BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.9097 of 2014
and M.P(MD) No. 1 of 2014

R.Malarvizhi ... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
(Deputy Commissioner of Income Tax (HQ) (Tech.),
Income Tax Deprtment,
Madurai 625 002.

2.The Commissioner of Income Tax – II,
Income Tax Department,
Madurai – 625 002.

3.The Additional Commissioner of Income Tax,
Income Tax Department,
Tiruenveli Range,
Tirunelveli.

4.The Income Tax Officer,
Income Tax Department,
Ward 1 (2),
Tirunelveli.

5.The Tax Recovery Officer,
Income Tax Department,
Tirunelveli. ... Respondents

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus by calling for the entire records pertaining to the order passed by the second respondent vide his proceedings in C.No.112/2/CIT-II/2011-12 dated 23.11.2011 and the order of confirmation passed by the first respondent vide her proceedings in C.No.21171/CC/MDU/2013-14 dated 29.03.2014 as well as the consequential recovery notice issued by the fifth respondent vide his notice in T.R.No.31007 to 31010/TRO/TNLbdated 08.04.2014 and quash the same and consequently direct the respondents No.1 and 2 to waive the interest and penalty charged by them on account maintained with then vide Account Vide PAN: AJCPM8546N.

For Petitioner : Mr.L.Siva
For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

The order under challenge has been passed in terms of Sections 220(2 A) of Income Tax Act, 1961 (in short 'Act') that provides for waiver of interest charged under Section 220 (2) of the Act. The petition relates to 5 assessment years.

2. At the outset, I must state that the provision requires exercise of discretion by the Commissioner of Income Tax and as such, I would not interfere in the exercise of such discretion, unless the petitioner/asseseee is in a position to establish that such discretion has been exercised in an arbitrary, illegal or perverse manner.

3. The petitioner is engaged in the running of a pharmacy and also earns rental income from Seetha Apartments consisting of 30 residential units at Vannarapet. Admittedly, she is in receipt of monthly rental income even as of now.

4.Assessments made for the years 1995-96 and 1996-97 were carried in appeal and concluded in her favour.

5. Thereafter, assessments were framed for the periods 1999-2000 ,2000 - 2001, 2001-2002, 2002-2003 and 2003-2004. The tax demands raised in the aforesaid assessments attained finality. There has been admittedly a delay in remittance of the tax and interest demanded. According to the petitioner, the delay arose on account of paucity of funds and she sought a waiver of the interest after belated deposit of the taxes.

6. The conditions for waiver set out under Section 220(2) of the Act are extracted hereunder:

i) Payment of such amount has caused or would cause genuine hardship to the assessee
ii) Default in the payment of the amount on which (interest has been paid or was payable) under the said sub-section was due to circumstances beyond the control of the assessee; and
iii) The assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from her.

7. In the present case, the petitioner has not, in my view, satisfied the conditions set out under sub section (2 A) of Section 220 of the Act and there is no error or flaw in the exercise of discretion by the Commissioner rejecting the petition for waiver. Admittedly, the petitioner is, even as on date, in receipt of rental

income from her property and as such there is no genuine hardship in the remittance of the admitted tax. The efforts of the petitioner before me are for a re-appreciation of the facts, which, I am not inclined to do under Article 226 of the Constitution of India.

8. In the aforesaid reasons, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

To

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Tirunelveli.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-79110[F] dated 01/08/2019)

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31.07.2019

cm
JM/17.09.2019/3P/7C