IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED .28.02.2017

CORAM:

THE HONOURABLE **MR.JUSTICE P.N.PRAKASH**

Writ Petition No.18041 of 2003
and WMP.No.22529 of 2003

M/S. Shanthi Hatcheries [Petitioner]
(now known as Shanthi Fortune (India)
Private Limited
Rep by its partner R. Krishnamurthi
Palladam, Coimbatore.

(P-1 is amended
as per order dated:08.02.2017
IN WMP.No. 2518/2017)

Vs

1 The Director General of Income Tax (Inv)
108, Mahatma Gandhi Road, Chennai 34.

2. The Chief Commissioner,
Income Tax, Coimbatore
(R2 Suo motu impleaded as per order
dated 09.01.2017)

[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 respondent in F.No.2006 (130)2000-2001 and quash the impugned order dated 28.01.2003 and consequently direct the respondent to grant relief for assessment years 1998-99.

For Petitioner : Mr.Subharaya Aiyar

For Respondents : Mr.T.Pramod Kumar Chopta, SSC

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ORDER

The facts of the case have already been set out in paragraph No.2 of the order dated 27.10.2015 passed in W.P.Nos.18103 and 18148 of 2003, which reads as follows:-

> "2.The case of the petitioner is that the petitioner is a Partnership Firm and is engaged in the business of poultry farming and hatcheries. The relevant assessment years are 1996-97 and 1997-98 and the corresponding accounting year ended on 31.03.1996 and 31.03.1997. For all the years, the Petitioner field income tax returns and claimed deduction under Section 80 IA of the Income Tax Act, 1961 and the same were accepted under section 143(1) (a), thereby the Petitioner enjoyed the reliefs under Section 80 IA of the said Act viz., (1) for the assessment year 1996-97, Rs.83,844/- and (2) for the assessment year 1997-98, Rs.1,51,145/-. Later, the Assessing Officer sent a show cause notice under Section 154 of the said Act, stating that the deduction was given wrongly and directed the Petitioner to send objections to the show cause notice. The Petitioner also sent a reply dated 27.5.1999 and claimed deduction under section 80 JJ of the said Act, which was rejected on the ground that the assesses did not claim relief in the returns filed, in view of the decision of the Honourable Supreme Court reported in 237-ITR-174 (CIT vs. Shri Venkateswara Hatcharies P Limited), which was rendered on 24.3.1999 reversing the earlier judgment of the Andhra Pradesh High Court reported in 174-ITR-231. Accordingly, the Assessing Officer levied interest under Sections 234B and 234C of the said Act viz., (1) for the assessment year 1996-97, Rs.11,226/- and (2) for the assessment year

1997-98, Rs.44,724/-. Aggrieved by the order of levy of interest under Sections 234B and 234C, the Petitioner filed a waiver Petition to the Respondent, contending that as per the Board circular in F.No.400/234/95-IT(B), dated 23.5.1996, which squarely covers the facts of the case, the Petitioner is entitled to waiver of interest levied under Sections 234B and 234C of the Act. However, the Respondent, without considering the real scope of the said Circular, by the impugned order, rejected the waiver petition. Hence, these Writ Petitions have been filed for the reliefs as stated above.

2. It may be necessary to state here that this petitioner was aggrieved with the assessment relating to the years 19976-97, 1997-98 and 1998-99. Challenging the three impugned orders passed for the aforesaid assessment years, the petitioner filed W.P.No18103 of 2003 (assessment year 1996-97) and W.P.No.18148 of 2003 (assessment year 1997-98) along with this writ petition (1998-99). For some reasons, this writ petition got de-linked from W.P.Nos.18103 and 18148 of 2003 and the latter were heard by a learned Single Judge of this Court (RMDJ) and final orders were passed on 27.10.2015, which is as under:-

> "12. In view of the settled law, as has been laid down in the decisions cited supra, the impugned orders are set aside and the matters are remanded back to the Respondent for fresh consideration in the light of the decisions cited supra. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity to the petitioner."

3. In view of the above, no other order can be passed in respect of the assessment year 1998-99 in this writ petition except to follow the earlier order dated 27.10.2015 passed in W.P.Nos.18103 and 18148 of 2003.

4. At this juncture, Mr.Pramod Kumar Chopta, learned Senior Standing counsel for the Income Tax Department submitted that as against the order dated 27.10.2015 passed in W.P.Nos.18103 and 18148 of 2003, the department had filed W.A.Nos.1305 and 1306 of 2016 and a Division Bench of this Court had dismissed the same with certain directions, however, the order copy is not available.

5. In view of the above, this writ petition is disposed of with a direction to the authorities to follow the directions issued by the Division Bench in W.A.Nos.1305 and 1306 of 2016, in this case also. No costs. Connected miscellaneous petition is closed.

28.02.2017

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To

1 The Director General of Income Tax (Inv)
108, Mahatma Gandhi Road, Chennai 34.

2. The Chief Commissioner,
Income Tax, Coimbatore

P.N.PRAKASH,J
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<u>Writ Petition No.18041 of 2003</u>

28.02.2017