IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.29916 of 2004

Madras Race Club,
Guindy Race Course,
Chennai - 600 032.
rep. By its Member P.M.Antony,
Committee of Management. ... Petitioner

Vs.

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

2.The Assistant Commissioner of Income-tax,
Company Circle IV(1),
Chennai.

3.The Joint Commissioner of Income-tax,
Special Range VII
121, Nungambakkam High Road,
Chennai - 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records in C.No.3057/29/III/2002-03 dated 30th August, 2004 on the file of the 1st respondent.

For Petitioner : Mr.M.P.Senthilkumar

For Respondents : Mr.Naveen Durai Babu

ORDER

The petitioner is a company registered under Section 25 of the Indian Companies Act, 1956 with objects of encouraging and promoting racing as a sport. In this writ petition, the petitioner has challenged an order passed by the Commissioner of Income Tax (Chennai-III) [hereinafter referred to as "CIT] dated 30.08.2004 rejecting the application filed by the petitioner under Section 220(2A) of the Income Tax Act, 1961 requesting for waiver of interest, which was levied on the petitioner for the assessment year 1985-1986.

2.The following facts would be essential to decide as to whether the CIT was justified in rejecting the application for waiver.

3.For the assessment year 1985-1986, the petitioner filed a return of income on 30.09.1985 declaring taxable income of Rs.8,19,088/- after setting off of the carried forward loss amounting to Rs.32,14,404/-.

4.The Government of Tamil Nadu enacted The Madras Race Club (Acquisition and Transfer of undertaking) Act, 26 of 1986 [hereinafter referred to as "Acquisition Act"], to provide for the acquisition, for a public purpose, and transfer of undertaking of the petitioner and for matters connected therewith or incidental thereto. In terms of Section 4 of the Acquisition Act, on the appointed date, i.e. 09.04.1986, the undertaking of the petitioner Club and the right, title and interest of the Club in relation to its undertaking shall, by virtue of the Acquisition Act, stood transferred to, and vested in, the Government. In terms of Section 3(e) of the Acquisition Act, "Government" means the State Government and Section 3(f) defines "Government Company" to mean a Corporation or a Company wholly owned by the State. The payments to be made, were effected by a Commissioner appointed by the Government in terms of Section 14 of the Acquisition Act. Every person having a claim against the petitioner with regard to any of the matters specified in Second Schedule to the Act pertaining to the undertaking shall prefer a claim before the Commissioner within thirty days from the specified date in terms of Section 17 of the Acquisition Act. Section 18 provides for "Priority of claims" and which Category I claim shall have precedence over all other categories and Category II shall have precedence over category III and so on. The Second Schedule to the Act contains five Categories in which Order of Priority, the liability of the petitioner have to be discharged and taxes fall under the V Category, being the last Category and in the Order of Priority, they are V and the I being wages and salaries due to employees etc.

5.The affairs of the petitioner Club was vested with the Government with effect from 10.04.1986 to 23.02.1996, when it was handed over back to the petitioner, in the interregnum, certain events have taken place which would be of relevance to decide the correctness of the impugned order. As stated above, the return filed by the petitioner in September/October, 1985 carried forward a loss for the assessment year 1984-1985 amounting to Rs.32.14 lakhs. This return was taken up for scrutiny and an assessment order was passed on 15.03.1988 (petitioner Club was under the control of the Government). In the said order of assessment, the carried forward loss for assessment year 1984-1985 was determined as Rs.35,435/- as against return filed by the petitioner being Rs.32.14 lakhs. Accordingly, a demand for tax of Rs.35,61,928/- was raised on the petitioner. An appeal preferred to the CIT(A), who had passed an order on 12.12.1988 granting certain reliefs to the petitioner/assessee, but nothing to do with the carried forward loss for assessment year 1984-1985. The order passed by the CIT (A) was given effect to by order dated 28.02.1989 (assessment year 1985-1986). Even at that point of time, the petitioner Club continued to be vested with the Government. On 12.12.2000 i.e. after the Club was handed over to the petitioner an order was passed computing interest under Section 220(2) of the Act at Rs.24.61 lakhs. In the meantime, the Assessing Officer exercised his suo motu power of rectification under Section 154 of the Act and took up the assessment for the year 1985-1986 which was completed under Section 143(3) of the Act, by order dated 15.03.1988 for certain rectification and computed the interest at Rs.15,35,104/- as against earlier computation of Rs.24.61 lakhs. So far as the carried forward loss for the assessment year 1984-1985 which was determined at Rs.35,433/- was re-determined by the Assessing Officer, by order dated 31.10.1996 as Rs.11.92 lakhs. Once again, the Assessing Officer exercised his powers under Section 154 and passed a rectification order dated 25.08.2003 for assessment year 1984-1985 arrived at the carried forward business loss at Rs.12.82 lakhs as against the earlier determination of Rs.11.92 lakhs. This rectified order dated 25.08.2003 was given effect to by way of revision of assessment under Section 154, by order dated 29.08.2003 allowing a carried forward loss of Rs.12.82 lakhs for the assessment year 1984-1985 and arrived at the total income of Rs.26,88,790/- after adjustment for tax arrived at NIL tax payable. By separate order dated 29.08.2003, interest was demanded at Rs.24.65 lakhs.

6.As noticed above, from 09.04.1986 to 22.03.1996, the affairs of the Club vested with the Government and however, during the said period the subscription from the members alone was collected that being their only meagre income. Thus, it could be seen that the assessment for the year 1985-1986 where the petitioner carried forward the loss for assessment year 1984-1985 stood finalised only on 29.08.2003 and in other words, there were three computations made by the Assessing Officer with regard to the carried forward loss. Likewise, the interest demanded from the petitioner, there were three computations viz., on 07.12.2000 at Rs.24.61 lakhs; on 09.11.2001 at Rs.15.35 lakhs and by the final order dated 29.08.2003, computed at Rs.24.65 lakhs. Therefore, the quantum of interest payable was fluctuating, there appears to have been a nebulous even during the period when the undertaking vested with the Government and immediately thereafter which was at the instance of the Department. With these facts, the petitioner filed an applicationd dated 07.02.2003 before the CIT under Section 220 (2A) of the Act requesting for waiver.

7.The sum and substance of the averments made therein was (i) the entire business of racing and all assets and liabilities have been with the custodian since 1986 and the company had no fund to pay towards the demand raised for 1985-1986, in March 88; (ii) in spite of its repeated attempts to get the correct arrears petition, still the matter had not been sorted out by the Assessing Officer, even though the correspondence to the said effect was made as early as in March' 1996; (iii) the assessment for the year 1985-1986 requires a further revision as pointed out by the petitioner in its latest communication which is also pending.

8.With regard to the genuine hardship faced by the petitioner, it was pointed out that the revision of assessment order was passed for the assessment year 1977-1978 and the order giving effect to CIT(A)'s decision dated 25.02.1984 was passed only on 30.10.1996. However, the Assessing Officer did not allow the mandatory interest under Section 244(1A) of the Act and if that had been done, the petitioner will not be liable for interest under Section 220(2) for the assessment year 1985-1986.

9.The respondent, by the impugned order, has rejected the application filed by the petitioner on the following grounds:

(i)the Department has given interest under Section 244(1A) of the Act with regard to the revision of assessment for the assessment year 1977-1978 and when the petitioner has received that interest amount, they cannot claim that the interest payable by them should be waived. In other words, it was stated that the interest, which was granted under Section 244(1A), being a substantial amount, the petitioner cannot claim any hardship;

(ii) for being entitled for waiver of interest under Section 220(2), three Conditions have to be satisfied cumulatively and the petitioner has not satisfying Condition Nos.(i) and (ii) regarding genuine hardship and circumstances beyond their control. Therefore, the petitioner is not entitled for waiver of interest;

(iii) the petitioner could have paid advance tax or self assessment tax much before the takeover of the Club on 10.04.1986 and the liability could have been easily settled and that question of 'waiver of interest' will not arise.

10.The correctness of this reasons is being tested in this writ petition.

11.Heard Mr.M.P.Senthilumar, learned counsel for the petitioner and Mr.Naveen Durai Babu, learned Junior standing counsel for the respondents and carefully perused the materials placed on record.

12.The assessee to be entitled for waiver of interest under Section 220(2A) has to establish to the satisfaction of the CIT, the following conditions:

> "(i) payment of such amount has caused or would genuine hardship to the assessee;
> (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
> (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him."

13.The 1st respondent in the impugned order has rightly held that the assessee should cumulatively satisfy all the above three conditions. The 1st respondent does not dispute the fact that the petitioner cooperated in the enquiry relating to the impugned assessment. In other words, there is no adverse comment against the petitioner with regard to their cooperation in the assessment proceedings though the vague averment is sought to be made for the first time in the counter affidavit. Therefore, I am satisfied that the petitioner has satisfied Clause (iii) of Section 220(2A). The 1st respondent has come to a conclusion that the petitioner has not satisfied Clause (i) and (ii) of the said Section.

14.With regard to "genuine hardship", the 1st respondent states that the petitioner received the payment of interest of Rs.13.89 lakhs under Section 244(1A) of the Act and having received such a huge interest amount from the Department, the assessee cannot plead that it has been unjustly charged under Section 220(2) of the Act. Conveniently, the 1st respondent has failed to mention as to on what date the statutory interest payable to the petitioner on the refund was paid. As pointed out earlier, in the application filed by the petitioner for waiver of interest, the petitioner has specifically stated that they had succeeded before the CIT(A) in respect of the year 1977-1978 and an order was passed on 25.02.1984. However, that order was given effect to only on 30.10.1996 i.e. after twelve years and even thereafter, the Department did not pay the mandatory interest under Section 244(1A). However, this interest was paid only on 07.10.2003. Therefore, this payment which was received by the petitioner on 07.10.2003 can hardly have an impact on the present issue which pertains to the assessment for the year 1985-1986 for which the petitioner filed return of income during September, 1985. For ten long years, the administration of the undertaking vested with the Government and the petitioner had no control over the payments to be made. As mentioned above, taxes fell in Category V of Schedule II to the Acquisition Act and the last among the priority of debts as stipulated under Section 18 of the Acquisition Act. The Assessing Officer as well as the Department was well aware with the said provision and this presumption can safely be drawn on account of the conduct of the Department in not enforcing any of the demands issued and for the first time interest demand was issued on 12.12.2000 much after the Club was handed over to the Committee of Management.

15.One more important fact to be seen in the instant case is the assessment for the year 1985-1986 in which the petitioner claimed a carried forward loss for the assessment year 1984-1985 was finalised only on 25.08.2003. The Assessing Officer suo motu rectified the order for the year 1984-1985 with regard to the carried forward business loss and this rectified order was implemented and revision of assessment was made for the assessment year 1985-1986 on 29.08.2003. Thus, from 1985 onwards till 2003 the assessment was not completed. As noticed above, there were three computations with regard to carry forward loss. The petitioner cannot be stated to be wholly incorrect for claiming a carry forward loss, while they filed the return atleast they were partially right since the Department rectified the mistake suo motu and arrived at the carried forward business loss at Rs.12.82 lakhs as against the initial quantification of Rs.35,435/-. Thus, these factors should enure to the benefit of the petitioner. Thus, in the light of the factual position referred above, payment of interest would cause undue hardship to the petitioner.

16.With regard to the second aspect regarding "Circumstances beyond the control of the assessee", once again the 1st respondent relies upon the interest received by the assessee under Section 244(1A). In fact, this interest should have been paid to the petitioner even in the year 1984 as they succeeded before the CIT(A) with regard to the assessment year 1977-1978. However, the Department paid the interest only on 07.10.2003. Therefore, to state that the petitioner having been received interest should not cringe to pay interest is an analogy which has been wrongly cited. The petitioner is, as a matter of right, entitled for the mandatory interest. Therefore, the 1st respondent cannot state that the petitioner has become financial richer on account of that payment of interest. This receipt of interest which is statutory and mandatory can have no impact on the petitioner's claim for waiver under Section 220(2A). This power has been conferred on the 1st respondent by the Statute. The manner in which he has to consider such application has also been spelt out in the Statute and if the Court finds that the reasons recorded are not germane to facts or without taking into consideration the relevant factors or taking note of irrelevant factors are all good and sufficient grounds to interfere with the order.

17.The Revenue seeks to sustain the impugned order stating that the petitioner has not satisfied Clause (ii) of Section 220 (2A) as they have not established that circumstances were beyond their control. Though the giving effect to order of the CIT(A) for the assessment year 1985-1986 was passed on 28.02.1989, the assessment was completed and order was passed under Section 154 only on 29.08.2003. Therefore, to state that in the interregnum tax could have been paid is a wrong conclusion without due regard to the fact that the undertaking vested with the Government from 1986 to 1996 and even during the period when it vested with the Government, the respondent Department had no priority over their claims and they were the last among the list of priorities, the respondent Department did not challenge the provisions of the Acquisition Act. Therefore, to now pin down the petitioner/assessee and direct them to pay interest will be harsh especially when the circumstances stated above clearly shows that they were beyond the control of the petitioner.

18.The learned counsel for the Revenue relied on the decision of the High Court of Delhi in the case of Girnar Investment Limited V. Commissioner of Income Tax, [2012] 17 taxmann.com 69 (Delhi). Firstly, the said case is clearly distinguishable facts as the assessee therein contended that the demand for interest should not be made from the date on which the assessee had committed default in payment but should be fixed after taking note of the orders passed by the Appellate Authority as well as the Tribunal. This contention was rejected and the Hon'ble Division Bench ruled in favour of the Revenue holding that even if the assessment is restored and original demand gets revived from the inception, the assessee is liable to pay interest under Section 220(2) from the date on unpaid amount and any variation in the amount of demand favourbale to the assessee which was directed by any of appellate Authorities in the interregnum has no effect on the liability of the assessee to pay interest. Therefore, the decision renders no support to the stand of the Revenue.

19.Thus, for the above reasons, this Court is fully convinced that the petitioner has satisfied all the three conditions as enumerated under Section 220(2A) of the Act and therefore are entitled for waiver of interest.

20.Accordingly, the Writ Petition is allowed and the impugned order is set aside and the interest levied on the petitioner for the assessment year 1985-1986 stands waived. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl

To

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

2.The Assistant Commissioner of Income-tax,
Company Circle IV(1),
Chennai.

3.The Joint Commissioner of Income-tax,
Special Range VII
121, Nungambakkam High Road,
Chennai - 600 034.

+1 CC to Ms. Mallika Srinivasan, Advocate sr 79639.
+1 CC to Ms. Hema Muralikrishnan, advocate sr 79847.

W.P.No.29916 of 2004

SP(28/11/2017)