IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No. 18147 of 2003
and
W.P.M.P.No.22636 of 2003

M/s.New Era Urban Amenities Ltd.,
Flat No.7, Baba Foundations,
15, Balakrishna Road,
Mylapore, Chennai - 600 004. ... Petitioner

Vs.

1.The Commissioner of Income Tax,
Chennai - III,
121, Mahatma Gandhi Road,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle III (4)
Chennai - 300 034. ... Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records in C.No.3032 (8)/III/01-02, dated 15th February, 2002 of the 1st respondent and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.J.Narayanaswamy
Senior Standing Counsel

O R D E R

Heard Mr.M.P.Senthil Kumar, the learned counsel appearing for the petitioner, and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondents.

2. This Writ Petition is filed by the petitioner, challenging the order passed by the first respondent, dated 15.02.2002, which is purported to be an order under Section 264 of the Income Tax Act, 1961 (henceforth, referred to as 'the Act').

3. The assessment for the petitioner-Company in respect of the year 1995-1996 was completed under Section 144 of the Act, on 31.03.1998, determining the total income at Rs.20,11,092/-, and the tax payable at Rs.16,09,677/-. The demand notice was issued under Section 156 of the Act, dated 25.05.1998. Since the tax was not paid, even as on the date of the passing the order under Section 220(2) of the Act, the Assessing Officer charged interest under the said Section, at Rs.48,290/-.

4. The petitioner filed a Petition before the first respondent, under Section 264 as well as Section 220 (2A) of the Act, and the prayer sought for thereunder was to waive the interest levied and/or sustained in full, in exercise of powers under Section 220 (2A) of the Act, and to Stay the recovery of the interest during the pendency of this Writ Petition. The first respondent, while rejecting the Petition by the impugned order, opined that only the correctness, legality or the propriety of the order will come within the scope of power of revision under Section 264 of the Act, and the petitioner, having not challenged, either the chargeability of the interest under Section 220 (2) of the Act, or the quantification of interest for the relevant assessment years, such relief cannot be granted to the petitioner, and the Petition was held to be not maintainable, though there are certain other observations, touching upon the merits, essentially, the first respondent came to the conclusion that the Petition U/s.264 of the Act, seeking for waiver is not maintainable.

5. As pointed out earlier, in the preceding para, the petitioner has not only filed a Petition under Section 264 of the Act, but, it is under Section 220(2A) of the Act as well. Therefore, the first respondent could have very well treated the Petition, as a Petition for waiver under Section 220(2A) of the Act, as the Commissioner has been empowered to deal with such Petition by the Central Board.

6. In fact, the petitioner has set out in the grounds of this Writ Petition, as to how, they failed to fulfill the parameters, required to be complied with under Section 220(2A) of the Act. Therefore, the first respondent should have considered the said Petition, by treating it as Petition under Section 220 (2A).

7. Therefore, considering the factual situation, it is clear that the petitioner sought for waiver under Section 220 (2A) and it is not revision under Section 264 for revising the earlier order passed by the Assistant Commissioner or for that matter. Hence, this Court is of the view that the matter requires to be re-considered by the first respondent, by

treating the Petition as purely a Petition under Section 220(2A) of the Income Tax Act.

8. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall consider the Petition filed by the petitioner, dated 23.01.1999, as purely a Petition under Section 220 (2A) of the Act and decided the same, in accordance with law. It is seen that, at the time, when the Writ Petition was entertained, order of interim stay was granted on 06.10.2003, subject to the condition that the petitioner pays 30% of the impugned demand towards interest under Section 220 (2) of the Act. The learned counsel for the petitioner submitted that the conditional order has been complied with. If that be the case, then, the payment made by the petitioner shall abide by the fresh orders to be passed by the first respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nmm/sd

To

1.The Commissioner of Income Tax,
Chennai - III,
121, Mahatma Gandhi Road,
Chennai - 600 034.

2.The Asst. Commissioner of Income Tax,
Central Circle III (4)
Chennai - 300 034.

+1cc to Mr.Mallika Srinivasan, Advocate, S.R.No.50193

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CS IV
CA(03/08/2017)