

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

W.P.No.18094 of 2017 and
WMP.No.19635 of 2017

Alagesan

Proprietor: Manigandan Rice Mill
Pwalvarthuvendan Village, Polur Taluk,
Thiruvannamalai District.

...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,
BSNI 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

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent to quash the impugned order dated 19.09.2016 C.No.CC III/8(13)/Waiver/2013-14 for the Assessment Year 2003-04 and direct the first respondent for considering the plea of waiver of interest charged under Section 234A, 234B, 234C, 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.J.Narayanaswamy
Sr.Standing Counsel

ORDER

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

2. The petitioner has filed this writ petition, praying for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent dated 19.09.2016 for the assessment year 2003-2004 and for a direction to the first respondent to waive interest charged under Sections 234A, 234B, 234C, 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961.

3. This Court, on 18.07.2017, elaborately heard the learned counsel for the petitioner and passed the following order:-

"Heard Mr.A.S.Sriraman, learned counsel for the petitioner.

2. The petitioner in this writ petition has challenged the proceedings of the first respondent - the Chief Commissioner of Income Tax-III, dated 19.09.2016, by which, the application for waiver of interest under Sections 234A, 234B, 234C and 220(2) of the Income Tax Act, 1961 and Rule 5 of the Rules framed thereunder, has been rejected.

3. So far as the claim for waiver of interest levied under Sections 234A, 234B and 234C of the said Act is concerned, the Chief Commissioner, in the impugned order, was right in holding that the petitioner assessee, having not paid the income tax - principal component of demand, does not fulfill the conditions laid down in the Board's Notification dated 23.05.1996, which has been superseded by the Board's order dated 26.06.2006.

4. Thus, the petitioner having not fulfilled the pre-condition, the question of entertaining the application for waiver of interest levied under Sections 234A, 234B and 234C of the said Act cannot be interfered with and to that extent, the impugned order dated 19.09.2016 is confirmed.

5. With regard to the interest under Section 220(2A) of the said Act and under Rule 5 of the Rules framed

thereunder, the learned counsel for the petitioner would submit that if the petitioner had been afforded an opportunity of personal hearing by the Chief Commissioner, who decided the matter, he would have been able to demonstrate that the petitioner had fulfilled the three conditions laid down under Section 220(2A) of the said Act and the payment of such amount would cause genuine hardship to the petitioner, as the only asset the petitioner possessed namely a rice mill is already under the attachment by the Department. Apart from that, prosecution has been initiated against the petitioner.

6. The learned counsel would further submit the very same argument would hold good so far as the levy of interest under Rule 5 of the said Rules is concerned. The contention raised is that though, in the impugned order, the first respondent stated that a personal hearing was granted on 21.03.2016 and on 24.03.2016, such hearing was given by the predecessor, who was the then Chief Commissioner of Income Tax-III and not the present Chief Commissioner, who has passed the impugned order. Thus, the argument appears to be as if the person, who heard the petitioner, had not decided the matter, but a different officer in the rank of Chief Commissioner has passed the impugned order.

7. To this extent, this Court is inclined to issue notice to the respondents to enable the respondents to state as to whether the said submission is right. If it so, then this Court will consider as to whether the matter should be remanded to the Chief Commissioner for considering the petitioner's plea for waiver of interest under Section 220(2A) of the said

Act and Rule 5 of the Rules framed thereunder.

8. Mr.J.Narayanaswamy, learned Senior Standing Counsel accepts notice for the respondents and seeks time to get instructions.

9. Post on 24.07.2017 at the end of motion list. "

4. Thus, the only issue that the Court was inclined to consider was whether the matter has to be remanded to the first respondent for fresh consideration on the ground that the officer, who heard the petitioner in person on 21.03.2016 and on 24.03.2016 was not the Officer/Chief Commissioner, who decided the matter. Only on this issue, the Court was inclined to issue notice to the respondents to enable the respondents to state whether the submission made by the petitioner was factually correct and if so, whether the matter should be remanded to the Chief Commissioner for consideration of the petitioner's plea for waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961.

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5. Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondents, on instructions submitted that it is true that the Chief Commissioner, who offered opportunity of personal hearing to the

petitioner on 21.03.2016 and on 24.03.2016 is not the Chief Commissioner, who has passed the impugned order. The legal principle is that the person who hears must decide. Therefore, by applying the said principle to the case on hand, the only conclusion that can be arrived at is to send back the matter for fresh consideration before the first respondent, on the plea for waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961.

6. Accordingly, the writ petition is partly allowed and the impugned order in so far as rejecting the petitioner's request for waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961, alone is set aside and the matter is remitted to the first respondent for fresh consideration, who shall afford opportunity of personal hearing to the petitioner and decide the matter afresh on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

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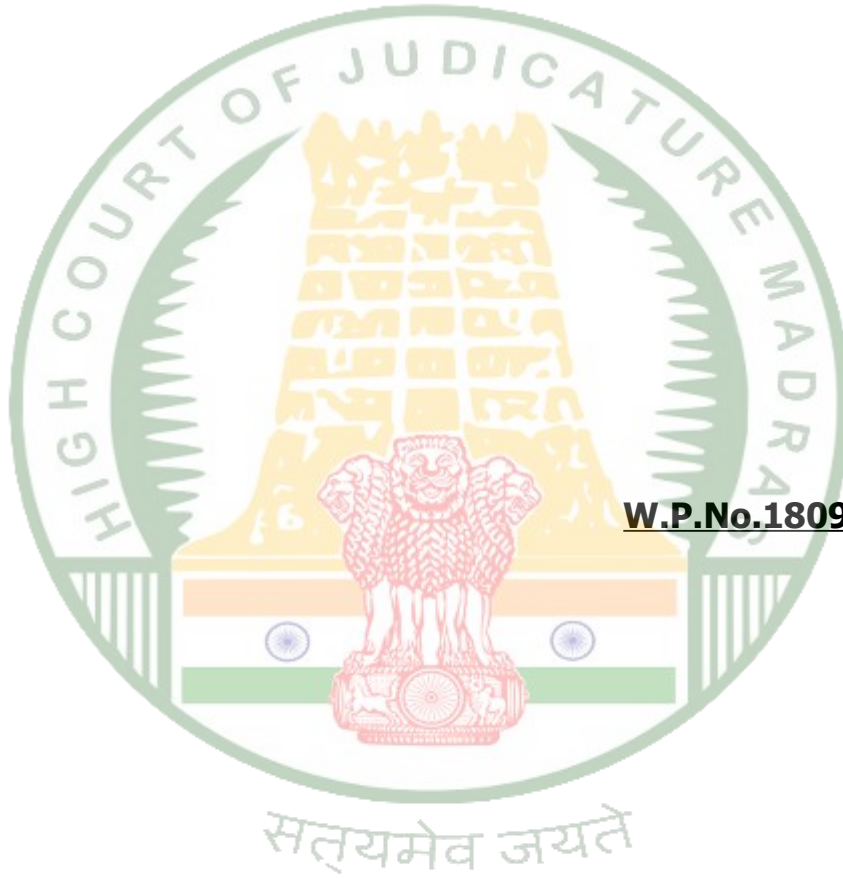
To

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T.S.SIVAGNANAM,J

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