

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.5068 to 5070 of 2004
and
W.M.P.Nos.5895 to 5897 of 2004

M/s. Poompuhar Shipping Corporation Ltd,
rep. by its Chairman and Managing Director,
M. Kutralingam, 473, Anna Salai, Nandanam,
Chennai-600 035. ...Petitioner in all W.Ps.

Vs.

1. Assistant Commissioner of Income Tax,
Company Circle V(2), "Ayakar Bhavan",
121, Nungambakkam High Road,
Madras-600 034.
2. Commissioner of Income Tax,
Chennai-III, Chennai,
121, Nungambakkam High Road,
Madras-600 034. ...Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records in C.No.3057/24/III/2003-4, dated
25.02.2004 in respect of the Assessment years 1986-87, 1987-88
and 1994-95 of the respondents respectively.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.D.Naveen Duraibabu

COMMON ORDER

Heard Mr.M.P.Senthil Kumar, learned counsel appearing
for the petitioner and Mr.D.Naveen Duraibabu, learned counsel
appearing for the respondents.

2. The petitioner, Poompuhar Shipping Corporation
Limited, is a wholly owned Government of Tamilnadu Company,
engaged in freight of coal for the Tamil Nadu Electricity Board.

During the previous year relevant to the assessment year 1986-87, the company had purchased a ship on 02.08.1995 and investment allowance was claimed. During the previous year relevant to the assessment year 1987-88, the petitioner had purchased two ships and claimed investment allowance. In addition to the aforesaid three ships, the petitioner had also purchased a dredger on 20.08.1990 and the petitioner debited the said amount to the P & L account and credited to the "investment allowance reserve account". The details are as follows:-

Sl.No	Assessmet Year	Amount (Rs.)
1	86-87	86,52,447
2	87-88	1,43,295
3	92-93	11,89,41,592
4	93-94	8,58,75,046
5	94-95	21,16,52,404

3. Initially, the Assessing Officer accepted the claim of the petitioner and allowed the investment allowance for the three assessment years namely 1986-87, 1987-88, and 1994-95, but subsequently, invoking the provisions of Section 155 read with Section 154 of the Income Tax Act, 1961 (in short "the Act"), withdrew the investment allowance granted earlier on the ground that the petitioner had not utilized the investment allowance reserve for the acquisition of new ships within the allowable period of 10 years.

4. Aggrieved by the said order of the Assessing Officer, the petitioner preferred an appeals before the first and second appellate authorities, which were rejected. Before the Tribunal, the petitioner prayed for stay of recovery and the same was granted till the disposal of appeal by the Tribunal. Ultimately, the Tribunal by a common order dated 23.11.2001, in ITA Nos.319, 320, 321 (MDS) of 2001, dismissed the appeals. Immediately, on dismissal of the appeals, the respondent-Department issued a notice under Section 226(3) of the Act, attaching the petitioner's bank account and the accounts of the petitioner with the TamilNadu Electricity Board. Aggrieved by such action, the petitioner filed a writ petition before this Court, in which, the Court directed the Commissioner of Income Tax (Appeal) to take up the stay petition for consideration and untill then, protected the petitioner from recovery. As against the order passed by the ITAT, the petitioner preferred Tax Case (Appeals) before this Court in TCA Nos.99 to 101 of 2002. After the disposal of the writ petition, the Bank accounts of the

petitioner were attached and steps were taken for recovery by issuance of notice under Section 133(6) of the Act and summons was also issued under Section 131 of the Act to furnish the list of debtors, list of persons to whom loans advanced, etc. Subsequently, a meeting was convened with the officials of the Income Tax Department on 15.03.2002. The respondent-Department acceded to the petitioner's request to permit them to pay arrears of Income Tax in instalments, after adjusting the refund due to the petitioner for the assesment years 1986-87, 1998-99 and 2001-02. The details of the amount paid by the petitioner is as follows:-

Amount paid on 14.03.2002 as a condition to the meeting:	Rs.475 lakhs
During April, 2002	Rs.475 lakhs
During May, 2002	Rs.90lakhs
During June, 2002	Rs.90lakhs
During July, 2002	Rs.90lakhs
During August, 2002	Rs.90lakhs
During September, 2002	Rs.26.34 lakhs

5. It is not in dispute that the petitioner had adhered to the instalment schedule as was granted by the Commissioner of Income Tax in pursuance to the meeting held on 15.03.2002. However, there was a demand for payment of interest under Section 220(2) of the Act and accordingly a demand dated 16.10.2002, was issued totalling to a sum of Rs.3,68,93,561/-. The petitioner on receipt of the demand, filed an application dated 10.12.2002, under Section 220(2A) of the Act, requesting for waiver of the interest. The sum and substance of the contention raised by the petitioner is that they were suffering huge financial losses for several years and the loss incurred by them over the years has weakened the financial position of the petitioner substantially and hence, we are unable to pay the disputed tax and this Court accepting the stand taken by the petitioner and financial position, granted an order of interim stay for recovery of tax. Therefore, it is submitted that payment of interest under Section 220(2) of the Act, would cause genuine hardship to the petitioner, which is a Government owned Public Sector Enterprise and the default in non-payment of interest was due to the acute financial constraints and beyond the control of the petitioner. It is further submitted that the petitioner co-operated with the Assessing Authorities during all stages of assessment proceedings and recovery proceedings and initially remitted a sum of Rs.10,00,000/- as directed by the

ITAT, during the pendency of the appeal. Subsequently, they unconditionally agreed before the Chief Commissioner of Income-tax and the Commissioner of Income-tax, Tamil Nadu-III, for paying the entire tax liability after adjusting the refunds, in instalments and they strictly adhered to the instalment schedule. Therefore, the petitioner contended that directing the petitioner to pay interest would cause genuine hardship to them. Default in payment of interest was due to circumstances beyond the control of the petitioner and that the petitioner has co-operated in all enquires related to the assessment or any other proceedings. With these submissions, the petitioner sought for waiver of the amount of interest payable by him under section 220(2) of the Act. This application has been rejected by order dated 25.02.2004, which is impugned in this writ petition.

6. The short question which arises for consideration is whether the petitioner satisfies the condition prescribed under Section 220(2A) of the Act. The said provision reads as follows:-

Section 220 (2A) Notwithstanding anything contained in sub-section(2), the Chief Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that:-

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

7. The above provision starts with a non obstante clause that notwithstanding anything contained in Sub Section (2), the Chief Commissioner or the Commissioner may reduce or waive the amount of interest paid or payable by the assessee under the said Sub-Section if they satisfy three conditions namely,

(i) if the payment would cause genuine hardship;

(ii) default in payment was due to circumstances beyond the control of the assessee and,

(iii) the assessee has co-operated in the enquiry related to the assesment or other proceedings, recovery of any amount due from them.

8. The second respondent in the impugned order has held that the petitioner was non co-operative, as they had approached this Court and filed a writ petition when notice under Section 226(3) of the Act was issued. With regard to condition (ii), viz., circumstances beyond the control of assessee is concerned, the second respondent proposed to interpret one of the clause in the agreement between the petitioner and the TamilNadu Electricity Board and came to a conclusion that self-inflicted unjust impoverishment has been done because the controlling authority of the petitioner as well as the Tamil Nadu Electricity Board are one and the same. So far as the plea raised that the situation was beyond their control, the respondent referred to the Balance Sheet of the petitioner and stated that they had a fixed deposit of Rs.4.4 crores and also earned interest income from term deposits and there is no visible financial hardsip.

9. Before I proceed to consider the correctness of the stand taken by the second respondent in the impugned order, it may be relevant to note that the petitioner has partially succeeded in the tax case appeals in TCA Nos.99 to 101 of 2002 vide judgment dated 21.03.2006, that is, in respect of the acquisition of the dreger for the assessment year 1994-95, the petitioner's stand was accepted. However, the orders passed by the ITAT in respect of two other assessment orders viz., 1986-87 & 1987-88 were affirmed. The second respondent would state that the petitioner did not co-operate in the proceedings and this conclusion is arrived at solely on the ground that the petitioner filed a writ petition challenging a notice issued under Section 226(3) of the Act. The explanation given by the petitioner was that because they were reeling under financial loss, they were unable to meet the demand and appeal having been preferred as against the order of the ITAT, they requested for an interim protection. Infact, ITAT had granted an order of interim stay till the disposal of the appeal subject to certain conditions, which the petitioner had complied with. Therefore, when notice under Section 226(3) of the Act was issued it was well open to the petitioner to safeguard the interest of the company and for which purpose, they have approached the Court of law. Merely because the petitioner had approached the Court of law, they should not be penalised or found fault with. Every person is entitled to seek appropriate remedy, when an action is initiated against him, unless and until it is established that such availment of remedy before the Court of law was abuse of process of Court or for certain other mala fide reasons. In the impugned order, there is no such allegation against the petitioner. Therefore, I am of the clear view that merely

because the petitioner approached this Court and filed a writ petition, they cannot be put to prejudice nor can it be treated that the petitioner did not co-operate in the proceedings. Therefore, the condition no (iii) contained in Section 220(2A) stands complied with. With regard to other two facts, to be fulfilled for the entitlement of waiver, namely genuine hardship and circumstances beyond the control, the second respondent has interpreted the clause in the freight rate agreement dated 09.06.1987 and concluded that it is a self-inflicted injury by the petitioner. In my view, the second respondent has no jurisdiction to sit in judgment over a condition contained in an agreement between two parties viz., two Government organization and that cannot be put against the petitioner. Thus, the manner in which the second respondent has approached the issue is in-correct.

10. With regard to financial difficulty, the second respondent would state that the petitioner has a fixed deposit of a sum of Rs.4.4 Crores and they also earned interest income and the said fixed deposit is maintained specifically in connection with Kanniyakumari ferry service, which is a matter of national importance and the fixed deposit has to be maintained for the purpose of acquiring the ferry and cannot be diverted for any other purpose. Thus, the observation with regard to financial condition of the petitioner is also factually in-correct. Thus, for the above reasons, this Court has no hesitation to hold that the petitioner has fulfilled all the three conditions contained under Section 220(2A) of the Act and thus, entitled for waiver of interest.

11. Accordingly, this Writ petition is allowed and the impugned order is quashed. It is seen that at the time, when the writ petition was allowed, an order of interim stay was granted on condition that the petitioner pays 25% of the amount demanded within a period of eight weeks. This condition has been complied with by the petitioner. In the light of the above order, the petitioner is entitled for refund of the said amount and this amount can be adjusted against the future assessments. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar

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Sub Assistant Registrar

bri/abr

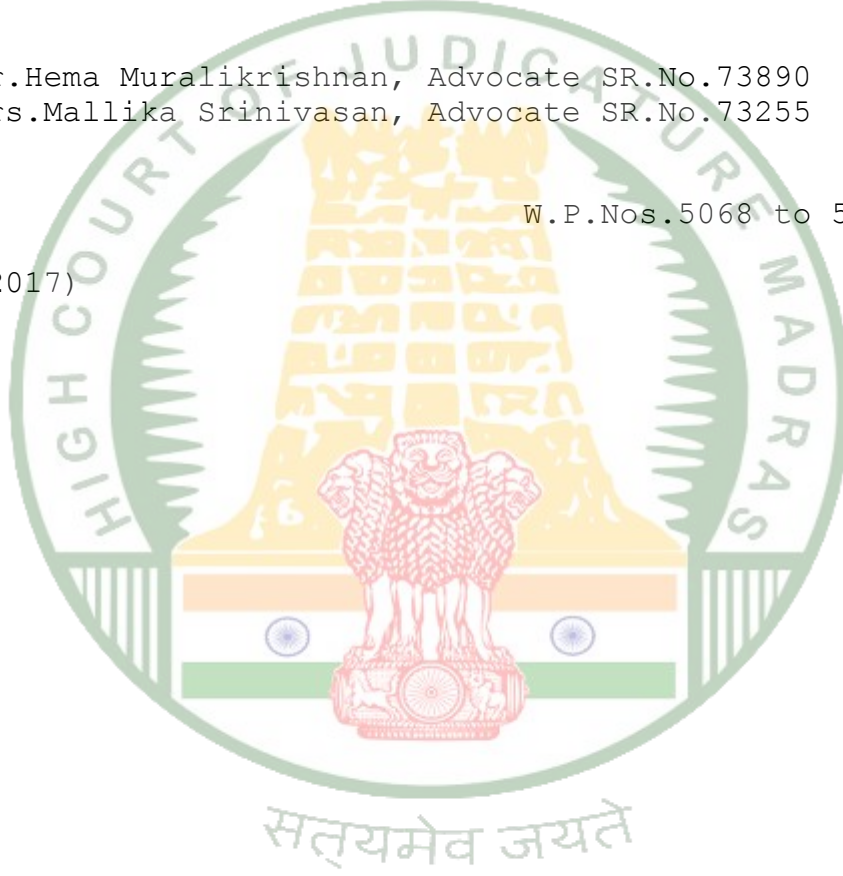
To

1. Assistant Commissioner of Income Tax,
Company Circle V(2), "Ayakar Bhavan",
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2. Commissioner of Income Tax,
Chennai-III, Chennai,
121, Nungambakkam High Road,
Madras-600 034.

+1cc to Mr.Hema Muralikrishnan, Advocate SR.No.73890
+1cc to Mrs.Mallika Srinivasan, Advocate SR.No.73255

W.P.Nos.5068 to 5070 of 2004

PVS (CO)
GN(05/12/2017)



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