IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 19.07.2017
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.13044 and 13045 of 2007
and
M.P.Nos1 and 2 of 2007

M/s. Alpha Detergents (P) Ltd.,
now merged with Ecof Industries P Ltd.,
8C/8D Gee-Gee Crystal,
No.91, Dr. Radhakrishnan Salai,
Chennai – 600 004. ...Petitioner in both the W.Ps.

Vs.

The Chief Commissioner of Income Tax,
Chennai – III, 121, Mahatma Gandhi Road,
Chennai – 600 034. ...Respondent in both the W.Ps.

Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records and to quash the common impugned order, bearing CHE/Coord/106 (W-18)/1/2001-02, dated 10.05.2006, for the assessment year 1997-98 and 1998-99 passed by the respondent under Section 119 (2) (b) of the Income Tax Act, 1961.

For Petitioner : Mr. V. S. Jayakumar
For Respondent : Mr.J. Narayanaswamy
Standing Counsel

COMMON ORDER

Heard Mr. V. S. Jayakumar, the learned counsel appearing for the petitioner and Mr.J. Narayanaswamy, the learned Standing Counsel for the respondent.

2. The petitioner, in these Writ Petitions, has impugned the common order passed by the respondent, the Chief Commissioner of Income Tax,Chennai – III, in rejecting their application filed for grant of waiver from payment of interest under Section 234 (C) of the Income Tax Act, 1961 (hereinafter, referred to as 'the Act').

3. The petitioner had paid advance tax for the relevant assessment year, by cheques, dated 14.06.1996, 13.09.1996, 13.12.1996, and 14.03.1997. Admittedly, these cheques are well within the cut of date, viz., 15th of the relevant months. It appears that the cheques were realized by the Department on 17.06.1996, 17.09.1996, 16.12.1996 and 17.03.1997. It is not disputed by the Revenue that the amount remitted by the petitioner was accepted as payments towards advance tax, and the assessments were proceeded for the relevant assessment year on that basis, giving due credit to

the advance tax remitted. However, there was a claim for waiver of interest under Section 234 (C) of the Act. The petitioner addressed the Joint Commissioner of Income Tax, Special Range- IV, Chennai, by letter, dated 15.09.1999, which was received by the Department, on 21.10.1999, in which, they stated that, the date of tender of the cheque is deemed to be the date of payment of advance tax. The petitioner placed reliance on the Clarification issued by the Central Board of Direct Taxes (CBDT), stating that, if the cheque or draft is presented for payment of Government dues, and is honoured on presentation, then, under the provisions of Rule 80 of the Central Treasury Rules, payment is deemed to have been made on the date on which the cheque was handed over to the Government Bank. This Clarification is reported in **120 ITR ST Page 7.** Subsequently, the petitioner sent another representation to the Joint Commissioner of Income Tax, by letter, dated 21.10.1999, which was received by the Department, on 22.10.1999, requesting for waiver of the interest, and they placed reliance on the decision of the Hon'ble Gujarat High Court, in the case of **[Kangold (India) Ltd., Vs. CIT]** reported in **(1999) 239 ITR 843.** The Joint Commissioner of Income Tax, by letter, dated 05.06.2000, informed the petitioner that, in subsequent Rulings, reported in **(1996) 221 ITR (AAR) 172**, it has been held that, payment of Government dues tendered in the form of a cheque or draft shall be the date on which it was cleared. Therefore, the Joint Commissioner of Income Tax refused to accept the assessee's contentions. Immediately thereafter, the petitioner filed an application for waiver before the respondent. This application has been rejected by the impugned order.

4. In the light of above facts and circumstances of the case, this Court is of the view that, it need not labour much to resolve the controversy raised in these Writ Petitions, as it has been considered by the Hon'ble Division Bench of this Court, in the case of **(CIT Vs. Repco Home Finance Ltd.)** reported in **(2014) 90 CCH 0195.** The question of law, which was framed for consideration was "Whether under the facts and circumstances of the case, the Tribunal was right in holding that the date of presentation of cheque in the Bank is to be reckoned as the date of payment of advance tax and not the date on which the cheque is cleared and entered in the receipt roll as required under Rule 20 of the Central Government Account (Receipts and Payments) Rules, 1983, for the purpose of calculating interest under Section 234 C of the Income Tax Act?" The Hon'ble Division Bench, after taking note of the decision of the Hon'ble Supreme Court, in **(CIT Vs. Ogale Glass**

Works Ltd.,) reported in **(1954) 25 ITR 529,** answered the question of law in favour of the assessee and against the Revenue, holding that the relevant date would be the date on which the cheque is issued, and such date of presentation should be reckoned from the date of payment of advance tax, and not the date on which the cheque is cleared and entered in the receipt roll as required under Rule 20 of the Central Government Accounts (Receipts and Payments) Rules, 1983, for the purpose of calculating interest under Section 234 (C) of the Act.

5. In the light of the decision of the Hon'ble Division Bench, the respondent was not entitled to rely upon the advance Rulings, which has been referred in the case of **(1996) 221 ITR (AAR) 172,** as the judgment of the Hon'ble Division Bench rendered in the case of **Repco Home Finance Ltd's, (supra)** would bind the respondent as it is from the jurisdictional High Court. Thus, in the light of the above decision in the case of **Repco Home Finance Ltd's, (supra)** it has to be held that the petitioner is not liable to pay interest under Section 234 (C) of the Act.

6. For the above reasons, these Writ Petitions are allowed, orders impugned herein are quashed, and the respondent's demand for interest under Section 234 (C) of the Act is held to not sustainable in law. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.07.2017

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Index : yes/no

To

The Chief Commissioner of Income Tax,
Chennai – III, 121, Mahatma Gandhi Road,
Chennai – 600 034.

T.S.Sivagnanam, J.

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Writ Petition Nos.13044 and 13045 of 2007

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