

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2519 OF 2017

Video Master

....Petitioner

V/s.

The Chief Commissioner of
Income-Tax-1, Mumbai & Ors.

....Respondents

* * * * *

Mr. Deepak Trakshawala i/by. Mr. V.S. Hadade, Advocate
for the petitioner.

Mr. P.C. Chhotaray, Advocate for the respondent.

CORAM :-

M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :-

16TH MARCH, 2018.

P.C. :-

1. This petition under Article 226 of the
Constitution of India challenges an order dated 29th May,
2017 passed by the Chief Commissioner of Income-Tax. By

the impugned order dated 29th May, 2017 the petitioner's application under Section 220(2A) of the Income Tax Act, 1961 (the Act) seeking waiver of interest of Rs.2,19,99,482/- payable under Section 220(2) of the Act on account of the delay in payment of the tax for the block period 1st January, 1985 to 24th August, 1995 was rejected.

2. Briefly, the facts are that, the petitioners are engaged in the business of production and sale of Video Cassettes and purchase and sale of video copy-rights of cinematographic films. Consequent to search on 24th August, 1995 under Section 132 of the Act, the assessment was completed on 25th September, 1996 under Section 158BC of the Act for the block period 1st January, 1985 to 24th August, 1995. The final amount determined to be payable as tax consequent to the block assessment proceedings (including appeals thereafter) was Rs.1,10,72,290/-. The petitioner finally paid the full

aforesaid amount of taxes only in September, 2016.

3. In April, 2016 (prior to paying the taxes in full), the petitioner filed an application to the Chief Commissioner of Income Tax seeking waiver of interest payable on the taxes determined for the block period of 1st January, 1985 to 24th August, 1995 to the extent there was delay in making the payment of taxes to the Revenue. On receipt of the petitioner's waiver application dated 18th April, 2016, the Chief Commissioner of Income-Tax called for a report from the Assessing Officer in the context of the conditions referred to in Section 220(2A) of the Act. On receipt of the report from the Assessing Officer, the undisputed position before us is that, a copy of the report as received from the Assessing Officer was also furnished to the petitioner-Assessee. It was only thereafter, that the petitioner was heard and the impugned order dated 29th May, 2017 was passed.

4. The impugned order dated 29th May, 2017

considers the three ingredients which have to be cumulatively satisfied (not disputed by the petitioner) before waiver of interest, under Section 220(2A) of the Act, can be granted as under :-

“A) Payment of such amount has caused or would cause genuine hardship to the assessee.

B) Default in the payment of the amount on which interest was payable was beyond the control of the assessee.

C) The assessee has co-operated in the assessment and recovery proceedings.

5. It was on consideration of all the three conditions that the Commissioner of Income Taxes came to the conclusion that in the facts of this case, the petitioner does not satisfy the conditions. It records that demand relating to the period 1985 to 1995 was confirmed by the Tribunal in 2001 and by the High Court in 2004. Nevertheless, except Rs.23 lakhs out of Rs.1.10 crores, the petitioner

had not paid the principal amount for over fourteen years. It also noted the fact that, the partners of petitioner had funds available with them to meet the demand. Further, it held that, mere prolonged litigation is not a sufficient cause for delayed payment. It also held that, the petitioner had not co-operated in expeditious disposal of the assessment as it had retracted its statement. Therefore, it held no waiver of interest payable under Section 220(2) of the Act could be granted under Section 220(2A) of the Act.

6. The grievance of the petitioner is that, the impugned order has not properly dealt with the petitioner's submissions and therefore the same needs to be set aside and the petitioner's waiver application dated 18th April, 2016 be restored to the Commissioner for fresh disposal after properly considering the petitioner's submissions. It is contended that, this was a case of genuine hardship as the entire Video Cassette Industry

has, in view of the change of technology rendered non-functional and thus non-payment of the tax was on account of genuine hardship. As corollary to the first, the non-payment of interest was for circumstances beyond the control of the assessee and that the petitioner has always co-operated with the assessment and recovery proceedings. Besides, reliance was placed upon the decisions of the Madras High Court in the case of **J. Jayalalitha v. Commissioner of Income-Tax and Others Vol. 244 ITR (Mad) page 74** and of the Apex Court in **B.M. Malani V. Commissioner of Income-Tax and Another, reported in [2008] 306 ITR 196 (SC)**.

7. We find that the demand of taxes on which interest is now payable, relates to the block period 1st January, 1985 to 24th August, 1995. This demand was caused as a consequence of search on undisclosed income of the petitioner. The petitioner contested the assessment

and did not pay the taxes even when its challenge was negatived by the Tribunal in 2001 and by the High Court as far back as in the year 2004. Notwithstanding the above, the petitioner did not pay the taxes. On the contrary, it had discharged its obligation with regard to the taxes fully as late as in September, 2016. The impugned order places reliance upon the report of the Assessing Officer of which a copy was given to the petitioner. This report indicated that the partners of the assessee firm were in possession of sufficient funds to meet its obligation. The challenge to the above finding is that, it is for the Income-Tax Department to proceed against the partners of the firm and recover the money from them. This, it submitted is for the reason that the petitioner's hardship should be seen on a stand alone basis without considering the financial position of its partners. This submission to say the least is preposterous. This submission cannot be accepted, particularly in view of Section 188A of the Act which makes the partners jointly

and severally liable for the tax payable by the firm under the Act. The fact that the partners of the petitioner have funds to meet the tax demands of the firm was neither challenged before the Commissioner or even before us. Infact, non-payment of taxes and interest thereunder by the petitioner when its partners who are severally liable to pay the dues of the firm even when they are possessed of funds would dis-entitle the petitioner to any reliefs under Article 226 of the Constitution of India.

8. It is an undisputed fact that the tax payable is in respect of the period 1985 to 1995. The petitioners have chosen not to pay the tax even though it was conscious of the fact that in case it fails in its challenge, it would have to pay the interest due on the same. Thus, it was a call which the petitioner took at a time when the demand was confirmed by the Assessing Officer. Moreover, the Commissioner, in the impugned order, also found that during the assessment proceedings, statements

were made and retracted. This would by itself establish the fact that, full co-operation was lacking during the assessment proceedings. Thus holdig the petitioner is not entitled to waiver.

9. We are of the view that in matters like this, the decisions would be case specific and decisions of higher forums are of assistance only if it deals with a principle of law. In so far as, *J. Jayalalitha* (supra) is concerned, the facts in that case were completely different. It was a case, where the petitioner's bank accounts had been frozen by the Vigilance and Anti-Corruption Department. Therefore, on the above facts the Court found that as bank accounts have been frozen and properties have been attached, the non-payment of taxes and interest was beyond the control of the petitioner. In the present facts, there is no such supervening impossibility which had made it difficult/impossible for the petitioner to pay the taxes for the block period 1985 to 1995. Thus, the above decision

has no application.

10. So far as the decision of the Apex Court in *B. M. Malani* (supra) is concerned, the Apex Court, while pointing out the genuine hardship could mean genuine difficulty. Further, the Apex Court had held that, mere having of large assets would not by itself lead to the conclusion that, there was no genuine hardship. The Court, further observed that in such applications one would have to also keep in mind, the legal principles that a person cannot take advantage of its own wrong and that the statutory authority would act within the four corners of the statute. After so observing, in the case of *B.M. Malani* (supra), the issue was restored to the Assessing Officer to reconsider the issue of genuine hardship. We find that, in this case, the petitioners have not pointed out any difficulty in the partners paying the amount of taxes. Further, in the facts arising in the present case, the principle that the person cannot take advantage of his

own wrong would apply as the petitioner has failed to pay his taxes conscious of the fact that non-payment will be visited with interest, if its plea is not accepted in appeal. Thus, the above decision will have no application to the present facts.

11. Therefore, in the above view, we find that the view taken by the impugned order of Commissioner in the facts herein is a reasonable view and would not warrant an interference under Article 226 of the Constitution of India.

12. Accordingly, the petition is dismissed.

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)