IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18093 of 2017 & W.M.P. No.19634 of 2017

Mr.Alagesan .. . Petitioner

Vs.

1. The Chief Commissioner of Income Tax – 3
Income Tax Department,
121, Nungambakkam High Road
Chennai – 600 034.

2. The Principal Commissioner of Income Tax – 8
Income Tax Department,
BSNL Building, Tower II – C Wing
No.6, Greams Road,
Chennai – 600 006.

3. The Tax Recovery Officer – 8
Income Tax Department,
BSNL Building, Tower II – C Wing
No.6, Greams Road,
Chennai – 600 006.

4. The Income Tax Officer
Ward – I, Thiruvannamalai
Income Tax Department,
No.2, Barracks Cross Street
Officers Line
Vellore – 632 001. ...Respondents

Petition filed 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 first respondent, to quash the impugned order dated 09.06.2017 in C.No.41/A/CCIT3/2017-18 for the Assessment Year 2003-04 and to direct the first respondent for considering the plea of waiver of interest charged under Sections 234A, 234B, 234C, 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 Respondents .. Mr.J.Narayanaswamy and
Mr.Rajkumar Jhebekh

ORDER

Heard Mr.A.S.Sriraman, learned counsel for the petitioner and Mr.J.Narayanaswamy, learned counsel appearing for the respondents.

2. The petitioner has filed this writ petition challenging the proceedings of the Assistant Commissioner of Income Tax dated 09.06.2017, by which, the petitioner was informed that there is no power of review vested with the Chief Commissioner of Income Tax to review his earlier order dated 19.09.2016, rejecting the petitioner's application seeking waiver of interest under Sections 234A, 234B, 234C and 220(2) of the Income Tax Act, 1961 read with Rule 5 of the Income Tax Rules and interest levied under Rule 5 of the said Rules.

3. Admittedly, the Chief Commissioner of Income Tax, who considered the application for waiver, has exercised power as a delegate of the Central Board of Direct Taxes. The Statute does not confer power on the Chief Commissioner to review his own orders. More so, when he is acting as a delegate, the question of exercising a review power not conferred on the delegate cannot be exercised.

4. That apart, the power of waiver is an independent power of the Board de hors regular procedure under the provisions of the Income Tax Act, 1961. It is an admitted fact that, the order of assessment dated 17.2.2006 attained finality, as the challenge to the proceedings upto the Hon'ble Supreme Court has been futile.

5. Therefore, the proceedings of Assistant Commissioner of Income Tax (Hqrs.)(I/c) Office of CCIT-3, Chennai, dated 09.6.2017 is sustained and the writ petition is dismissed. No costs. Consequently, the above WMP is also dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To
1. The Chief Commissioner of Income Tax - 3,
   Income Tax Department,
   121, Nungambakkam High Road,
   Chennai - 600 034.

2. The Principal Commissioner of Income Tax - 8,
   Income Tax Department,
   BSNL Building, Tower II - C Wing,
   No.6, Greams Road, Chennai - 600 006.

3. The Tax Recovery Officer - 8,
   Income Tax Department, BSNL Building,
   Tower II - C Wing, No.6,
   Greams Road, Chennai - 600 006.

4. The Income Tax Officer Ward - I,
   Thiruvannamalai Income Tax Department,
   No.2, Barracks Cross Street,
   Officers Line, Vellore - 632 001.

+1cc to Mr.S.Sridher, Advocate Sr. 50593

W.P.No.18093 of 2017 &
W.M.P. No.19634 of 2017

SK(CO)
VR(03/08/2017)