IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGANANAM

W.P.No.24694 of 2004

T.Jayachandran .. Petitioner

Vs.

The Chief Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai - 600 034. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus to call for the records of the respondent in his proceedings bearing No.CCA:105(23)/III/97-98 dated 21.10.2000 and quash the same and consequently direct the respondent to grant waiver of interest levied under Section 234(B) and (C) of the Income Tax, 1961 inrespect of the Assessment Years 1991-92 to 1994-95.

For Petitioner .. Mr.P.S.Raman
Senior Counsel
for Mr.C.Seethapathy

For Respondents .. Mr.J.Narayanaswamy
Standing Counsel

O R D E R

Heard Mr.P.S.Raman, learned Senior Counsel for Mr.C.Seethapathy, learned counsel for the petitioner and Mr.J.Naranayaswamy, learned Standing Counsel for the respondent.

2. The petitioner has challenged the order passed by the first respondent - the Chief Commissioner of Income Tax, Chennai, dated 21.10.2000, insofar as it restricts the waiver of interest levied under Section 234(B) of the Income Tax Act, 1961 to 50% for the four assessment years 1991-92, 1992-93, 1993-94, 1994-95. With regard to the waiver application for interest under Section 234(C) of the said Act, the same was rejected for

all the four assessment years.

3. The learned Senior Counsel for the petitioner would point out that as of now, the Court need not adjudicate as to whether the denial of 50% of the waiver of interest was justified or not, though the entire findings recorded by the Chief Commissioner in the impugned order are fully in favour of the petitioner accepting their case, since there are subsequent developments in the matter pertaining to the assessments for the years 1991-92, 1992-93 and 1993-94. In respect of the assessments for these three years, the petitioner had approached the Income Tax Appellate Tribunal by filing appeals and all those appeals being rejected, the petitioner filed in the tax case appeals in T.C.A.Nos.366 to 368 of 2015 before the Division Bench of this Court and the Division Bench, by judgment dated 29.10.2012, answered the four questions, which were framed for consideration in favour of the petitioner assessee and against the Revenue.

4. Therefore, it is submitted that the matter may be remitted back to the Chief Commissioner to decide as to the petitioner's eligibility for the waiver of the balance 50% of the interest for three assessment years, which were the subject matter of T.C.A.Nos.366 to 368 of 2005 viz., 1991-92 to 1993-94 as well as for assessment year 1994-95.

5. Mr.J.Narayanaswamy, learned Standing Counsel for the respondent pointed out that as against the judgment of the Division Bench dated 29.10.2012, the Revenue has preferred an appeal to the Supreme Court. But, nevertheless the matter can be remanded to the Chief Commissioner for a fresh consideration.

6. There may not be any difficulty in sending back the matter to the Chief Commissioner for re-consideration. But, by virtue of such direction, the Revenue can not try to negate the impugned order in so far as it grants a relief to the assessee i.e with regard to 50% waiver of interest under Section 234(B) of the Act for the four assessment years.

7. The learned Standing Counsel for the Revenue fairly states that that is not the intent or purport of the Revenue, as the Revenue has not questioned the order passed by the Chief Commissioner granting 50% waiver of the interest under Section 234 (B) of the said Act and such waiver shall remain intact and that the remand can be restricted only for the remaining 50%, that too, in the light of the subsequent development that the tax case appeals were allowed in favour of assessee by the Division Bench.

8. In the light of the above, the writ petition is allowed in so far as it relates to refusal to grant 100% waiver of the

interest under Section 234(B) of the said Act and the respondent is directed to take a fresh decision on merits and in accordance with law and while doing so, shall also examine the judgment of the Division Bench in T.C.A.Nos.366 to 368 of 2005 dated 29.10.2012.

9. With regard to the rejection of the entire claim of the waiver of interest under Section 234(C) of the said Act, the respondent shall take a fresh decision in the matter while deciding the issue with regard to 50% waiver of the interest under Section 234(B) of the said.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

The Chief Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to MR.C.Seethapathy, Advocate SR.No.50042
+1cc to MR.J.Narayanaswamy, Advocate SR.No.50236

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