IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.5622 of 2007

A.Kuberan
Kartha of V.V.Arumugam Chettiar [HUF] ... petitioner

Vs.

The Chief Commissioner of Income Tax,
Chennai-VI,
III Floor, Aayakar Bhawan,
121, Nungambakkam High Road,
Chennai-600 034. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ certiorari to call for the records on the file of the respondent in file HQ.19/(40)/02-03/67 dated 15.04.2005 and quash the same as illegal and against the Notification NO.F.400/234/95-IT(B), dated 23.05.1996 and to direct the respondent to refund the interest levied under Sections 234 A, 234 B and 234 C for the assessment years 1989-90 and 1990-91 pending disposal of the above writ petition.

For petitioner : Mr.J.Balachandar
For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

ORDER

Heard Mr.J.Balachander, learned counsel for the petitioner, Mr.A.P.Srinivas, learned Special Government Pleader appearing on behalf of the respondent.

2.The writ petition has been filed by the assessee challenging an order passed by the respondent dated 15.04.2005 under Section 119 (2) (a) of the Income Tax Act 1961 [for short "the Act"]. This order has been passed based on the application filed by the petitioner dated 29.11.2001, requesting for waiver of interest charged under Sections 234A, 234B and 234C of the Act, amounting to Rs.12.30 lakhs for assessment years 1989-90 and 1990-91.

3.Before I consider as to whether the petitioner is entitled for waiver, the following facts should be taken note of. The assessee has given a statement on oath under Section 132(4) during the course of Search under Section 132 in the premises connected with the petitioner. Disclosure was made only after detection pursuant to the search. Therefore, it is clear that the petitioner's disclosure is not a voluntary disclosure before the Department. The sworn statement was recorded on 17.08.1990 and subsequently, the Assessing Officer issued notice under Section 148 of the Act on 19.08.1991. The Assessee did nothing thereafter, but it appears that after several notices were issued, the Assessee filed return on 07.01.1994 and subjected for assessment. In the background of the conduct of the Assessee it has to be seen as to whether the Assessee is entitled to the waiver of the statutory interest payable under Sections 234A, 234B and 234C of the Act.

4.The Hon'ble Division Bench in the case of Chief Commissioner of Income Tax Vs. Rajanikant & Sons reported in [2017] 83 taxmann.com 162 (Madras) / [2017] 396 ITR 171 (Madras). While, considering the scope and ambit of Circular dated 26.06.2006 took note of the circumstances under which the Chief Commissioner and/or the Director General of Income Tax would have power to reduce or waive interest. At this juncture, it is worthwhile to refer a few paragraphs of the said judgment:

> "11.2.Therefore, what is required to be seen is what is the scope and ambit of the circular dated 26.06.2006. A bare perusal of the Circular would show that the CBDT has delegated its power to the Chief Commissioner and / or the Director General of Income Tax to reduce or waive interest charged under Section 234A or under Section 234B or under Section 234C of the 1961 Act, in the classes of cases or classes of incomes specified in paragraph 2 of the said Circular.
>
> 11.3 The extent to which the said delegatees, i.e., Chief Commissioner/Director General of Income Tax, may waive or reduce the interest has been left to their discretion.
>
> 11.4 Furthermore, the Circular makes it clear that no reduction or waiver of interest under the provisions referred to above shall be ordered, unless the assessee has filed a return of income for the relevant AY and paid the entire income tax (principal component of demand due on the income, as assessed).
>
> 11.6 Therefore, what emanated upon perusal of the Circular is that, unless the Assesse's case falls under the circumstances set out in paragrapg 2(a) to 2 (d) of the Circular dated 26.06.2006, which includes classes of cases and / or classes of incomes, the Chief Commissioner/Director General of Income Tax has

no power to reduce or waive interest.

11.7 In the instant case, as indicated in the narration of facts above, though returns were filed for the subject periods, the assessment made in the usual and normal course, was reopened under Section 148 of the 1961 Act. The reassessed tax was paid only after the Revenue had passed the reassessment order. As noted above, the assessee, at that stage, as advised, it appears, has also paid interest under sections 234A, 234B and 234C of the 1961 Act."

6.Thus, the discretion conferred upon the respondent is clearly circumscribed and set out in paragraphs 2(a) to 2(d) of the Circular dated 26.06.2006. The right to claim waiver of the interest is not a statutory right given to the Assessee but based on the Circular and therefore, strict interpretation of the Circular has to be done.

7.Facts of the case clearly reveals that the petitioner does not fall under any of the Clauses 2(a) and 2(d) of the Circular, dated 26.06.2006. Therefore, the respondent was fully justified in not exercising his discretion and waiving the interest levied. Thus, there is no error in the impugned order. Accordingly, the writ petition fails and dismissed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Income Tax Appellate Tribunal,
Madras Bench C,
Chennai.

2.The Chief Commissioner of Income Tax,
Chennai-VI,
III Floor, Aayakar Bhawan,
121, Nungambakkam High Road, Chennai-600 034.

+ 1 cc to Mr.A.P.Srinivas, Advocate,SR.87233
+ 1 cc to Mr.J.Balachandar Advocate,SR.87294

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