



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2019

CORAM:

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THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLI

W.A. (MD) No.901 of 2014
AND
M.P. (MD) No.1 of 2014

M/s.Sri Saravana Spining Mills Pvt Ltd.,
Pithalaipatty,
Dindigul.

... Appellant/Petitioner

-vs-

1.The Asst. Commissioner of Income Tax,
Company Circle II,
Madurai.

2.The Chief Commissioner of Income Tax,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002. ... Respondents/Respondents

PRAYER: Appeal is filed under Section 15 of Letters Patent, against the order of this Court dated 21.02.2014 made in W.P.(MD). No.7570 of 2009.

Prayer in WP(MD). 7570/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction to call for the records of the petitioner on the file of the 2nd Respondent in CNo.2118/4/CC/MDU/Tech/2008-09 and quash the impugned order dt.26.02.2009 relating to the petitioner for the Assessment year 1992-93 and consequentially direct the 2nd Respondent to waive interest levied u/s.234B.

For Appellant : Mr.P.Arun Jeyatran,
for M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mrs.S.Srimathy,
Standing Counsel

**JUDGMENT**

[Judgment of the Court was made by DR.VINEET KOTHARI, J.]

The writ appeal has been filed by the Assessee, M/s.Sri Saravana Spinning Mills Private Limited, aggrieved by the dismissal of the writ petition by the learned Single Judge, dated 21.02.2014, whereby, the learned Single Judge upheld the order of the Chief Commissioner of Income Tax, rejecting the waiver application of the Assessee seeking waiver of interest under Section 234-B of the Income Tax Act, which attracts levy of interest on account of failure of the Assessee to pay advance tax.

2. The Chief Commissioner of Income Tax, while rejecting the waiver application of the Assessee, vide his order dated 26.02.2009, held that the guidelines of the Central Board of Directors in the Circular No.FNo.400/29/2002-ITB, dated 26.06.2006, did not get attract to the facts of the case of the appellant / Assessee and therefore, the waiver of interest under Section 234-B of the Act, could not be granted. The relevant observation of the Chief Commissioner of Income Tax in the impugned order, including the relevant guidelines covered in para 2(c) of the said Circular (which is wrongly stated as 2(d) in the impugned order), is quoted below for ready reference.

"Where any income which was not chargeable to income-tax on the basis of any order passed in the case of an assessee by the High Court within whose jurisdiction he is assessable to income-tax, and as a result he did not pay income-tax in relation to such income in any previous year and subsequently, in consequence of any retrospective amendment of law or, as the case may be, the decision of the Supreme Court in his own case, which event has taken place after the end of any such previous years, in any assessment or reassessment proceedings the advance tax paid by the assessee during the financial year immediately preceding the relevant assessment years is found to be less than the amount of advance tax payable on his current income, the assessee is chargeable to interest under Section 234B or Section 234C and the Chief Commissioner or Director General is satisfied that this is a fit case for reduction or waiver of such interest."

What is referred to in this para is the jurisdictional High Court decision according to which the particular item of income was not chargeable to income-tax which was available in the relevant previous year when the advance tax was paid and which was not overruled by the Supreme Court or a larger bench subsequently. The assessee has failed to point out any such High Court decision which held that the



expenditure on replacement of machinery for modernization was allowable and which was available during the relevant previous year. The jurisdictional High Court decisions in the case of CIT v. Sambandham Spinning Mills Ltd., 298 ITR 306 (Mad) dated 18.04.2007 and CIT vs Metal Power Company Ltd., 300 ITR 48 (Mad) dated 14.03.2007 came after the combined decision in several cases including the case of the assessee reported as CIT vs Janakiraman Mills Ltd., 275 ITR 403 (Mad) by which the matter was decided in favour of the assessee on 29.04.2005. In the course of hearing on 25.02.2009, the assessee failed to point out any such decision of the jurisdictional High Court that was available during the previous year or the financial year in which the relevant advance tax was paid or even at the time of filing of return for that previous year. The only argument of the assessee was that its decision to exclude the aforesaid amount of replacement cost from the total income for the purpose of paying advance tax was based on the ITAT decision in the case of L.S.Mills P.Ltd. As is clear from the aforesaid excerpt of the Board's order, the ITAT decision is not material in this regard. Hence, within the parameters laid down by the Board, the benefit of waiver/reduction of interest u/s 234B cannot be granted to the assessee.

5.As regards the contention that there was no intention to defer the payment of advance tax, that the assessee has been regular in filing the return and paying taxes, and that there was no other dispute in his case, these have no relevance in this regard.

6.It was settled in the following decisions that the interest u/s 234B is consequential, automatic, compensatory and mandatory:

- (i) Union Home Products vs Union of India 215 ITR 748 (KAr)
- (ii) CIT vs Anjum M.H.Ghaswala 252 ITR 01 (SC)
- (iii) CIT vs Ramalingam 241 ITR 753 (Ker)
- (iv) Kuttakaran Tools vs CIT 264 ITR 305 (Ker)
- (v) Mrs.Prabhulal vs CIT 269 ITR 212 (Pat)
- (vi) Dr.S.Reddappa vs Union of India 232 ITR 62 (kar)
- (vii) Vinor Khurana vs CIT 253 Itr 578 (P&H)

On account of the interest being compensatory, it only represents the cost of funds payable as advance tax but not paid and enjoyed by the assessee for his own purposes including earning of income.

It was not penal in nature and hence, the considerations pleaded by the assessee are not germane to waiver/reduction. In fact, the



circumstances in which, the advance tax was not paid except the one specified in para 2(d) of the Board's order are immaterial for waiver/reduction of interest u/s 234B. It was settled by the Supreme Court in the aforesaid decision in the case of Anjum M.H.Ghaswala that the Chief Commissioner can waive the interest only in the classes of cases and classes of incomes as specified by the Board in its order u/s 119(2)(a) (page 16 of 252 ITR). Thus, the classes of cases specified in the said order are exhaustive and not illustrative. It is therefore not permissible to grant this benefit on the ground of equity or natural justice.

7. In view of the foregoing the application of the assessee for waiver of interest u/s 234B is hereby rejected."

3. According to the learned counsel for the Assessee, the issue involved is whether the replacement of rings and frames in the Textile Machineries, installed by the factory, was an allowable revenue expenditure or not, for the assessment year 1992-93 and the Assessing Authority rejected the said claim of the Assessee and raised the demand of tax and also imposed, inter alia, interest under Section 234-B of the Act, for the failure of the Assessee to pay advance tax and the same was confirmed on appeal, by the Commissioner of Income Tax (Appeals) and by the Income Tax Appellate Tribunal. The said order was assailed by the Revenue before the High Court. A Division Bench of this Court took up the matter along with batch of cases and decided the same in favour of the Assessee in **Commissioner of Income Tax v. Janakiram Mills Ltd. [275 ITR 403 (Mad.)]**. The relevant portion of the order passed by the Division Bench reads as under:

"EMPIRE JUTE CO. LTD. V. CIT [1980] 124 ITR 1 (SC) AND ALEMBIC CHEMICAL WORKS CO. LTD. V. CIT [1989] 177 ITR 377 (SC) RELIED ON.

Expenditure on worn out machinery can fall to be considered under "current repairs" or as an "expenditure laid out or expended wholly and exclusively for the purpose of the business".

In the scheme of the Act, Section 31 deals with "current repairs" Section 32 deals with "depreciation on assets used for the purposes of business" and Section 37 deals with allowance of "business expenditure" not in the nature of capital or personal expenditure. These three sections do not operate alternatively but independently. The introduction of the concept of "block of assets" does not affect the operation of Sections 31 and 37.

<https://hcservices.ecourts.gov.in/hcservices/UserAccess> question whether an item of expenditure is capital or revenue is not determined by the treatment given in the books of account or in the



balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee.

Held also, that since the very same issue/point had been considered by the Court in various decisions in favour of the assessees and against the revenue and admittedly, those decisions had not been taken up by way of appeal to the Supreme Court, the Department's challenge in the present cases was not justified.

DEPUTY CIT v. VELLORE CO-OPERATIVE SUGAR MILLS LTD. [2000] 242 ITR 170 (Mad); BERGER PAINTS INDIA LTD. v. CIT [2004] 266 ITR 99 (SC); UNION OF INDIA v. SATISH PANALAL SHAH [2001] 249 ITR 221 (SC); CIT v. NARENDRA DOSHI [2002] 254 ITR 606 (SC) AND CIT v. SHIVSAGAR ESTATE [2002] 257 ITR 59 (SC) followed."

The appeal No.53 of 2001 pertained to the present Assessee, in the said batch of appeals decided by the High Court.

5. On further appeal by the Revenue against the aforesaid judgment of the Madras High Court, the Apex Court in **Commissioner of Income Tax v. Saravana Spinning Mills P. Ltd.** (the present Assessee) [(2007) 293 ITR 201 (SC)], reversed the judgment of the Madras High Court in **Janakiraman Mills Limited** case supra and held that the expenditure incurred for replacement of the machineries could not be claimed as "current repairs" under Section 37(1) of the Act and since Section 37(1) of the Act excludes those items of expenditure which expressly fall under Sections 32 to 36 of the Act, such expenditure of replacement of machinery was not an allowable expenditure.

6. The relevant portions of the judgment of the Supreme Court in **Commissioner of Income Tax v. Saravana Spinning Mills P. Ltd.** [(2007) 293 ITR 201 (SC)] are quoted below for ready reference:

"Held, reversing the decision of the High Court, (i) that the manufacturing process in the textile mill was not one continuous integrated process;

(ii) that to decide the applicability of section 31(i) the test was not whether the expenditure was revenue or capital in nature, but whether the expenditure was "current repairs". The basic test was to find out whether expenditure was incurred to "preserve and maintain" an already existing asset, and the expenditure must not be to bring a new asset into existence or to obtain new advantage.

(iii) That each machine including the ring frame was an independent and separate machine capable of independent and specific function and, therefore, the expenditure incurred for replacement thereof would not come within the meaning of "current



repairs". The replacement of the ring frame constituted substitution of an old asset by a new asset, and, therefore, the expenditure incurred by the assessee did not fall within the meaning of "current repairs" in Section 31(i).

Under Section 31(i) the deduction admissible is only for current repairs. Therefore, the question as to whether the expenditure incurred by the assessee conceptually is revenue or capital in nature is not relevant for deciding the question whether such expenditure comes within the etymological meaning of the expression "current repairs". **In other words, even if the expenditure is revenue in nature, it may not fall in the connotation of "current repairs".**

NEW SHORROCK SPINNING AND MANUFACTURING CO. LTD. V. CIT [1956] 30 ITR 338 (Bom) relied on.

CIT V. MAHALAKSHMI TEXTILE MILLS LTD. [1967] 66 ITR 710 (SC); [1967] 3 SCR 957 distinguished.

Decision of the Madras High Court in CIT v. JANAKIRAM MILLS LTD., [2005] 275 ITR 403 reversed."

7. The Assessee had filed the waiver application on 10.08.2008 before the Chief Commissioner of Income Tax and the same was rejected by him vide order dated 26.02.2009, quoted above. The learned counsel for the Assessee urged that since the Assessee has consistently succeeded on the issue of claiming the said expenditure for replacement of some plant and machinery viz., rings and frames, up to the High Court and merely because, the said issue came to be decided against the assessee by the Apex Court, it was still a fit case for waiver of interest under Section 234-B of the Act, as the assessee bonafidely contested the said issue and did not pay the advance tax with respect of the said business expenditure, which would be of allowable revenue expenditure and merely because the Apex Court held against the assessee that even though it may be revenue expenditure, but it will not be allowable as "current repairs", finally, the liability to pay advance tax could not be presumed on the part of the assessee during that contemporary period and therefore, it was fit case for waiver of interest under Section 234-B of the Act., in terms of para 2(b) of the Board Circular, dated **26.07.2006** which laid down illustrative guidelines for waiver of interest in such case.

8. On the other hand, the learned counsel appearing for the Revenue submitted that the Assessee did not satisfy the Guidelines in para 2(c) of the Circular dated 26.06.2006 and therefore, the Chief Commissioner of Income Tax was justified in rejecting the waiver application filed by the Assessee, and the same was rightly upheld by the learned Single Judge.



9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. We are of the considered opinion that the preset Writ Appeal of the Assessee deserves to be allowed. Undoubtedly, the Guidelines laid down by the Central Board in the Circular dated 26.06.2006 are only illustrative cases where the Designated Authority can grant waiver of interest under Sections 234-B and C of the Act. The claim of the Assessee was that the income is not chargeable to tax on the basis of an order passed by the High Court and the expenditure in question was a revenue expenditure and the same was negatived by the Supreme Court later on only to the extent of it not being deductible as "current repairs". The spirit of the said illustrative examples in para 2(c) of the Circular dated **26.6.2006** is that on the debatable issue, the Assessee had succeeded up to High Court contesting his liability to claim particular expenditure as an allowable revenue expenditure and therefore, it will not be an 'income chargeable to income tax' in view of Section 234B of the Act, then in our opinion, it would be a fit case to consider for waiver of the interest under Section 234-B of the Act and merely because the Supreme Court held that the expenditure in question could not be allowed as 'current repairs', even though it was revenue expenditure in nature, it would not mean that the levy of interest under Section 234-B of the Act for the failure to pay advance tax, is automatically attracted and the waiver in such cases, may not be granted by the Competent Authority. As is clear that the issue was highly debatable and therefore, liability of paying advance tax to that extent, treating as admitted liability could not arise.

11. It is equally true that the discretionary power to waive or reduce the interest is vested with the Competent Authority, including the Chief Commissioner, and therefore, no straight jacket formula could be fixed in this regard and that it should always depend upon the facts and circumstances of each case, whether such waiver or reduction of interest may be granted or may not be granted. It is essentially a discretionary matter and that discretion has to be fairly and objectively exercised.

12. In view of the thin line difference between the 'revenue expenditure' for replacing some of the parts of plant machineries, like rings and frames in the present case in Textile industry being allowable deduction or not and that being a highly debatable issue, in our opinion, particularly when the Assessee had succeeded up to High Court consistently, irrespective of the fact whether the appeal was filed by the Assessee or by the Revenue before the High Court or lower authorities, it cannot be said that the Assessee, in such cases, ought to have admitted the liability to pay advance tax, by giving up their claim for claiming such expenditure for replacement of part of plant and machinery as an



allowable revenue expenditure. That is why, while considering the application for waiver of interest under Section 234-B of the Act, the Chief Commissioner of Income Tax was bound to consider this aspect, which has unfortunately not been done.

13. Therefore, we are inclined to allow the present Writ Appeal. We accordingly allow this Writ Appeal and set aside the order passed by the learned Single Judge dated 21.02.2014 as well as the order passed by the Chief Commissioner of Income, dated 26.02.2009 under Section 119(2)(a) of the Act, for the Assessment Year 1992-93 and remand the matter to the Chief Commissioner of Income Tax, for re-considering the case of the Assessee afresh for waiver of interest under Section 234-B of the Act, in accordance with law,. No order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)

+1 cc to Mr. Subbaraya Aiyar , Advocate SR.No.57120

+1 cc to Mr. S. Srimathy , Advocate SR.No.57315

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