In the High Court of Judicature at Madras

Dated : 23.10.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.22691 of 2017 & WMP.No.23785 of 2017

Smt.E.Rukmani, legal heir of
late Shri.R.Eswaramurthy ...Petitioner

Vs

The Chief Commissioner of Income
Tax, No.63, Race Course Road,
Coimbatore-18. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned order dated 30.5.2017 in C.No./Waiver/ CCIT/CBE/1433(16)/2017-18 for the assessment years 1988-89, 1989-90, 1991-92 and 1992-93 and direct the respondent to consider the plea of waiver of interest charged under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961 on the grounds stated in the present writ petition.

For Petitioner : Mr.A.S.Sriraman
For Respondent : Mr.A.N.R.Jayapratap

ORDER

The petitioner, who is a widow of one late Sri.R.Eswaramurthy, has filed this writ petition challenging an order passed by the respondent dated 30.5.2017 rejecting the petitioner's application under Section 220(2A) of the Income Tax Act, 1961 (hereinafter called the Act).

2. The facts, which are necessary for the disposal of the above writ petition, are as follows :

The petitioner's husband Sri.R.Eswaramurthy filed an application before the Settlement Commission under the Act for settling the case pertaining to the assessment years 1988-89, 1989-90, 1991-92 and 1992-93. The application was filed on 12.3.1996. When the said application was pending, the said

Sri.R.Eswaramurthy died on 20.8.1996. The petitioner - his wife, as the legal heir, pursued the matter before the Settlement Commission and the final order dated 30.7.2002 was passed by the Settlement Commission under Section 245D(4) of the Act. The petitioner was permitted to pay the tax along with interest in twelve (12) equal quarterly instalments. The first quarterly instalment commenced from 30.9.2002.

3. The petitioner, in due compliance with the directions issued by the Commission, completed the entire payment by 15.3.2010. The total amount paid by the petitioner is Rs.1,90,67,285/-. Out of the said amount, the tax due was Rs.1,50,55,610/- and the interest was Rs.40,72,675/-. On 31.3.2010, the Tax Recovery Officer, Central Range, Coimbatore, issued a notice to the petitioner directing payment of interest on the interest amount paid by the petitioner. On receipt of the said notice, the petitioner filed an application before the respondent on 21.3.2011 claiming waiver of interest. This application has been rejected by the respondent by passing the impugned order.

4. Heard Mr.A.S.Sriraman, learned counsel for the petitioner and Mr.A.N.R.Jayapratap, learned Standing Counsel appearing for the Revenue.

5. At the time when the writ petition was entertained, an interim order was passed on 24.8.2017 wherein this Court recorded a prima facie finding as to why this Court was convinced that an order of interim injunction has to be granted. It would be pertinent to refer to the order dated 24.8.2017, which reads as under :

> "Heard Mr.A.S.Sriraman, learned counsel appearing for the petitioner and Mr.A.N.R. Jayaprathap, learned Standing Counsel, who accepts notice for the respondent.
>
> 2. The petitioner challenges the order passed by the Chief Commissioner of Income-Tax, Coimbatore, under Section 220 (2) of the Income Tax Act, 1961.
>
> 3. The petitioner's case is that the assessee, namely, the petitioner's husband approached the Settlement Commission on 12.03.1996, by filing an application for settling the issues pertaining to the assessment years 1988-89, 1989-90, 1991-92 and 1992-93. The application was admitted by the Settlement Commission on 26.04.1996. However, within a period of four months, thereafter, the petitioner's husband died and the petitioner, as legal heir, pursued

the matter. The Settlement Commission passed an order on 30.07.2002. The petitioner has remitted the tax between the periods 2004 and 2010, along with appropriate interest and interest on interest.

4. In the year 2011, the respondent issued notice claiming interest under Rule 5 of the said Act. The petitioner submitted an application for waiver on 21.03.2011. After about seven years, the petitioner received an intimation stating that the personal hearing has been fixed on 30.05.2017. Though the petitioner did not have reasonable time, yet, she contacted her Chartered Accountant and they filed written submissions before the respondent.

5. The further case of the petitioner is that, when none of the issues pointed out by the petitioner were considered by the respondent and there is an inconsistency between the observations made in paragraph 4 of the impugned order and the finding in paragraph 5; so to say that the respondent had stated that the petitioner had possessed necessary means to make payment of cheques, however, on what basis such a finding was given is not on record, nor the petitioner was provided with copy of any remand report, which was received by the respondent; this finding is inconsistent with the findings in paragraph 4 of the impugned order, wherein the respondent has admitted that the immovable properties of the assessee were attached.

6. On a prima facie reading of the impugned order, this Court is of the view that the petitioner did not have adequate opportunity to put forth their submissions and while passing the impugned order, various issues which were raised by the petitioner in their application for waiver and the written submissions dated 29.05.2017, were not taken into consideration.

7. In view of the above, there shall be an order of interim injunction restraining the respondent/Revenue from proceeding further, pursuant to the impugned order, until further orders.

8. List the case on 22.09.2017. The learned Standing Counsel appearing for the respondent is directed to file the counter, in the meantime."

6. After the notice was accepted on behalf of the respondent, the respondent instructed the learned Senior Standing Counsel through the Income Tax Officer (HQ) (Tech. & TPS-2), Coimbatore, vide communication dated 13.9.2017. As noticed by this Court while granting the order of interim injunction, the petitioner did not have adequate opportunity to put forth her submissions. This is so because the application for waiver was submitted on 21.3.2011, but it was taken up for hearing on 30.5.2017. It is not known as to why the application for waiver was kept pending for such a long period.

7. By notice dated 26.5.2017, the respondent informed that her case was posted for personal hearing on 30.5.2017 thereby hardly giving three days' time for the petitioner to make appropriate arrangements to appear before the respondent. Nevertheless, she had engaged an authorized representative, who had appeared before the respondent and submitted written submissions on 29.5.2017. In the written submissions, apart from factual details, the petitioner referred to certain decisions of this Court, justifying her stand as to how she is entitled for waiver of interest.

8. On a bare reading of the impugned order, it is seen that only two reasons have been assigned by the respondent to reject the application namely that

(i) the petitioner did not comply with the orders regarding payment of tax by way of instalment schedule granted, which indicates lack of reciprocity and cooperation on the part of the petitioner; and

(ii) from the report, it is evident that the assessee possessed necessary means to make payment of tax, but failed to do so.

9. Firstly, it is not clear as to how the respondent came to the conclusion that the assessee possessed necessary means to pay the tax. This finding is purportedly based upon the reports furnished by the Lower Authorities, copies of which were furnished to the assessee or the authorized representative at the time of personal hearing. In the parawise instructions given by the Income Tax Officer, there is a candid admission that reports were referred to. But, the Authority took a stand that the reports of the Lower Authorities were only taken into account for reference purpose.

10. Be that as it may, if the respondent is to take a decision based on such a report, principles of natural justice deem fit that the petitioner shall be put on notice about such report. Therefore, the finding recorded by the respondent that the assessee possessed necessary means to make payment of tax is not borne out by records nor it is clear as to how such a finding was recorded. This is more so because the properties, which were owned by the assessee, have been attached by the Department. It is not clear either from the impugned order or from the parawise comments furnished by the Income Tax Officer concerned that the Department was conscious of the fact that the properties owned by the assessee were attached by the Income Tax Department. If such attachment is in force against the properties owned by the assessee, obviously the assessee would not be in a position to deal with those properties. Therefore, this Court has no hesitation to hold that the finding that the assessee had means to make the payment for tax remains unsubstantiated.

11. The second aspect of the matter is that the respondent found fault with the assessee alleging lack of reciprocity and cooperation. It is to be noted that the application was pending before the Settlement Commission from 1996 to 2002. The Settlement Commission took note of the fact that the assessee passed away and that in his place, the petitioner was pursuing the matter and directed payment of tax in twelve quarterly instalments, the first of such instalment commenced on 30.9.2002. Apart from that, the petitioner had to pay interest under Section 245D(6A) of the Act. This direction was complied with by the petitioner and a total amount of Rs.1,90,67,285/- has been paid, which includes tax and interest. Even assuming that the petitioner defaulted in adhering to the instalment schedule, it is clear that no action was initiated against the petitioner for non adherence to the instalment schedule. However, the notice demanding interest on interest was issued only on 31.3.2010 after the petitioner completed the payment of entire tax and interest on 15.3.2010. Therefore, it cannot be held that the attitude of the petitioner lacks reciprocity and cooperation.

12. This Court had an occasion to consider an identical issue in the case of Mani Vs. CIT [reported in (2010) 320 ITR 472] and held that when an application is filed under Section 220(2A) of the Act, the Authority concerned is called upon to take a quasi judicial decision and if he is satisfied that the reasons assigned in the application would bring the case under any of the conditions in Clauses (i), (ii) and (iii) of Section 220(2A) of the Act, then he has power either to reduce or waive

the amount of interest and while doing so, the Authority concerned is bound to record reasons since the power is exercised as a quasi judicial power.

13. In the instant case, I find that the twin reasons, which have been referred to in the impugned order, are not reasons by themselves to reject the petitioner's application seeking waiver. The officer, who has given parawise comments to the learned Standing Counsel for the Revenue, has taken a strong exception to the use of the expression 'unreasonable' in the affidavit filed in support of the writ petition. The expression 'unreasonable' denotes anything, which is not reasonable and which will not stand to reason. In the instant case, unreasonableness would be in not providing an adequate opportunity to the petitioner to put forth her stand especially when the application for waiver was taken up for hearing nearly after 6 1/2 years. The petitioner cannot be blamed for the delay caused at the Departmental level. Therefore, any opportunity to be given to the petitioner should be adequate, real and sufficient. If these factors are not fulfilled, then it would undoubtedly mean that the petitioner did not have reasonable opportunity, resultantly terming the impugned order to be unreasonable. This Court deems it appropriate to observe that the petitioner, being the legal heir of the original assessee, had complied with the directions issued by the Settlement Commission and since the properties of the assessee having been attached by the Income Tax Officer, prima facie, it appears that this is a fit case where the respondent can exercise his powers under Section 220(2A) of the Act.

14. For all the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration. The respondent is directed afford a reasonable opportunity to the petitioner, hear the petitioner or her authorized representative and pass a reasoned order on merits and in accordance with law. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

RS

To

The Chief Commissioner of Income Tax,
No.63, Race Course Road,
Coimbatore-18.

+ 1 cc to Mr. S. Sridhar, Advocate SR.74559
+ 1 cc to Mr. A.P. Srinivas, Advocate Sr.74943

WP.No.22691 of 2017&
WMP.No.23785 of 2017

SR(CO)
EU(16/11/2017)