which the respondents received the petitioner's letter dated 21.12.1998 calling upon the respondents to recover the tax due from the account attached on 13.10.1998. Infact the advance tax was payable only in the year of the receipt of the amount and by 15.12.1998. The advance tax in that event would have been payable only by 15.12.1998. Accordingly the petitioner's liability to pay the interest under section 234-B would be only from 15.12.1998 to 23.12.1998.

11. We are conscious of the fact that no appeal has been filed against the assessment order. However, the petitioner made a representation for waiver of interest in view of these facts which was partially accepted. Further orders on the representation are purportedly under section 119(2)(a) of the Act against which an appeal is not maintainable. The only question is whether it ought to have been accepted in full or not.

12. We are also informed that in the petitioner’s brother’s case which is identical to the petitioner’s case, a similar representation has been accepted in its entirety.

13. In these circumstances, we are inclined to exercise our extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

14. In the circumstances, the impugned order is set aside/modified by providing that the petitioner’s liability to pay interest is restricted only under section 234-B and only for the period 15.12.1998 to 23.12.1998.

The petition is accordingly disposed of.

(S.J.VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

06.12.2016
‘ravinder’

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√