In the High Court of Judicature at Madras

Dated : 16.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2490 of 2018 & CMP.No.20200 of 2018

M/s Sri Chakra Educational
Foundation, Chennai-101 ...Appellant

Vs

The Commissioner of Income Tax
(Exemptions), Income Tax
Department, III Floor, Annex Building
121, Mahatma Gandhi Road,
Chennai-34. ...Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 31.8.2018 made in W.P.No.10149 of 2018. Petition filed under Article 226 of the constitution of India praying this Hon'ble Court to issue a writ of Mandamus to issue the order of waiver of interest u/s 220(2) and Rule 5 of the second schedule to the Act for the Assessment Year 1996-97 in the quantification of refund eligible in relation thereto by the respondent in view of the expiry of time limit of one year from the end of the month in which the petition for waiver was filed by the writ petitioner society within the scope of the proviso below section 220(2A) of the Act for passing the order in PAN: AAETS4241F

For Appellant : Mr.Mohan Parasaran, SC assisted by
Mr.R.Parthasarathy & Mr.A.S.Sriraman

For Respondent: Mrs.Hema Muralikrishnan, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.Mohan Parasaran, learned Senior Counsel assisted by Mr.R.Parthasarathy and Mr.A.S.Sriraman, learned counsel appearing for the appellant and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepting notice for the respondent.

2. This appeal has been filed by the assessee challenging the order passed the learned Single Judge in W.P.No.10149 of 2018 dated 31.8.2018.

3. The said writ petition was filed by the appellant – assessee praying for the issuance of a Writ of Mandamus to issue the order of waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the Act for the assessment year 1996-97 in the quantification of refund eligible in relation thereto by the respondent in view of the expiry of time limit of one year from the end of the month in which the petition for waiver was filed by the writ petitioner society within the scope of the proviso below section 220(2A) of the Act for passing the order in PAN: AAETS4241F.

4. The learned Single Judge, by the impugned order, disposed of the said writ petition with a direction to the respondent to consider the petition filed by the appellant dated 21.2.2017 seeking waiver of interest. The learned Single Judge also made it clear that he had not expressed anything on the merits of the appellant's claim.

5. The learned Senior Counsel appearing on behalf of the appellant would contend that in terms of the Proviso to Section 220(2A) of the Income Tax Act, 1961 (for brevity, the Act), the order accepting or rejecting an application of the assessee for waiver either in full or in part shall be passed within a period of twelve months from the end of the month, in which, the application is received. It is the further submission of the learned Senior Counsel that in the assessee's case, the application was presented on 22.2.2017, but no orders were passed within the stipulated period of twelve months. Therefore, the assessee is deemed to have been granted the claim and consequently, they will be entitled to the refund of any interest paid by them.

6. It is the further submission of the learned Senior Counsel appearing on behalf of the appellant that the respondent has become functus officio, as the period of twelve months as stipulated in the First Proviso to Section 220(2A) of the Act is over and that beyond the said period of twelve months, no orders can be passed. In this regard, he places reliance on the decisions of the Hon'ble Supreme Court in the case of Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union [reported in AIR 1953 SC 95] and in the case of Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya [reported in 1987 (1) SCC 606].

7. Countering the said submissions, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel would contend that the principle advocated by the appellant is incorrect, as even assuming that the respondent - Authority has not passed orders within a period of twelve weeks, that does not mean that the assessee is automatically entitled to waiver, since the assessee has to cumulatively satisfy three conditions stipulated under Section 220(2A) of the Act.

8. After elaborately hearing the submissions of the learned counsel on either side and carefully perusing the materials placed on record, we are of the considered view that there is no error in the order passed by the learned Single Judge in directing the respondent to decide the application for waiver dated 21.2.2017.

9. The decision in the case of Strawboard Manufacturing Co. Ltd., can be of no assistance to the case of the assessee, since it was a case where a Notification was issued under the Industrial Disputes Act, 1947 notifying a Tribunal to decide the issue within a time frame. The question was as to whether the Tribunal had become functus officio after the period had lapsed. The facts of the present case are entirely different since the case on hand is a case where there is exercise of statutory powers under Section 220(2A) of the Act, which also contains conditions to be fulfilled by the assessee.

10. The decision in the case of Balasinor Nagrik Cooperative Bank Ltd., was rendered interpreting Section 36(1) of the Gujarat Cooperative Societies Act, 1961 and the Proviso specifically provides that the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission and in the absence of such communication, the resolution shall be effective. The First Proviso to Section 220(2A) of the Act is worded entirely in a different version and therefore, the decision in the case of Balasinor Nagrik Cooperative Bank Ltd., will not help the assessee.

11. As observed by us earlier, we find no error in the order passed by the learned Single Judge in directing the respondent to take a decision on the application for waiver dated 21.2.2017. However, since the appellant has raised the question of jurisdiction of the respondent to take a decision in the matter and also made the other consequential submission that if it is held that the respondent has no jurisdiction, then the assessee is automatically entitled to waiver, we are of the opinion that these two issues can be canvassed by the assessee before the respondent and the respondent shall take a cumulative decision in the matter while deciding the

application for waiver dated 21.2.2017 including the jurisdictional issue raised by the assessee before us.

12. With the above observation, the writ appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

13. It is submitted by the learned Senior Counsel appearing on behalf of the appellant that the respondent fixed the hearing on 19.11.2018 and necessary directions may be issued to the respondent to adjourn the hearing by a week.

14. We direct the learned Senior Standing Counsel appearing for the Revenue to inform the respondent about the orders passed by this Court in this appeal today and direct the respondent to postpone the hearing by a week and issue fresh notice of hearing to the assessee.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

RS

To

The Commissioner of Income Tax (Exemptions),
Income Tax Department, III Floor,
Annex Building, 121, Mahatma Gandhi Road, Chennai-34.

+ 1 cc to Mr. S.Sridhar, Advocate Sr.78524
+ 1 cc to M/s. Hama Muralikrishnan, Advocate Sr.78660

WA.No.2490 of 2018 &
CMP.No.20200 of 2018

SV(CO)
EU(05/12/2018)