

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.2020 to 2024 of 2010
and
MP.NOS 1 to 2010

- 1.The Chief Commissioner of Income Tax,
Chennai-18.
 2. The Assistant Commissioner of
Income Tax, Business Range.XV,
Nungambakkam, Chennai.34. ...Appellants in both the W.As
- Vs.

M/s.Rajanikant and Sons,
New No.528, Anna Salai,
3rd Floor, Teynampet,
Chennai-600 018. ... Respondent in all the
W.As.

Prayer : Appeals filed under Section 15 of the Letters Patent
praying to set aside the orders dated 22.07.2010 passed in
W.P.Nos.15183/2010, 15180/2010, 15181/2010, 15182/2010 and
15184/2010.

Common Prayer in W.P.No.15183/2010, 15180/10 WP.15181/2010,
15182/2010 and WP.15184/10:Writ petitions filed under Article
226 of the Constitution of India praying for the issuance of
Writ of Certiorarified mandamus to call for the records and
quash the proceedings of the 1st respondent in the impugned
order dated 04.01.2010 bearing No.F.No.C.C.V/24(5) 1997-98 to
2000-2001 & 2003-2004 issued by the 1st respondent and direct
the respondent not to recover the interest amount so far paid.

For Appellants in : Ms.Hema Muralikrishnan
all the Appeals

For Respondent in: Mr.S.V.Jayakumar
all the Appeals

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER, J.)

1. These are appeals preferred by the Revenue against five (5) orders of even date, i.e., 22.07.2010, passed by the learned Single Judge. These orders, though, identical, are passed separately, in the writ petitions preferred by the respondent herein.

1.1. The Revenue is aggrieved by the impugned orders, in as much as they set aside the order dated 04.01.2010, passed by the first appellant.

1.2. Pertinently, the learned Single Judge, after setting aside the order dated 04.01.2010, remitted the matter to the first appellant to consider the respondent's application for waiver of interest on merits, albeit, in accordance with law.

2. It may be pertinent to note that in the captioned appeals, the period involved is Assessment Years (AY) 1997-1998 to 2000-2001 and 2003-2004.

3. The brief facts, which are required to be noticed, in order to adjudicate upon the captioned appeals, are as follows :

3.1. The respondent is in the business of manufacture, sale and export of diamond jewellery. In respect of the relevant periods, to which we have made a reference above, the respondent had made local sales to another company, namely, Rosy Jewellery Exports Limited; a company situated in Santacruz Electronics Export Processing Zone (in short 'SEEPZ') at Mumbai.

3.2. The respondent was under the impression that, since, these were "deemed exports", it would be entitled to deduction under Section 80 HHC of the Income Tax Act, 1961 (in short 'the 1961 Act').

3.3. We are informed by the counsel for the respondent; a fact, is not disputed by the learned counsel for the Revenue, that the returns, in the usual and normal course, were filed in respect of the aforementioned period, wherein, deduction under Section 80HHC of the 1961 Act, had been claimed qua local sales made to Rosy Jewellery Exports Limited.

3.4. We are further informed that the Revenue reopened the assessments for the aforementioned period, by issuing notices under Section 148 of the 1961 Act.

3.5. Pertinently, in so far as AY 2001-2002 was concerned, though, the respondent had claimed deduction under Section 80HHC of the 1961 Act, qua sales made to Rosy Jewellery Exports Limited, the said deduction was denied by the Assessing Officer.

3.6. Being aggrieved, the respondent carried the matter in appeal to the Commissioner of Income Tax (Appeals), who confirmed the assessment order passed by the Assessing Officer, vide order dated 27.08.2004.

3.7. We are further informed by the counsel for the respondent that pursuant to the reassessment carried by the Revenue qua the period in issue, the respondent not only paid the reassessed tax, but also interest, as demanded under Sections 234A, 234B and 234C of the 1961 Act.

4. The record shows that the respondent filed separate petitions of even date, 19.06.2006, qua the aforementioned period, before the Chief Commissioner of Income Tax-V, Chennai-34, (hereafter referred to as 'the Chief Commissioner'), for waiver of interest claimed under Sections 234A, 234B and 234C of the 1961 Act. These petitions for waiver of interest were pivoted on the Circular issued by the Central Board of Direct Taxes (in short 'CBDT') being : Circular No.400/29/2002 IT(B), dated 26.06.2006.

4.1. The said Circular has been issued by the CBDT, in exercise of powers conferred under Section 119(2)(a) of the 1961 Act.

4.2. The Chief Commissioner, by a reasoned order, rejected the prayer made by the respondent for waiver of interest for the following reasons, which are set out in paragraphs 5 to 8 of the order dated 04.01.2010 :

"..... 5. I have carefully considered the facts and circumstances of the case and the written submissions filed by the A.R. present. I have also perused the records of the case and have taken due note of the various judgements relied upon by the A.R. before me. However, I am not at all convinced with the reasons given by the A.R. for waiver of interest charged u/s 234A, 234B, 234C of the Act in this case in view of the discussion being made in the succeeding paragraphs.

6. In the first place, the deduction claimed by the assessee u/s 80HHC in respect of the local sales made to certain concerns, situated in the Export Promotion Zones (EPZ) by treating the same as 'Deemed Exports' is not at all based upon the relevant statutory provisions in this regard. Any misreading of the provisions or misinterpretation thereof cannot confer any benefit on the assessee. Neither the same can be treated as a bona fide claim. The assessee has not been able to justify his claim in the above matter by relying upon any direct decision of the jurisdictional High Court or Hon'ble Supreme Court. Neither the assessee can take shelter behind the mistake, if any, committed by the Assessing Officer in this regard, as such mistakes cannot confer any vested right in the assessee.

7. The most important and relevant fact in this

case is that the claim of deduction u/s 80HHC on the alleged 'Deemed Exports' had been made by the assessee in the original returns and it was never withdrawn voluntarily by the assessee by filing revised returns before the completion of the original assessments. As a matter of fact, the assessee has neither filed revised returns of income suo motto (sic "suo motu") within a reasonable time, withdrawing its claim for deduction u/s 80HHC on the alleged deemed exports, even after the appellate order was passed by the CIT(A) in the assessee's own case for the Assessment year 2001-02 on 27.08.2004. It is found that the assessee waited for the receipt of the notice u/s 148 from the Assessing Officer in the above matter. Hence, the income offered by the assessee in the returns filed in response to the notice issued u/s 148 by withdrawing the deduction u/s 80HHC to certain extent cannot be said to be a voluntary act on the part of the assessee. It is a clear case of detection of income escaping assessment owing to the wrong claim by the assessee. The payment of tax by the assessee in respect of the filing of the returns of income consequent upon the notice u/s 148 of the Act cannot be treated at par with Advance-tax. The judgement relied upon by the AR in the case of Dr. Prannoy Roy and Another -vs- CIT and Another 254 ITR 755 (SC) is clearly distinguishable on the facts of the present case, as in the above judgement, it was held by the Hon'ble Supreme Court that interest would be payable in a case, where tax has not been deposited prior to the due date of filing of the income-tax return. The increase in the quantum of interest charged u/s 234A, 234B, 234C of the Act in this case is mainly due to the increase in the total income finally assessed as per the reassessment orders. The contention of the assessee that since he has paid the tax, no interest is chargeable in this case is not in conformity with the provisions of the IT Act. The other case laws relied upon by the AR, as mentioned above, are, therefore, found to be not applicable on the facts of the present case. In view of the aforesaid facts, such as, detection of concealment of income by the Assessing Officer, non-submission of voluntary returns before the above detection and non-disclosure of true and correct income in the original returns are the relevant issues, wherein the assessee has totally failed to establish its case within the four corners of the CBDT'S Circular in F.N.400/29/2002-IT (B) dated 26.06.2006.

8. Under the circumstances, I am constrained to hold that the assessee's petitions seeking waiver of interest charged u/s 234A, 234B and 234C of the Act for all the assessment years cannot be entertained by me and hence the same are liable to be rejected."
(emphasis is ours)

5. The respondent, being aggrieved, preferred five (5) writ petitions under Article 226 of the Constitution, against the order dated 04.01.2010.

6. As indicated right at the outset, the learned Single Judge set aside the order dated 04.01.2010, and remitted the matter to the Chief Commissioner for adjudicating upon the waiver petitions on merits, albeit, in accordance with law.

7. The Revenue, in these circumstances, has preferred the captioned appeals.

8. On behalf of the Revenue, Ms.Hema Muralikrishnan, has advanced submissions, while on behalf of the respondent/Assessee, submissions have been advanced by Mr.V.S.Jayakumar.

9. It is the submission of Ms.Muralikrishnan that the order of the learned Single Judge would have to be set aside, as not only was the order dated 04.01.2010, a reasoned order and therefore, required no interference, but also, for the reason that in the facts and circumstances obtaining in the instant case, the respondent had failed to establish the provisions of the Circular dated 26.06.2006 were applicable. It was, thus, submitted that the learned Single Judge had erred in coming to the conclusion that the order dated 04.01.2010, was passed without bearing in mind the provisions of the Circular dated 26.06.2006.

10. On the other hand, Mr.Jayakumar, who appears for the respondent, submits that the respondent was under a bona fide belief that, since, the local sales, which were made to a company situate in SEEPZ, could be treated as a "deemed export", it would further be entitled to deduction under Section 80 HHC of the 1961 Act.

10.1. Learned counsel further submitted that, since, the necessary discretion was available to the Chief Commissioner, in terms of the Circular dated 26.06.2006, he ought to have taken into account, the said circumstances, which were obtaining in the matter and then, come to a conclusion one way or the other, as to whether or not, interest ought to be waived under Sections 234A, 234B and 234C of the 1961 Act.

10.2. In other words, according to Mr.Jayakumar, the direction issued by the learned Single Judge, ought not to be

interfered with, as all that it does is to remand the matter to the Chief Commissioner for reconsideration of the case in the light of the Circular dated 26.06.2006.

10.3. In support of this submissions, learned counsel relied upon a Division Bench judgement of this Court in the matter : N.Haridas & Co. Vs. Chief Commissioner of Income Tax and another, (2008) 296 ITR 246 (Mad.).

10.4. We must also indicate that Mr.Jayakumar has displayed exemplary fairness in the matter, by bringing to our notice a judgement of the Division Bench of the Bombay High Court in the matter of : De Souza Hotels Private Limited V. Chief Commissioner of Income Tax, (2012) 253 CTR 0541, which takes a contra view.

10.5. This judgment of the Bombay High Court, evidently, takes the view that the discretion available to the Chief Commissioner for waiving interest under Sections 234A, 234B and 234C, is confined to the circumstances, adverted to, in paragraphs 2(a) to 2(d) of the said Circular. According to the Court, the circumstances set out therein are exhaustive, and that, no waiver of interest can be granted in case, it does not fall within the circumstances set out therein.

10.6. We may also indicate that we had put to Mr.Jayakumar as to whether or not the present circumstance would fall in any of the clauses referred to in paragraphs 2(a) to 2(d) of the Circular dated 26.06.2006. Once again Mr.Jayakumar, with usual candour, stated, that, strictly speaking, the respondent's case would not fall in any of the circumstances set out therein.

11. Having heard the learned counsel for the parties and perused the record, what emerges, in nutshell is that, this Court is required to look at the contents of the Circular dated 26.06.2006, in order to come to a conclusion, in one way or the other, as to whether or not, the respondent would be entitled to seek waiver of interest.

11.1. We may also note herein that the learned counsel for the Revenue, Ms.Muralikrishnan, is right in her submission that the Chief Commissioner in his order dated 04.01.2010, had exhaustively dealt with merits of the waiver petitions and, then, come to a conclusion that the circumstances obtaining in the case did not fall within the provisions of clauses 2(a) to 2 (d) of the Circular.

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 delegates, 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).

11.5. In addition thereto, the Chief Commissioner/Director General of Income Tax has been empowered to impose any other condition, as it may deem fit, while granting reduction or waiver of interest.

11.6. Therefore, what emanates upon perusal of the Circular is that, unless the Assessee's case falls under the circumstances set out in paragraph 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.

11.8. However, what emerges from the record, is also, that in so far as AY 2001-2002 is concerned, at the assessment stage itself, the deduction claimed under Section 80HHC qua the local sales was denied to the respondent. The matter was carried in appeal, which was sustained by CIT(A), in his order dated 27.08.2004.

11.9. Therefore, in a sense, at that stage itself, the respondent was made aware that Section 80HHC deduction was not available.

12. Be that as it may, given the facts and circumstances emerging in the present appeals, and those found by the Chief Commissioner in his order dated 04.01.2010, it is quite clear that the instant case does not fall in any of the circumstances, adverted to in paragraph 2(a) to 2(d) of the Circular dated 26.06.2006.

12.1. As indicated above, the Division Bench of the Bombay High Court in *De Souza Hotels Private Limited V. Chief Commissioner of Income Tax and Others*, (2012) 253 CTR 0541, has come to the conclusion, with which, we are in complete agreement, that unless the Assessee's case comes within the

ambit and scope of the Circular dated 26.06.2006, the Chief Commissioner would have no power to reduce or waive interest under Sections 234A, 234B and 234C.

12.2. In our view, the order dated 01.04.2010, passed by the first appellant deals with waiver petitions on merits, and therefore, the judgements of the learned Single Judge setting aside the same and remitting the matter for reconsideration was not called for. Furthermore, we may also indicate that in so far as the judgment of the Division Bench of this Court in N.Haridas & Co. V. Chief Commissioner of Income Tax and another, (2008) 296 ITR 246 (Mad) is concerned, it was passed in peculiar facts and circumstances of the case. In that case, waiver/reduction of interest was sought on the ground that the tax, which was required to be paid under the Voluntary Disclosure of Income Scheme 1997, could not be paid, in time, by the Managing Partner, even though, he had made a declaration as required, since, he was diagnosed with blood cancer, and to which, he succumbed shortly thereafter.

12.3. Furthermore, what is not evident upon a perusal of the said judgment as to the what were the contents of the order of the Chief Commissioner, whereby, the request for waiver/reduction of interest was rejected. It appears that the order was perfunctory, which is why, the Division Bench in paragraph 7 observed that the impugned order of the Chief Commissioner "merely observed that the condition prescribed in Notification dated 23.05.1996 was not satisfied".

12.4. We may indicate herein that the notification/circular dated 23.05.1996 precedes the circular in issue, i.e., Circular dated 26.06.2006. Circular dated 26.06.2006 supersedes the earlier circular dated 23.05.1996. We are, thus, concerned only with Circular dated 26.06.2006.

12.5. For all these reasons, we are of the view that the judgment in the matter of : N.Haridas & Co. (cited supra) cannot help the cause of the respondent in this case. Therefore, the appeal will have to be allowed.

13. Accordingly, the the impugned judgements are set aside. The appeals are, accordingly, allowed. Resultantly, pending applications shall stand closed. There shall, however, be no order as to costs.

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Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

TO

1.The Chief Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai-18.

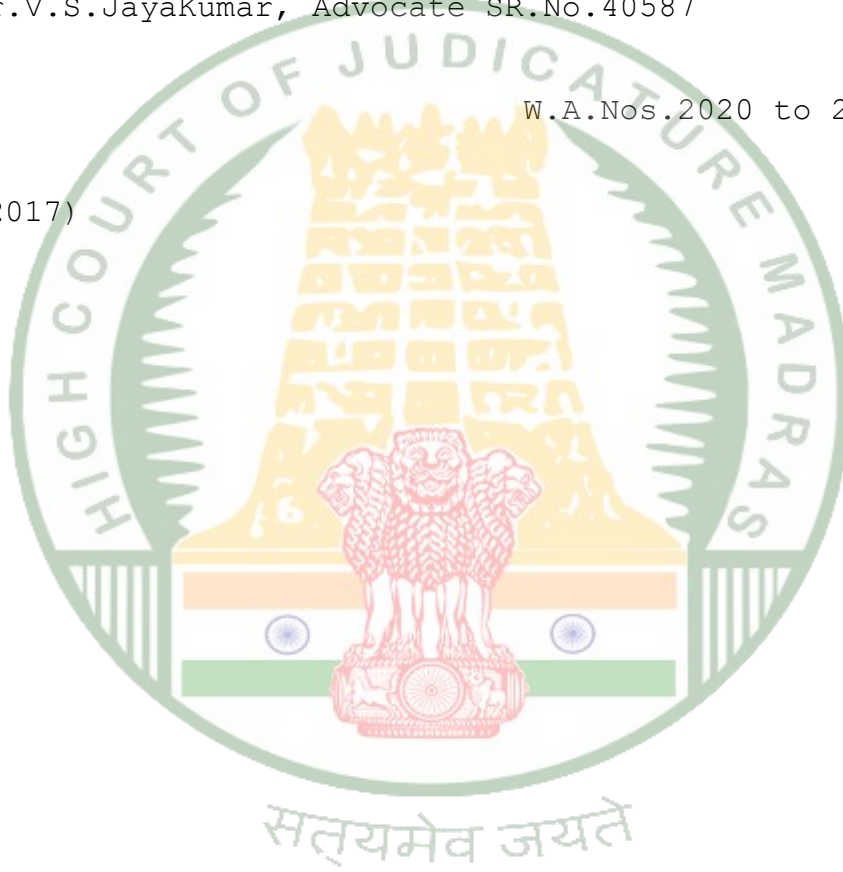
2. The Assistant Commissioner of
Income Tax, Business Range.XV,
Chennai.34.

+1cc to Mr.Hema Muralirishnan, Advocate SR.No.40230

+1cc to Mr.V.S.JayaKumar, Advocate SR.No.40587

W.A.Nos.2020 to 2024 of 2010

PPA (CO)
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