IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

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

WRIT PETITION NO.30776 OF 2007
AND
M.P.NO.1 OF 2007

M/s.Narayanan Chettiar Industries,
No.14, Davidson Street,
Rep.by its Managing Partner,
Chennai 600 001. ...Petitioner

Vs.

The Chief Commissioner of Income Tax,
Chennai - IV,
Chennai 600 034. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records of the petitioner on the file of the respondent in C.No.4005(159) CCIT-IV/2006-07 and quash the impugned order dated 15.02.2007 relating to the petitioner for the assessment year 1990-91 and direct the respondent to waive interest u/s.234A, 234B, 234C and 220(2) of the Income Tax Act,1961.

For Petitioner : Mr.Venkat Narayanan for
: M/s.SubbarayaAiyar
Padmanabhan and Ramamani

For Respondents : Mr.Naveendurai Babu
Junior Standing Counsel

O R D E R

Heard Mr.Venkat Narayanan, the learned counsel appearing for M/s.Subbaraya Aiyar Padmanabhan and Ramamani, the learned counsel for the petitioner and Mr.Naveendurai Babu, the learned Junior Standing Counsel for the respondent.

2. The petitioner has impugned the order passed by the respondent, dated 15.02.2007, under Sections 234A, 234B & 234C read with 119(2) (a) and Section 220(2A) of the Income Tax Act, 1961 (hereinafter, referred to as 'the Act').

3. The petitioner's case is that, they had mortgaged a property to secure the loan transactions availed by their sister concern. On account of the default committed, the property mortgaged by the petitioner was proceeded against and sold, and the sale proceed was appropriated towards the discharge of the loan

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availed by the sister concern.

4. The question that falls for consideration in this Writ Petition, is as to whether the petitioner is liable for capital gains.

5. The petitioner sought for waiver of interest before the respondent, by relying upon the decisions of i) Hon'ble Kerala High Court, in the case of Commissioner of Income Tax Vs. Thressiamma Abraham reported in [(1997) 227 ITR 0802] and ii) Hon'ble High Court of Andra Pradesh, in the case of Commissioner of Income Tax Vs. Attili Narayana Rao reported in [(1998) 223 ITR 0010].

6. By relying upon the afore mentioned decisions, it was contended that, when the sale consideration has been directly credited to the Bank or Financial Agency, no capital gains were credit to the assessee. Further, it was submitted that, the decision rendered by the High Court of Andra Pradhesh, in V.Attili Narayana Rao's case (supra) was reversed by the Hon'ble Supreme Court only in the year 2001, in the case of Commercial Income Tax V. Attili N.Rao, reported in [(2001) 252 ITR 0880] and what would be the relevant law, which hold the field as on the date of filing the Petition, is the law laid down in the decisions rendered in the cases of Smt.Thressiamma Abraham (supra) Vs. Attili Narayanan Rao (supra).

7. The Revenue, on the other hand, would contend that the respondent has rightly rejected the petitioner's application for waiver of interest under Sections 234A, 234B and 234C of the Act as well as Section 220 (2) of the Act, as the petitioner's case does not fall under any of the parameters, as mentioned in the Circular of Central Board of Direct Taxes (CBDT), dated 26.06.2006.

8. In reply, the learned counsel appearing for the petitioner would contend that, after the impugned order was passed, it came to the notice of petitioner/assessee that the Authority has proceeded on the basis that the Appeal related only to quantification of capital gains on sale of agricultural lands and not the claim that, it was not liable to capital gains, in view of the entire sale proceeds being appropriated by the Bankers towards their dues.

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9. Thus, according to the petitioner/assessee, there was a mistake apparent from the record, and therefore, the petitioner has requested for rectifying the mistake crept in the impugned order, by filing a Petition, dated 07.04.2007 under Section 154 of the Act, which is said to have been filed through the petitioner's authorized representative on 08.04.2007. Therefore, it is submitted that the petitioner should be permitted to go before the respondent and argue the Petition filed under Section 154 of the Act. In addition to the above submission, it is submitted that, so far as waiver of interest under Section 220(2) of the Act is concerned, the respondent has not given any reasons, as to how, the petitioner has not satisfied the condition laid down under Section 220 (2A) of the Act.

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10. Further, it is submitted that the respondent is bound to record the reasons, as to why, he is not satisfied that the waiver cannot be granted. In support of such contention, the learned counsel appearing for the petitioner placed reliance upon the decision of this Court, in the case of Mani Vs. Commissioner of Income Tax, reported in [(2010) 231 CTR 0453], wherein, it is pointed out that, the respondent is bound to record reasons while passing an order, since the power exercised by the respondent is a quasi judicial power.

11. A perusal of the impugned order does not reveal any cogent reason for rejecting the request of the petitioner. The respondent is bound to consider the Petition, as to whether the petitioner fulfilled all the three conditions laid down under Section 220 (2A) and record reasons, as to how, the petitioner is not entitled to the waiver of penal interest.

12. The learned Junior Standing Counsel for the Revenue pointed out that, the Rectification Petition is said to have been presented wayback in the year 2007, and by now, it would have been disposed of. Whereas, the learned counsel appearing for the petitioner, on instructions, submitted that the Petition is yet to be disposed of, and the same is pending before the respondent.

13. Thus, considering the fact that Petition for rectification is pending, and this Court, being satisfied that the respondent has not recorded any reasons, as to why, the petitioner is not entitled to waiver of interest, levied under Section 220 (2A), the matter requires to be re-considered by the respondent afresh.

14. Thus, for the above reasons, this Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall take into consideration the Petition filed by the petitioner for rectification under Section 154 of the Act and permit the petitioner to canvass all the points before him and take a fresh decision in the matter, in accordance with law. Since it is represented that, the petitioner's Application under Section 154 of the Act, filed on 08.04.2007, if not available on files of the respondent, the petitioner at liberty to furnish true copy of the same, which shall be taken into consideration. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
ASST. REGISTRAR

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SUB ASST. REGISTRAR

dna/sd

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To

The Chief Commissioner of Income Tax
Chennai - IV,
Chennai 600 034.

+1 cc to Mr.Subbaraya Iyer, Advocate SR.NO. 551

+1 cc to Mrs.Hema Murali Krishnan, Advocate SR.NO. 405

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MG(CO)
JK 07/02/18

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