BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.6630 of 2019
and
W.M.P.(MD) No.5289 of 2019

P.Mahendra Kumar ... Petitioner

-vs-

1) The Principal Commissioner of Income Tax,
Trichy -1,
No-44, Williams Road, Cantonment,
Tiruchirappalli – 620 001

2) The Income Tax Officer, Ward 1(1),
No.44, Williams Road, Cantonment,
Tiruchirappalli 620 001

3) The Tax Recovery Officer,
Trichy -1,
No.44, Williams Road, Cantonment,
Tiruchirappalli ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Order U/s.220(2A) of the Income Tax Act in C.No.6149/PR.CIT/TRY-1/2018-19 / 522 dated 2-1-2019 passed by the 1st respondent and quash the same as unlawful, arbitrary and unsustainable in law and further direct the 1st respondent to grant waiver of interest on the application filed by the petitioner on 1.10.2018 under Sec.220(2A) of the Income Tax Act.

For Petitioner : Mr.R.Govindaraj
For Respondents : Mr.N.Dilip Kumar

<u>O R D E R</u>

The instant writ petition has been filed challenging the order dated 02.01.2019 passed by the first respondent under Section 220 (2A) of the Income Tax Act.

2. It is the case of the petitioner that the assessment order passed by the second respondent attained finality and thereafter, he paid a sum of Rs.20,19,442/- being the tax amount payable as per the Assessment order. After paying the said amount, the petitioner

submitted an application under section 220(2A) of the Income Tax Act seeking waiver of interest. By a demand dated 10.09.2018 made by the third respondent, the petitioner was directed to pay a sum of Rs.5,86,772/- as interest under Schedule 2 of Rule V of the Income Tax Act and an additional sum of Rs.5,65,518/- also towards the interest under section 220(2) of the Income Tax Act. On receipt of the demand, the petitioner filed an application under Section 220 (2A) of the Income Tax Act seeking waiver of interest before the first respondent and he submitted an application on 01.10.2018 on the following grounds:

(a) The demand was because of non-representation by his Chartered Accountant which was not under his knowledge;

(b) As soon as he came to know about the demand, he started paying Income Tax demand with great difficulty and co-operated with the department;

(c) He has landed in financial crunch *and*

(d) The delay in payment of tax demand was beyond his control as he does not have ways and means to pay the demand in one lump sum.

3. The details of the tax payment made by the petitioner totalling Rs.20,19,442/- was also disclosed in the application filed by the petitioner under Section 220 (2A) of the Income Tax Act. The first respondent by his impugned order dated 02.01.2019 rejected the application of the petitioner on the ground that he did not co-operate with the Department at the time of scrutiny proceedings which culminated in the passing of an *ex parte* order under section 144 of the Income Tax Act.

4. According to the first respondent, on verification of cash flow statement of the petitioner for the year ended in 31.03.2018, it is seen that the petitioner has shown an amount of Rs.5,86,000/- as payable on account of sundry creditors and Rs.11,44,000/- as receivables being debtors and therefore, the receivables by the petitioner are much more than the payable. Therefore, the contention of financial crunch raised by the petitioner gets refuted on merits and hence do not carry any substance.

5. In the affidavit filed in support of the writ petition, the petitioner has denied the observations of the first respondent and continues to maintain that only by mortgaging the property he was able to pay the tax amount, that too in instalments and he is not in a position to pay the interest due to his financial crunch. The learned counsel for the petitioner stated that the first respondent is bringing his property for sale as per the sale proclamation dated 21.02.2019 and the auction is slated to take place on 26.03.2019. In such circumstances, the instant writ petition has been filed.

6. By letter dated 10.10.2018, the second respondent called

upon the petitioner to appear before him with the following details:

(i) Brief nature of the business carried out by him as of now;

(ii) Copies of financial statements of the returns of income namely Profit and Loss Account and balance sheet for the last three Assessment years and

(iii) Any other details relied on by the petitioner to consider the waiver petition.

7. The documents sought for by the second respondent by his letter dated 10.10.2018 were produced before the second respondent which was also considered in the proceedings under section 220 (2A) of the Income Tax Act by the first respondent. After consideration of the same, under the impugned order, the first respondent has observed that from the verification of cash flow statement of the petitioner for the year ended in 31.03.2018, it is seen that the assessee has shown an amount of Rs.5,86,772/- as payable on account of sundry creditors and Rs.11,44,000/- as receivables being debtors. But the cash flow statement submitted by the petitioner or any other documents submitted by the petitioner has not been reflected in the impugned order and this Court is also unable to gauge from the impugned order as to how the second respondent has come to the conclusion that the petitioner is not entitled for interest waiver.

8. There is no objective consideration and elaborate discussion in the impugned order which will conclusively establish that the petitioner is facing financial crunch and is unable to pay the interest. Further, being a financier there is a possibility that the amount receivable from his debtors amounting to a sum of Rs.11,44,000/- may not be recoverable and may become bad debts. All these factors ought to have been considered by the first respondent in the impugned order.

9. If the petitioner is a genuine person and does not have any dishonest intention of not paying the interest, despite having the means, he should not be made to suffer. The available evidence on record is not sufficient to prove his guilt. Considering all these factors, this Court is of the considered view that the petitioner must be given one more opportunity to present his case with supporting documents to establish that he is facing financial crunch and does not have the means to pay the interest as demanded by the respondents.

10. However, this Court is of the considered view that the petitioner must be put on terms for reconsideration of the application submitted by him under Section 220 (2A) of the Income Tax Act seeking for waiver of interest. For the forgoing reasons, the following directions are given:

(a) the petitioner shall pay a sum of ***Rs.2,00,000/- (Rupees Two lakhs only) on or before 26.03.2019;*** *failure to pay the above said sum will result in automatic dismissal of the writ petition;*

(b) On payment of Rs.2,00,000/- the petitioner shall also pay another sum of **Rs.50,000/-** (Rupees Fifty Thousand only) towards the expenses of sale **on or before 26.03.2019.**

(c) On payment of the aforesaid amount (a+b) totalling **Rs.2,50,000/-** (Rupees Two lakhs and Fifty thousand only), the impugned order shall stand quashed and the matter is remanded back to the file of the first respondent for fresh consideration in accordance with law;

(d) The petitioner shall also pay the balance sum of **Rs.3,65,518/-** (Rupees Three lakhs Sixty Five thousand Five hundred and eighteen only) under the demand dared 10.10.2018 **on or before 20.04.2019.**

(e) The first respondent shall afford sufficient opportunity to the petitioner to satisfy the requirements under Section 220(2A) of the Income Tax Act in accordance with law and thereafter, the first respondent shall pass final orders within a period of eight (08) weeks from the date of receipt of a copy of this order.

11. With the aforesaid directions, the **Writ Petition is disposed** of. No costs. Consequently, connected W.M.P.(MD) No.5289 of 2019 is closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1) The Principal Commissioner of Income Tax,
Trichy -1,
No-44, Williams Road, Cantonment,
Tiruchirappalli – 620 001

+1cc to Mr.R.Govindaraj, Advocate, SR.No.55555
+1cc to Mr.N.Dilip Kumar, Advocate, SR.No.56032

Order made in
W.P.(MD).No.6630 of 2019
21.03.2019

SP/22.03.2019/ 4P/4C