IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

WRIT PETITION No.46877 OF 2016

Between:

Sri Subhash Neemkar (HUF),
h.No.7-1-276/9, neemkar Nagar,
Sanath Nagar, Hyderabad

...Petitioner

Vs.

The Principal Chief Commissioner of
Income Tax,
Chief Commissioner of Income Tax (Incharge)
Hyderabad and another.

.. Respondents

For Petitioner	:	Sri M. Venkatram Reddy
For Respondents	:	Smt. K. Kiranmayee

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.46877 OF 2016

ORDER: *(per V. Ramasubramanian, J)*

The petitioner has come up with the above writ petition challenging the rejection of his application for waiver of interest under Section 234A of the Income Tax Act, 1961 (for short 'the Act').

2. Heard Mr.M.Venkatram Reddy, learned counsel for the petitioner and Mrs.K.Kiranmayee, learned Standing Counsel for the respondents.

3. Under Section 234A of the Act, an Assessee is liable to pay simple interest @ 1% for every month, whenever a return of income either under Section 139(1) or 139(4) or a return of income in response to a notice under Section 142(1) of the Act is furnished after the due date. The Act does not contemplate the waiver of any interest.

4. However, Section 119 (1) of the Act enables the Board to issue orders, instructions and directions to Income Tax authorities for the proper administration of the Act. Sub-Section (2) of Section 119 of the Act makes it clear that the instructions issued by the Board may also include instructions for relaxation of any of the provisions indicated in Clause (a) to Sub-Section (2). One of the Sections included in Clause (a) to sub-Section (2) of Section 119 of the Act is Section 234A & B.

5. It appears that the Board issued circular dated 26.06.2006, permitting the Commissioner to waive interest under Section 234A & B of the Act under certain contingencies. The contingencies under which interest can be waived, are found in clauses (a) to (d) of Para-2 of the CBDT Circular dated 26.06.2006.

5. Unfortunately, the case of the petitioner does not appear to fall under any one of the four clauses. Therefore, the view taken by the Chief Commissioner of Income Tax, *prima facie,* appears to be correct.

6. However, we do not wish to pronounce a final opinion on merits, as the petitioner has an effective alternative remedy as against the original order of assessment.

7. As against the original order of assessment, a first appeal was filed and the same was rejected. If the petitioner takes up the first appeal on further appeal before the Tribunal and succeeds as against the original order of assessment, the question of interest may not arise at all. Therefore, leaving it open to the petitioner to pursue his remedies as against the original assessment order, the writ petition is dismissed.

8. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

The Registry is directed to return the original impugned order to the petitioner.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 26, 2017

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