IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2017

Coram

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

Writ Petition Nos. 28509 & 28510 of 2004

M/S. Golden Hills Estate Pvt. Ltd.,
Erinkadu Estate,
Visalakshi Nagar - 625 401,
Madurai. ...Petitioner in both W.Ps

Vs.

1. The Special Commissioner and
Commissioner of Agricultural Income Tax
Ezhilagam, Chennai.

2. The Agricultural Income Tax Officer,
Dindigul. ...Respondents in both W.P.

Prayer in both W.Ps:- These Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for records of the first respondent in R.C.Nos.5126/2002-C1 quash the order dated 24.2.2004 and further direct him to grant full waiver of penalty and penal interest under the Tamilnadu Agricultural Income Tax Act, for the assessment years 1997-98 and 1998-99 respectively therein.

For Petitioner : Mr.B.Ravichandran

For Respondents : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.B.Ravichandran, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondents.

2. In these Writ Petitions, the petitioner has challenged the orders passed by the Special Commissioner and Commissioner of Agricultural Income Tax, Chepauk, Chennai, dated 24.02.2004, in respect of the levy of additional penalty on the petitioner

for belated payment of agricultural income tax, for the assessment years 1997-98 and 1998-99

3. It is an admitted fact that the petitioner did not pay the advance tax within time, but subsequently, remitted the advance tax, which was accepted by the the Agricultural Income Tax Officer, vide proceedings, dated 23.01.1998. Subsequently, a notice was issued, dated 14.12.1998 levying penalty for the belated remittance of tax at 2% per month, and accordingly, a sum of Rs.22,990/- was demanded, which was also remitted by the petitioner and acknowledged by the respondent/Agricultural Income Tax Officer, vide proceeding, dated 23.01.1998. Subsequently, alleging that there is a calculation mistake, further sum of money has been demanded from the petitioner by way of penalty. The petitioner agitated the matter and ultimately, the matter went up before the Special Commissioner and Commissioner of Agricultural Income Tax, wherein, the petitioner pleaded waiver. The petitioner's case was considered by the Special Commissioner, but only to an partial extent, by giving waiver to the extent of 25% of interest and penalty for both years.

4. In terms of Section 16-A (5) of the Tamil Nadu Agricultural Income Tax Act, 1955, if any person fails to pay the agricultural income-tax, or any part thereof, in accordance with the provisions of sub-section (1) or sub-section (2) or fails to pay the agricultural income-tax in accordance with sub-section (3) before the due date fixed for filing the return, the Assessing Authority may direct that a sum equal to two per cert of such tax, or part thereof, as the case may be, shall be recovered from the assessee by way of penalty for every month, during which, default continues. However, proviso to Section 16-A 5 provides that the Commissioner may reduce or waive the penalty, if he is satisfied that there was sufficient reason for the delay in payment of the agricultural income tax.

5. Admittedly, in the instant case, the petitioner had remitted the penalty, and it is only on account of the alleged mistake committed by the Department, there is an additional demand. Therefore, this is a fit case, where, the Special Commissioner should have exercised his discretion, as provided under the proviso to section 16-A 5 of the Act and waived the penalty. That apart, as of now, the Tamil Nadu Agricultural Income Tax Act has been repealed and the petitioner-Company is also not in existence. Therefore, this Court is inclined to interfere with the matter and grant appropriate relief.

6. Accordingly, both the Writ Petitions are allowed and the impugned orders are set aside and the petitioner is granted waiver of additional penalty and interest as demanded by the second respondent. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To
1. The Special Commissioner
Commissioner of Agricultural Income Tax
Ezhilagam, Chennai.

2. The Agricultural Income Tax Officer,
Dindigul.

+1cc to Mr.Chandran Karupiah,Advocate sr.46760

+1cc to Special Government Pleader sr.46793

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mg(co)
ss(20/7/2017)