THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 5679 of 2003

ORDER: (per SK, J)

This writ petition was filed aggrieved by the order dated 22.11.2011 passed by the Commissioner of Income-tax, Rajahmundry, relating to the assessment year 1987-88.

2. The petitioner-assessee had sought revision of the Assessment Order relating to this year in connection with the refusal by the Assessing Officer to waive interest under Section 139(8) and Section 217 of the Income tax Act, 1961 (for short, 'the Act of 1961'). The petitioner's revision was originally rejected by the Commissioner of Income Tax, Visakhapatnam, under Order dated 18.10.1993. Assailing the said order, the petitioner filed W.P.No.2320 of 1994 before this Court. By judgment dated 14.08.2001, a Division Bench of this Court allowed the writ petition and remanded the matter back to the Commissioner of Income Tax with a direction to hear the matter afresh and pass appropriate orders within a timeframe. Significantly, the Division Bench observed that as regards the interest payable under Section 139(8) of the Act of 1961, the interest would be liable to be waived if the return was filed in response to a notice under Section 148, in terms of Rule 117A(iv) of the Income Tax Rules, 1962. The Bench went to the extent of unequivocally stating that once it is found that a return is filed under Section 148 of the Act of 1961, the provisions contained under Rule 117A(iv) would automatically apply and discretion is vested with the Income Tax Officer either to reduce or waive the interest keeping in view the facts of the case.

3. Despite such clear observations being made, the Commissioner of Income Tax, Rajahmundry, who took up the matter *de novo*, passed the impugned order dated 22.11.2011 again rejecting the revision petition filed by the petitioner. Perusal of the said order reflects that the Commissioner was carried away by his opinion that the petitioner was himself responsible for understating the cost of construction of the theatre and that the additions made towards such understatement had been confirmed.

4. In this regard, it may be noticed that the Commissioner was of the opinion that such confirmation had been made in appeal by the Income Tax Appellate Tribunal, being the highest fact-finding appellate authority. This was in direct contravention to the observation made by this Court in the order in W.P.No.2320 of 1994 that the order of the Commissioner became final and no appeal had been filed before the Income Tax Appellate Tribunal either by the Department or the assessee in relation to the cost of construction of the theatre. This error also indicates the level of application of mind by the Commissioner of Income Tax, Rajahmundry.

5. As regards the benefit available to the petitioner under Rule 117A(iv) of the Rules of 1962, the Commissioner merely stated that it was owing to the assessee's own failure to account for the actual/appropriate cost of construction that the necessity arose to reopen the assessment proceedings and but for the assessee's failure, the proceedings for the year under review would not have arisen. On this ground, the Commissioner opined that invocation of Rule 117A(iv) and Rule 40(5) of the Rules of 1962 would not carry much force.

6. The prejudice entertained by the Commissioner against the petitioner is clear from his conclusions as set out in para 8 of the impugned order. The Commissioner seems to have completely overlooked the observations made by this Court as regards the circumstances in which Rule 117A(iv) of the Rules of 1962 would apply.

7. As regards the waiver of interest under Section 217 of the Act of 1961, the Commissioner did not even choose to discuss as to why the petitioner would not be entitled to rely upon Rule 40(5) of the Rules of 1962 to seek waiver. No doubt, this Court did not deal with that aspect of the matter in W.P.No.2320 of 1994 but once the petitioner is in a position to demonstrate that the circumstances of the case are such that a reduction or waiver of interest payable under Section 217 is justified, it would be within the discretion of the Commissioner to deal with such a prayer.

8. We therefore find that the Commissioner of Income Tax, Rajahmundry, completely misdirected himself while dealing with the revision petition of the petitioner despite the fact that this Court clearly set out what was required to be done by him, in its judgment dated 14.08.2001 in W.P.No.2320 of 1994.

9. As the waiver of interest payable under Section 139(8) and Section 217 of the Act of 1961 would be in exercise of the discretionary power vesting in the Income Tax authorities, we are left with no option but to remand the matter once again to the Commissioner of Income Tax, Rajahmundry, to appreciate the matter in the right perspective and pass appropriate orders thereon by exercising his discretion judiciously. As the matter has been kept pending long enough, we are constrained to fix a

timeframe for exercise of such discretion. The Commissioner of Income Tax, Rajahmundry, shall adjudicate the revision petitions afresh on merits and in accordance with law, after giving due opportunity to the petitioner, and pass appropriate orders thereon within four weeks from the date of receipt of a copy of this order.

10. The writ petition is disposed of accordingly. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

11th July, 2017

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 5679 of 2003

(Order of the Division Bench delivered by
Hon'ble Sri Justice Sanjay Kumar)

11th July, 2017

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