IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.12.2019
Pronounced On	16.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.5199 to 5203 of 2010
and
M.P.Nos.1, 1, 1, 2, 1 & 1 of 2010

E.K.Hajee Mohamed Meera
Sahib & Sons,
Periya Agraharam,
Erode - 638 005.
Rep. by its partner,
Mr.H.A.Md.Hasanali. ... Petitioner in All W.Ps.

vs

1.Chief Commissioner of Income Tax,
63, Race Course Road,
Coimbatore - 641 018.

2.Joint Commissioner of Income Tax,
Special Range,
Income Tax Building,
Gandhi Road, Salem - 7,
now transferred to
Income Tax Officer, Ward - I (4),
No.15, Gandhiji Road,
Erode 638 001. ... Respondents in All W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a writ of certiorarified mandamus calling for the records in C.No.1433(345)/06-07, C.S.No.1433(239)/ 02-03, C.No.1433(345)/06-07, C.No.1433(296)/ 04-05 and C.No.1433(2) /07-08 dated 30.10.2009 relating to the Assessment Years 1992-93 to 1994-95, 2002-03 and 2004-05 on the file of the 1st respondent and quash the same and direct the 1st respondent to waive the interest in dispute.

For Petitioner : Mr.M.P.Senthil Kumar in All W.Ps.

For Respondents: Mr.A.N.R.Jaya Prathap
Senior Counsel in All W.Ps.

C O M M O N   O R D E R

By this common order, all the above writ petitions are being disposed.

2.In these writ petitions, the petitioner has challenged the impugned orders dated 13.10.2009 passed by the 1st respondent Chief Commissioner of Income Tax under Section 119 (2) (a) read with Section 234 B of the Income Tax Act, 1961.

3.The petitioner had filed petitions under Section 119 (2) (b) of the Income Tax Act, 1961 read with Circular F-No. 400/129/2002-IT (B) dated 26.06.2006 for waiver of interest before the 1st respondent Chief Commissioner of Income Tax for the assessment years 1992-93 to 1994-95 and assessment years 2002-03 and 2004-2005.

4.By the impugned orders, the 1st respondent chief Commissioner of Income Tax has rejected the prayer for waiver of interest with the following observations in the respective impugned order for the assessment year 2004-05 reads as under:-

> * 9.0 Waiver of interest is to be seen as per the conditions laid down in Circular in F No.400/129/2002-IT(B) dated 26/6/2006. From the file it is noted that there was no voluntary compliance either in the filing of a revised return. Neither did the firm comply in the payment of tax. A glance at the file indicates very little by way of advance tax has been paid. On the contrary, the firm has been quick to place petitions seeking a stay on the payment of taxes.
>
> * 10.0 This petition is not a case of financial hardship where tax could not be paid due to certain financial constrains. Rather tax was not paid in the mistaken belief or as guided by the Auditing or legal counsels that advance tax need not be paid. Interest u/s 234B for failure to pay tax is compensatory since it is charged on the amount of tax that should have been paid by the due period.
>
> * 11.0 Accordingly the firm does not quality for waiver of the interest.

* 12.0 In view of the above petitions of the assessee is rejected.

(* Paragraph numbers vary in each of the impugned order)

5.The petitioner an exporter of leather products had assumed that it was not liable to pay income tax and therefore had failed to pay advance tax on such export turnover. The petitioner had later claimed exemption under Section 80HHC of the Income Tax Act, 1961. For the assessment years 1992-93 to 1994-95, the returns filed by the petitioner were accepted after processing under Section 143 (1) of the Act. Thereafter, assessments were reopened under Section 148 of the Income Tax Act, 1961 orders came to be passed under Section 147 of the said Act.

6.For the assessment years 2002-03 and 2004-05, the returns were processed and assessments were completed under Section 143 (3) by re-computing the relief under Section 80 HHC by partially granting refund of total income.

7.Since there was a delay in payment of advance Income Tax, the petitioner was called upon to pay interest under section 234 B of the Income Tax Act, 1961. Details of the interest demanded are detailed below:-

A.Y	Admitted income in return	Assessed income after reworking under 80HCC	Interests		
			U/s. 234A	U/s. 234B	U/s. 234C
1992-93	Nil	5,85,700	7,880	1,61,540	-
1993-94	4,04,790	5,53,220	34,692	1,02,584	7,344
1994-95	2,40,110	4,14,150	5,800	1,23,480	2,540
2002-03	Nil	-	-	59,235	-
2004-05	Nil	17,19,498	-	2,03,544	-

8.It is the contention of the petitioner that between the assessment years 1992-93 and 1994-95, there were several decisions of the original and the appellate authority wherein it was concluded that an exporter was not required to pay income tax on the export turnover and since the petitioner was an exporter, it was entitled to claim deduction under Section 80 HHC of the Income Tax Act, 1961. The learned counsel for the petitioner submits that the petitioner entertained a bona fide view that it was entitled to claim the benefit of deduction under Section 80 HHC of the Income Tax Act, 1961.

9.It is submitted that the decision of the Bombay High Court in CIT vs Shrike Constructions Equipments Ltd., (2000) 246 ITR 429 and the decision of this court in CIT vs Nameel Leather and Uppers, (2005) 23 ITR 350, had also concluded that the petitioner was entitled to deduction under Section 80 HHC of the Income Tax Act, 1961. The above decision was subsequently reversed by the Honourable Supreme Court only on 11th March, 2004 in IPCA laboratories Ltd., vs Deputy Commissioner of Income Tax, (2004) 266 ITR 0521 and therefore the petitioner paid the tax and prayed for waiver of Income Tax.

10.It is submitted that the Chief Commissioner of Income Tax ought to have granted waiver of interest in favour of the petitioner in the exercise of power conferred under the Income Tax Act, 1961 read with the aforesaid circular dated 26.06.2006. The learned counsel for the petitioner further relies on the decision of the court in R.Mani vs Chief Inspector of Income Tax, 2017 SCC OnLine 15884 and the decision of the court in N.Haridas and Co. vs Chief Commissioner of Income Tax and another, 2007 SCC OnLine 1061.

11.Per contra, the learned standing counsel for the income tax department Mr.A.N.R.Jayaprathap submits that the impugned orders passed by the Chief Commissioner of Income Tax were well reasoned and require no interference under Article 226 of the Income Tax Act, 1961.

12.He submits that the waiver can be granted only where any income was not chargeable to income tax in the case of an assessee on the basis of an order passed by the High Court within whose jurisdiction the assesee was assessable to income tax and as a result of which, he did not pay income tax in relation to such income in the previous years and subsequently, in consequence of any retrospective amendment of law or the decision of the Supreme Court of India or as the case may be a decision of a larger bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final), in any assessment or reassessment proceeding the advance tax paid by the assessee during such financial year is found to be less then the amount of advance tax payable on his current income, and the assessee is chargeable to Interest under Section 234 A, B or C as the case may be, the Chief Commissioner/Director General as the case may be on satisfaction that the assessee's case was fit for reduction or waiver of interest grant such waiver of interest.

13.Learned counsel for the income tax Department further submits that there were no decisions of this court so as to claim the benefit of the waiver of interest in terms of the above circular and therefore submits that the Chief Commissioner of Income Tax has correctly denied the waiver of interest under Section 234 B Of the Income Tax Act, 1961.

14.I have considered the arguments advanced by the learned counsel for the petitioner and for the income tax department. The Central Board of Direct Taxes has issued the circular in the exercise of powers vested under Section 119 (2) (a) of the Income Tax Act, 1961. The circular has to be read strictly. Normally, these cannot be any addition or substitution by the authority concerned while entertaining the application for waiver of interest under Section 234 A, B or C of the Income Tax Act, 1961. Since, during the Assessment Years 1992-93 to 1994-95 there were no decisions of this court, the respondent was justified in not granting waiver of interest as per the above circular.

15.However, it is noticed that the decision of the Bombay High Court in CIT vs Shirke Construction Equipments Ltd cited supra was pronounced on 24.07.2000. The said decision appears to have emanated from an order passed by the Income Tax Appellate Tribunal, Mumbai where the assessee had succeeded.

16.The Bombay High Court upheld the order of the Income Tax Appellate Tribunal and held that condition for claiming deduction under Section 80P, 80HH or 80M (as it stood) was not there in Section 80HHC and therefore dismissed the appeal filed by the Commissioner of Income Tax. This view was reversed by the Honourable Supreme Court on 11.03.2004 in IPCA laboratories Ltd., vs Deputy Commissioner of Income Tax, (2004) 266 ITR 0521.

17.Income Tax Act, 1961 is a Central enactment. The decisions of the Tribunal and the High Court rendered under the said enactment are widely reported and followed by assessee and tax practitioners.

18.They have both persuasive and precedential value. The authorities in the hierarchy under the Income Tax Act, 1961 are bound by the decisions rendered by such higher forums.

19.Therefore, the petitioner can legitimately state that it was entitled to take a bonafide view that it was eligible for exemption from payment of tax and/or claim deductions under Section 80HHC of the Income Tax Act, 1961 provided there were decisions of Tribunal though not of the jurisdictional Tribunal or the High Court as the case may be to entertain such a view.

20.The Central Board of Direct Taxes perhaps could to have considered these factors and such eventualities while issuing the said circular. However, it has restricted to specified instances for grant of waiver. Since, the respondent is bound by the circular, I find no fault in the impugned orders of the respondent in refusing to grant waiver to the petitioner in terms of the said circular.

21.At the same time, the circular being a beneficial circular, it can be construed liberally in appropriate case as the intention of the circular was to grant waiver where ever there were orders of the Courts/Tribunal which allowed an assessee to entertain a bonafide view to not to pay tax or claim deduction as Income tax is to be administered uniformly all over the Country.

22.If indeed there were decisions of the Tribunals and/or of High Court though not necessarily of the jurisdictional Tribunal/High Court, the petitioner can be stated to have entertained a bonafide view to not to pay tax on such turnover. The petitioner has not shown any decision of the Tribunal or High Court at the time of filing return.

23.If however the petitioner's view was concurrently or later accepted though another instance to infer a bonafide, it would not entitle the petitioner to claim waiver/exemption, such instance of non payment of tax or claim for deduction cannot be construed liberally.

24.Therefore, waiver of interest under Section 234B of the Income Tax Act, 1962 for the assessment years 1992-93, 1993-94, 1994-95, 2002-03 and 2004-05 can be directed to be given to the petitioner if there were decisions of the Tribunal or High Court though not of the jurisdictional Tribunal/High Court which would have allowed the petitioner to entertain such belief.

25.In the light of the above observations, I am of the view that the impugned orders are liable to be set aside and the cases be remitted back to the respondent to re-examine the issue afresh.

26.In case the petitioner is able to show existence of any judgment of the Tribunal/High Court though not necessarily of the jurisdictional Tribunal/High Court at the time of filing of return, respondent can grant waiver/exemption to the petitioner by liberally construing the Circular.

27.Accordingly, the impugned orders are set aside and the cases are remitted back to the respondent to pass a fresh order. All the Writ Petitions are allowed by way of remand. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. Chief Commissioner of Income Tax,
   63, Race Course Road,
   Coimbatore - 641 018.

2. Joint Commissioner of Income Tax,
   Special Range,
   Income Tax Officer, Ward - I (4),
   No.15, Gandhiji Road,
   Erode 638 001.

3. The Section Officer,
   V.R.Section. High Court,
   Madras.

+1 CC to Mr.N. Muthukumar, Advocate sr 104336.
+1 CC to Mr.A.P. Srinivas, Advocate sr 104246.

W.P.Nos.5199 to 5203 of 2010
and
M.P.Nos.1, 1, 1, 2, 1 & 1 of 2010

RGN(CO)
SP(17/02/2020)