IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.5422 of 2019 and
W.M.P.No.6164 of 2019

M/s.CVT Technology Solutions Private Limited,
Rep by its Managing Director Shri P.Thangamuthu,
4th Main Road, SIPCOT IT Park,
Siruseri, Off Old Mahabalipuram Road,
Chennai 603 103. ... Petitioner

Vs.

1.The Income Tax Officer,
Corporate Ward - 1(3),
Room No.612, 6th Floor, Wanaparthi Block,
121, M.G.Road,
Chennai 600 034.

2.The Principal Commissioner of Income Tax, Chennai-1,
Room No.701, 7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai 600 034. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in C.No.204/Waiver of Interest/PCIT-1/2018-19 dated 29.01.2019 in respect of the A.Y.2009-10 on the file of the second respondent, quashing the same and directing the second respondent to waive the interest u/s. 220(2) of the 'Act'.

For Petitioner : Mr.Philip George

For Respondents: Mrs.Hema Muralikrishnan, SSC

O R D E R

The present writ petition has been filed against the order passed by the second respondent in C.No.204/Waiver of Interest/PCIT-1/2018-19 dated 29.01.2019 in respect of the A.Y.2009-10 and direct the second respondent to waive the interest u/s. 220(2) of the 'Act'.

2. The case of the petitioner is as follows:-

(i) The petitioner filed the return of Income Tax for the assessment year 2009-10, and the same was processed under Section 143 of the Income Tax Act, 1961. The petitioner was intimated on 13.10.2010 about the aggregate tax liability including interest under Section 234(B) and 234(C) of the Income Tax Act to the tune of Rs.3,34,656/-.

(ii) According to the petitioner that he was not able to pay the outstanding demand of Rs.17,26,244/-, due to severe financial constraints and therefore, sought approval of the first respondent for payment under installment scheme vide its petition dated 22.09.2016 after making initial payment of Rs.2,00,000/- on 22.09.2016. In response to the application filed for payment under installment scheme, the first respondent vide his proceedings dated 30.09.2016, granted approval for payment under installment scheme under Section 220(6) of the Income Tax Act, requiring the petitioner to remit Rs.2,00,000/- for seven months and the final installment of Rs.1,26,244/- as eighth installment. Thereafter, the petitioner has strictly complied with the installment scheme and paid the entire arrears from September 2016 to May 2017. After completion of the installment scheme in May 2017, the first respondent by its communication dated 22.01.2018, demanded the petitioner for payment of a sum of Rs.12,74,432/- as interest for the assessment year 2009-10 under Section 220(2) of the Act for the defaulted period from December 2010 to May 2017.

(iii) At this, the petitioner appears to have filed a waiver application under Section 220 (2A) of the Income Tax Act to the Principal Commissioner of Income Tax, Chennai, the second respondent herein, setting out the financial difficulties faced by the petitioner and the petitioner has also satisfied with the conditions for grant of waiver under Section 220(2A) of the Income Tax Act.

(iv) In response to the application seeking waiver, on 07.01.2019, when the petitioner's authorized representative appeared before the second respondent, the petitioner's representative was informed that the matter would be heard by the Chief Commissioner of Income Tax and hence, on 07.01.2019, there was no effective hearing of the case. While so, the second respondent on 29.01.2019, passed an order rejecting the application of the petitioner for waiver of interest, which is impugned in the present writ petition.

3. The principle submission on behalf of the petitioner herein is that there was no effective hearing granted to the

petitioner before the impugned order of rejection came to be passed by the second respondent. According to the learned counsel, the manner in which the order came to be passed without hearing the petitioner is violative of the second proviso of Section 220 (2A) of the Income Tax Act, which reads as follows:-

> "Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard."

4. The learned counsel for the petitioner would submit that the above proviso provides for personal hearing of the assessee and in this case, the petitioner was not heard at all nor its representative and therefore, the order passed by the second respondent is contrary to the mandatory provisions of the Income Tax Act and therefore, on this ground alone the impugned order is liable to be interfered with.

5. In response to the notice issued in the writ petition, Mrs.Hema Muralikrishnan, learned counsel entered appearance and filed a detailed counter affidavit on behalf of the respondents. In the counter affidavit, it is stated that the authority has followed the procedure and the order has been passed on merits and therefore, the same does not call for interference.

6. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

7. From the materials and pleadings as disclosed in the writ petition, it is seen that the petitioner has not been heard by the second respondent while passing the impugned order, rejecting his claim for waiver made under Section 220(2A) of the Income Tax Act. When specific proviso has been provided under Income Tax Act, affording personal hearing to the assessee, the same has to be adhered to by the authority to exercise his power under the provisions of the Act. In this case, it appears that the second respondent has not afforded effective or reasonable opportunity to the petitioner and simply passed a cryptic order on 29.01.2019, which is the subject matter of challenge in the present writ petition. This Court therefore is of the view that the second respondent has passed the impugned order violating the provisions of the Income Tax Act. As rightly contended by the learned counsel for the petitioner that on this ground alone, the writ petition is liable to be allowed.

8. For the above said reasons, the impugned order in C.No.204/Waiver of Interest/PCIT-1/2018-19 dated 29.01.2019, is hereby set aside and the matter is remanded back to the second respondent for fresh consideration of the waiver application filed by the petitioner herein. The second respondent is directed to follow the procedure as provided under Section 220

(2A) of the proviso provided thereunder before passing any order in the waiver application filed by the petitioner. The second respondent is directed to dispose of the waiver application by granting reasonable opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Income Tax Officer,
Corporate Ward - 1(3),
Room No.612, 6th Floor, Wanaparthi Block,
121, M.G.Road,
Chennai 600 034.

2.The Principal Commissioner of Income Tax, Chennai-1,
Room No.701, 7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai 600 034.

+1cc to Mr.Philip George, Advocate sr.no.29585
+1cc to Mrs.Hema Muralikrishnan, Advocate sr.30177

W.P.No.5422 of 2019

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nr 08/05/2019