IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.24771 & 24772 of 2010
and
M.P.Nos.1 and 1 of 2010

M/s.MGM Earth Equipment Agencies (P) Limited,
No.1, 9th Cross Street,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 034. ... Petitioner in both Wps

Vs.

1.The Chief Commissioner of Income Tax
Chennai-II,
121, Nungambakkam High Road,
Chennai-600 034.

2.The Commissioner of Income Tax,
Chennai-III,
121, Nungambakkam High Road,
Chennai-600 034. ... Respondents 1 & 2 in both WPs

3.The Assistant Commissioner of Income Tax,
Company Circle IV(2),
121, Nungambakkam High Road,
Chennai-600 034. ... Respondent No.3 in WP.No.24771/2010

4.The Assistant Commissioner of Income Tax,
Company Circle IV(4),
121, Nungambakkam High Road,
Chennai-600 034. ... Respondent No.3 in WP.No.24772/2010

Prayer in WP.No.24771 of 2010: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the Petitioner on the file of the First Respondent to quash the impugned order dated 20.1.2010 issued in CC-II/B(66)/2001-2002 in the rejection of the prayer for waiver of interest under Section 220(2) of the Income Tax Act, 1961 quantified and levied for the assessment year 1997-98 and consequently direct the First Respondent to accept the prayer for such waiver of interest.

Prayer in WP.No.24772 of 2010: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the Petitioner on the file of the First Respondent to quash the impugned order dated 20.1.2010 issued in CC-II/B(66)/2001-2002 in the rejection of the prayer for waiver of interest under Section 234A & Section 234B of the Income Tax Act, 1961 quantified and levied for the assessment year 1997-98 and consequently direct the First Respondent to accept the prayer for such waiver of interest.

(In both WPs)
For Petitioner : Mr.S.Sridhar
For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

C O M M O N O R D E R

The petitioner is a company that had filed a return of income in respect of AY 1997-1998 in terms of the provisions of the Income Tax Act, 1961 (in short, 'Act') claiming depreciation at the rate of 100% on cinematography films. The assessment was completed on 30.03.2000 by the respondent disallowing the claim of depreciation on the ground that the claim was bogus and unsubstantiated. While doing so, the Assessing Authority reduced the lease rentals in regard to the cinematography films from the total income returned.

2. The petitioner filed an appeal before the Commissioner of Income Tax (Appeals), who, vide order dated 13.10.2000, confirmed the order of assessment, dismissing the appeal filed. A further appeal was filed by the petitioner before the Income Tax Appellate Tribunal, ('Tribunal') which, by order dated 05.06.2003 also confirmed and the findings in regard to the so called lease transactions. The findings of fact rendered by the Tribunal are extracted below:

> '5.Rival contentions in regard to the above have been very carefully considered. The assessee has not been able to place before us any material with regard to the observation of the Assessing Officer that three of the five films owned by M/s.Vivekananda Film Circuit and M/s.Vivekananda Pictures after the chain of transactions in a matter of 11 days went back to the owner. The Assessee was not in a position to disprove this factor. Therefore, in regard to those

three films the transaction has been proved to be bogus by the authorities and therefore the claim of depreciation at 100% is not admissible. One other film, it was in Gemini Film Laboratories, the facts of which are almost identical, the assessee could not controvert the finding of facts to the effect that the transactions were bogus. The assessee had not been able to place any material to suggest that the films were exhibited. The other film apparently the facts are also identical, in a sequence of 11 days when the owner of the film who parted with it initially gets back, it clearly goes to show that the assessee by means of these transactions wanted to have the benefits of depreciation. The asset was never intended to be exhibited and in these facts it has to be taken as the claim of depreciation which is allowed on an asset owned by the assessee which is not the case here is negatived. The assessee raised an alternative argument, namely that if the transaction of purchase and lease was a paper transaction, the income from the lease shown by the assessee cannot be treated as its assessable income. This matter could be examined by the Assessing Officer. We accordingly uphold the orders of the authorities except for the last alternative claim that the income in the circumstances of the case arising from the lease could be treated as income of the assessee at all or not. That part is remanded to the file of the Assessing Officer. The appeal is allowed in part.'

3. A Miscellaneous Application filed by the petitioner before the Tribunal was considered and the original order modified to conclude that as against seven cinematograph films in respect of which depreciation has been disallowed, the disallowance as against five stand confirmed and the disallowance as against two would be liable to be reversed.

4. As against the aforesaid order in Miscellaneous Application, both the Revenue as well as the petitioner filed Tax Case (Appeals) before this Court in terms of Section 260A of the Act. The appeal of the Revenue in T.C.(A).No.1084 of 2008 was dismissed on the ground of low tax effect on 25.03.2019 and the appeals of the assessee/petitioner in T.C.(A).Nos.464, 1054 and 1074 of 2007 were withdrawn on 04.04.2019. Thus, the findings of fact as regards the five transactions upon which depreciation was disallowed have become final.

5.While this is so, the petitioner sought waiver of the interest levied under Section 220(2) of the Act for delayed remittance of the demands raised. Admittedly the interest levied relates to the demands raised as per order of assessment dated 30.03.2000. The Chief Commissioner of Income Tax, upon consideration of the petition under Section 220(2) rejected the same holding that the conditions set out under Section 220(2A) have not been satisfied in the present case. The conditions stipulated are (i) that the payment of the amount would cause genuine hardship to the assessee, (ii) default in payment of amount on which interest was payable was due to circumstances beyond the control of the assessee and (iii) the assessee had co-operated in any enquiry relating to the assessment or any other proceeding for recovery.

6.In the present case, there is no dispute raised by the department in regard to condition No.(iii) i.e. that the assessee had not co-operated either at the time of assessment or subsequent proceedings for recovery. As far as condition Nos: (i) and (ii) are concerned, the financial position of the petitioner has to be necessarily ascertained and appreciated and the Chief Commissioner has extracted the summary of its financials during the assessment years 1998-1999 to 2002-2003 as follows:

	A.Y.98-99	A.Y.99-00	A.Y.00-01	A.Y.01-02	A.Y.02-03
Profits before allowance of depreciation	29.91 Lakhs	22.22 lakhs	19.75 lakhs	11.29 lakhs	3.78 lakhs
Advance to Sister concerns					
MGM India Benefit Fund	98.7 lakhs	102 lakhs			
MGM Diamond Beach Resort	30.00 lakhs	30.00 lakhs	30.00 lakhs	30.00 lakhs	
Indo Asia Agencies	55.97 lakhs	59.33 lakhs	59.33. lakhs	59.33 lakhs	11.84 lakhs
Reserves and Surplus	29.57 lakhs	38.12 lakhs	49.42 lakhs	54.78 lakhs	54.71 lakhs
Sundry Creditors	196.18 lakhs	210.10 lakhs	49.71 lakhs	81.18 lakhs	15.27 lakhs

The summary extracted above indicates that the petitioner is not a loss making concern. Before depreciation, substantial advances have been made to sister concerns, even after which amounts have been transferred to reserves and surplus. The assessee has not demonstrated or established hardship and I find no perversity in fact or in law, and thus no reason to interfere with the conclusion of the respondent to the effect that the conditions stipulated under (i) and (ii) have not been satisfied by the petitioner.

7.W.P.No.24771 of 2010 is dismissed, except to state that the amount of interest under Section 220(2) be re-computed so as to relate to the modified demand quantified post the order of the Income Tax Appellate Tribunal in Miscellaneous Application. A copy of the order has not been placed on record by the petitioner but the aforesaid position is not contested by the revenue. Let this exercise be completed expeditiously. No costs. Consequently, connected miscellaneous petition is closed.

8. In W.P. No.24772 of 2010, the petitioner has challenged order dated 20.01.2010 wherein its request for waiver of interest under Section 234A and B have been rejected by the Chief Commissioner of Income Tax. A perusal of the impugned order reveals that the respondent has rightly taken into account the Notification of the Board bearing No.400/29/2002-IT(B) dated 26.06.2006 setting out four Clauses:

2 (a) deals with waiver of interest arising out of an order of assessment pursuant to proceedings for search and seizure under Section 132 of the Income Tax Act, which is inapplicable to the present case.

2 (b) deals with the issue of waiver of interest chargeable under Section 234C of the Income Tax Act, inapplicable to the present case.

2 (c) deals with a situation where the assessee has not offered income to tax, on the legitimate understanding that such income is not liable to tax in the light of a Judgment of the Supreme Court or by a larger Bench of the jurisdictional High Court or any amount amount liable to tax in consequence of any retrospective amendment of law. This condition is also not satisfied in the present case.

2 (d) deals with non-filing of returns of income in certain unavoidable circumstances. This clause is also inapplicable.

9.Thus the conclusion of the Chief Commissioner to the effect that none of the situations envisaged under the Notification would arise in the present case, is unassailable.

10.Moreover the question of waiver of interest under Section 234 A, B and C has been considered by the Supreme Court in the case of Commissioner of Income Tax vs. Anjum H.Ghaswala and others ((2001) 252 ITR 1) wherein the Full Bench settles the position categorically to the effect that there can be no possibility of waiver of interest outside of the situations enumerated under Notification No. 400/29/2002-IT(B) dated 26.06.2006, as above.

11.W.P.No.24772 of 2010 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

vs

To

1.The Chief Commissioner of Income Tax
Chennai-II,
121, Nungambakkam High Road,
Chennai-600 034.

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3.The Assistant Commissioner of Income Tax,
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Chennai-600 034.

4.The Assistant Commissioner of Income Tax,
Company Circle IV(4),
121, Nungambakkam High Road,
Chennai-600 034.

+1cc to Mr.S.Sridhar, Advocate, SR.No.86238.
+2cc to Mrs.Hema Muralikrishnan, Advocate, SR.No.86025.

W.P.Nos.24771 & 24772 of 2010
and
M.P.Nos.1 and 1 of 2010

PP(CO)
CSR:20.01.2020