IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.5633 of 2019
and
W.M.P.Nos.6418 & 6420 of 2019

M/s.Liberty Equipments Private Limited,
Represented by its Managing Director,
R.Aravindhan,
No.373, SIDCO Industrial Estate,
Ambattur,
Chennai – 600 098. ... Petitioner

Vs.

1. The Principal Commissioner of Income Tax – 4,
301, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600034.

2. The Income Tax Officer,
Corporate Ward – 4(4),
Chennai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the Respondents in PAN: AABCL4173D and quash the impugned order in C.No.85/Waiver of interest u/s. 220(2)/PCIT- 4/2017-18 dated 31.12.2018 passed by the 1st Respondent as illegal and without jurisdiction and consequently direct the 1st respondent to waive an amount of Rs.26,82,187/- levied as interest u/s. 220(2) of the Act.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

This writ petition is filed challenging the order of the first respondent dated 31.12.2018, rejecting the application filed by the petitioner for waiver of interest under Section 220(2A) of the Income Tax Act, 1961.

2. The following are the short facts and circumstances which have driven the petitioner to file the present writ petition :-

In respect of the Assessment Year 2010-11, an order was passed on 28.03.2014, wherein and whereby, the Assessing Officer imposed the tax liability as well as other statutory liabilities on the petitioner thereby, computing the total tax payable as Rs.1,05,76,151/-. The petitioner challenged the said order of assessment before the Commissioner of Income Tax (Appeals). The said Appellate Authority by order dated 31.07.2017 partly allowed the appeal and reduced the tax liability. Consequent to the order passed by the Appellate Authority, the Assessing Officer through his proceedings dated 04.09.2017, passed a giving effect order, wherein and whereby, he made a demand of arrears of tax liability as Rs.97,22,499/- and interest at Rs.26,82,187/-. The petitioner paid the tax liability on 16.09.2017. Thereafter, the petitioner filed the Waiver Petition on 13.12.2017 under Section 220(2A) of the Income Tax Act, 1961, by contending that the assessee company is still making losses and is not financially sound to make the interest payment under Section 220 (2) as evident from the return of Income filed for the succeeding years and that the assessee has cooperated with the Revenue in the assessment proceedings and that the default in payment of the tax liability was due to circumstances beyond the control of the assessee. The said application was rejected by the first respondent through the impugned order dated 31.12.2018.

3. The respondents filed a counter affidavit disputing the claim of the petition for waiver and supporting the order impugned in this writ petition.

4. Mr.R.Sivaraman, learned counsel appearing for the petitioner submitted that the first respondent while rejecting the application filed under Section 220(2A) of the said Act, has not considered the reasons stated in detail in the Waiver Application, more particularly, with regard to the undue hardship being faced by the petitioner Company and that the delayed payment of tax was due to the circumstances beyond the control of the assessee. Thus, the learned counsel contended that the Commissioner has proceeded to pass the impugned order of rejection, only by stating that the Directors of the assessee Company could have easily made the payment of interest, when they themselves have given loans to the assessee to the tune of Rs.42,00,000/- for making the payment

of income tax. The learned counsel invited this Court's attention to Section 220(2A) of the Income Tax Act and submitted that when the petitioner/assessee, through their application for waiver, has pleaded and satisfied all the three parameters referred to in the above said provision, the first respondent ought to have considered the application favorably and granted the waiver of interest.

5. On the other hand, the learned senior standing counsel appearing for the respondents/Revenue after reiterating the contentions raised in the counter affidavit submitted that the first respondent has rightly taken note of the fact that the Directors of the assessee Company have given loans to the assessee for making payment of Income Tax and therefore, the assessee Company could have also paid the interest of making such arrangement with the Directors. Thus, the learned counsel contended that the order of the first respondent does not require any interference.

6. Heard both sides and perused the materials placed before this Court.

7. The petitioner is aggrieved against the rejection of their Waiver Application for payment of interest. It is seen that in respect of the relevant Assessment Year 2010-11, an order of assessment was passed on 28.03.2014 and the assessee filed the appeal before the Commissioner of Income Tax (Appeals) immediately on 22.04.2014, questioning entire tax. The appeal itself came to be disposed of only on 31.07.2017, granting partial relief to the petitioner/assessee. It is seen that the Appellate Authority has reduced the tax liability of the petitioner. The said order of the Appellate Authority was given effect to by the Assessing Officer on 04.09.2017 by raising a demand of arrears of tax of Rs.97,22,499/- and interest under Section 220(2) of Rs.26,82,187/-. It is claimed by the petitioner that the entire tax liability has been paid within 30 days from the date of receipt of the giving effect order. Their dispute is with regard to the interest claimed. Therefore, the petitioner filed the Waiver Petition dated 13.12.2017 under Section 220 (2A) of the Income Tax Act, 1961.

8. Perusal of the Waiver Petition filed before the first respondent, placed in the typed set of papers before this Court, indicates that the petitioner has stated some reasons and circumstances also by enclosing some documents in support of such contentions, justifying their claim for waiver of interest.

9. This Court, at this stage, is not inclined to go into such contentions and express any view as of now, since this Court, is of the view that it is for the first respondent to

consider and decide all those contentions afresh, as the impugned order does not reflect anywhere as to the consideration of those contentions raised by the petitioner in detail, except to state that the petitioner borrowed loan from the Directors and paid the tax and therefore, the petitioner Company could have easily made the payment of interest also, as demanded by the Department. In my considered view, while considering the application for waiver of interest, the first respondent should apply his mind, as to whether the petitioner has satisfied the three conditions provided under Section 220 (2A) of the said Act in order to grant waiver. Therefore, application of mind of the first respondent should be apparent on the face of the order passed under Section 220 (2A) of the said Act.

10. In other words, the factual contentions raised by the petitioner touching upon the three said parameters ought to be dealt with by the first respondent in detail and thereafter, to pass a speaking order as to whether those contentions are acceptable or not. To put it precisely, the first respondent while passing the order under Section 220 (2A) of the Act, has to consider the scope of Section 220 (2A) as well as the reasons and circumstances stated by the assessee for

exercising such power for waiver and thereafter, to pass a speaking order touching upon those contentions raised by the petitioner in detail, by giving a finding as to whether the assessee has satisfied those parameters or not.

11. In this case, as I find that the first respondent has passed the rejection order only on the ground that the Directors of assessee Company have given loans to the assessee and that the assessee has been receiving a rental income of Rs.1,12,500/- per month, he has not adverted to any of the contentions raised by the assessee in the waiver application in order to decide as to whether, the petitioner is entitled for waiver or not. Therefore, this Court, is inclined to remit the matter back to the first respondent to reconsider the matter afresh and pass orders on the merits and in accordance with law. It is also made clear that this Court, at this stage, is not expressing any view on the merits of the claim made by the petitioner for waiver of interest, as it is for the first respondent to consider and decide the same, by applying the parameters provided under Section 220 (2A) of the said Act.

12. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent for passing order on merits and in accordance with law afresh, after giving due opportunity of personal hearing to the petitioner. Needless

to say that it is for the petitioner to satisfy the first respondent with relevant documents, at the time of hearing, in support of the claim. The first respondent shall pass such fresh order within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner of Income Tax – 4,
301, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600034.

2. The Income Tax Officer,
Corporate Ward – 4(4), Chennai.

+1cc to Mr.R.Sivaraman, Advocate, SR.89055
+1cc to Mr.Hema Muralikrishnan, Advocate SR.88183

W.P.No.5633 of 2019

PM(CO)
CB(28/11/2019)