BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.03.2019
CORAM:
THE HONOURABLE Dr. JUSTICE VINEET KOTHARI
AND
THE HONOURABLE Mrs.JUSTICE T.KRISHNAVALLI

W.A.(MD)Nos.1426 and 1427 of 2011

W.A.(MD)No.1426 of 2011:

1.The Chief Commissioner of Income Tax,
10, Williams Road,
Trichy 620 001.

2.The Assistant Commissioner of Income Tax,
Circle - I (1),
Ward - I(3),
Salem 636 007. .. Appellants/Respondents in both Writ Appeals

Vs.

G.Shivakumar .. Respondent/Petitioner in both Writ Appeals

COMMON PRAYER: Appeal filed under Clause 15 of Letters Patent Act, to set aside the order of the Learned Single Judge dated 07.09.2011 in W.P.No.12354 of 2008.

Prayer in WP(MD). 12354/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of certiorarified mandamus calling for the records of the First Respondent in respect of the impugned order dated 12.09.2008 bearing No.C.No.932(189)/2001-02/CCIT/TRY in respect of assessment year 1993-94 quash the same and directing the respondents to waive the interest levied under section 234 A, B & C so far paid.

Prayer in WP(MD). 12366/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records of the first Respondent in respect of the impugned order dated 12.9.2008 bearing No.C.No.932(189)/2001-02/CCIT/TRY in respect of Assessment Year 1994-95 quash the same and directing the respondents to waive the interest levied under Section 234 A, B & C so far paid.

For Appellants :: Mr.N.Dilip Kumar, Standing Counsel for Income Tax

For Respondent :: Mr.V.S.Jayakumar

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.VINEET KOTHARI,J.)

The Learned Single Judge, by the order impugned order dated 07.09.2011 had remanded the matter back to the learned Chief

Commissioner of Income Tax, for considering and deciding again the applications of waiver of interest imposed on the respondent / Assessee under Sections 234-A, 234-B and 234-C of the Income Tax Act for assessment years 1993 - 1994 and 1994 - 1995 respectively.

2.The relevant observations made by the Learned Single Judge in the impugned order read as under -

"9.The second ground taken by the petitioner was that the delay in filing the Return was on account of unavoidable circumstances, as he bona fidely believe, that the gift received from the Non Resident Indian was not taxable. It was subsequently, on coming to know, that it may not be possible for him, to prove the genuineness of the gift, that Revised Returns were filed, by adding the gift, as taxable income. It was submitted by the petitioner, that before filing the Revised Return, the petitioner had approached the Assessing Officer, who had showed the petitioner, to file a Revised Return voluntarily, and in that event, he would not be subjected to any penalty, or interest under Section 234-A, 234-B and 234-C of the Act.

10.The applications filed by the petitioner were rejected by the learned Chief Commissioner of Income Tax, on the ground, that he exercised the delegated power in pursuance to the Board's order under Section 119(2)(a) in No.400/29/2002-IT(B) dated 26.06.2006, by superseding earlier orders dated 23.05.1996, and 30.01.1997, only in specified classes of cases. The learned Chief Commissioner, Income Tax was of the view, that the delegated power can be exercised strictly within the parameters of specific delegation, and there is no discretion with the delegate, to determine the matter beyond the said parameters. The case of the petitioner was held to be not falling within the ambit of order, delegating the powers of interest charged under Sections 234-A, 234-B or 234-C of the Act were made out.

11.The learned Chief Commissioner also held, that the waiver of interest was permissible, where the books of accounts, and documents were seized by the Department, and the delay in filing the Return of Income Tax, therefore, could not be attributed to the Assessee. Secondly, where the delay was due to unavoidable circumstances, and that the Return of Income was filed by the Assessee voluntarily without detection by the Assessing Officer.

12.The finding of the Chief Commissioner was that the case of the petitioner did not fall in the first clause, and as regards the second situation was concerned, there was no material placed on record, which could lead to a conclusion, that the petitioner was prevented from filing the Return due to unavoidable circumstances. A finding was also recorded, that the Return was not filed voluntarily, as it was filed only after issuance of Notice under Section 148 of the Act.

13.The learned counsel for the petitioner has challenged the impugned order, by contending, that the finding recorded by the learned Chief Commissioner of Income Tax, Trichy, that there is no discretion with him, to determine the matter beyond the parameters of CBDT cannot be sustained in law, in view of the judgment of this Court in W.P.No.3221 of 2004 (MR.T.N.Arumugam Vs. The Chief Commissioner of Income Tax and another) decided on 18.09.2008, and the judgment of the Hon'ble Division Bench of this Court in W.P.No.19996 of 2003 (N.Haridas and Co. Vs. Chief Commissioner of Income Tax and another) decided on 27.02.2007, wherein this Court was pleased to lay down, that the learned Chief Commissioner of Income Tax can waive or reduce the interest, if he satisfied, that it is a fit case to do so, on the facts and circumstances of the case. The Chief Commissioner of Income Tax, in view of the law, laid down by this Court can consider the facts of the case of the Assessee, for waiver or reduction of interest, subject to his satisfaction, that the facts and circumstances making out a case for doing so.

14.There is force in the contention of the learned counsel for the petitioner. The impugned order proceeds on the presumption, as if the learned Chief Commissioner of Income Tax did not have jurisdiction, to reduce or waiver of the interest on account of unavoidable circumstances, or on the facts of the case, as projected while deciding the application under Section 119(2)(a) of the Act.

15.The learned counsel for the petitioner also contended, that the finding of the learned Chief Commissioner, that the Return was not filed voluntarily cannot be sustained, as it is the case of the parties, that Revised Returns were filed on 10.07.1996, whereas the Notice under Section 148 of the Act, was served on the petitioner only on 24.07.1996.

16.There is also force in this contention of the learned counsel for the petitioner, as the notice was to take effect from the date of service, and not from the date of issuance of Notice. Though the Notice was dated 26.06.1996, it was served only on 24.07.1996 ie., after the petitioner had already filed Returns voluntarily, and therefore, the Revised Returns were required to be treated voluntarily.

17.The impugned order cannot also be sustained for the reason, that the learned Chief Commissioner of Income

Tax has not considered the stand taken by the petitioner, that the gift of Non Resident Indian was not included, as the goods were excluded in case the source could be justified, and that the petitioner had included this in the taxable income, to avoid the burden of proving the source of gift, as he was assured, that no penalty or interest would be charged. The question whether the impression formed by the petitioner was sufficient, and could be treated to be an unavoidable circumstances was required to be gone into, and decided. The impugned order is completely silent on this. The impugned order, therefore, deserves to be set aside even on this ground.

18.The learned Standing Counsel for the respondents contended that the impugned order does not call for any interference, as the learned Chief Commissioner of Income Tax had rightly come to the conclusion, that the disclosure was not voluntarily as the Revised Returns were filed only on 10.07.1996, ie., after issuance of Notice dated 26.06.1996.

19.This contention of the learned Standing Counsel for the respondents deserves to be noticed to be rejected, as observed in the earlier part of the order, that the notice could take effect from the date of service and not from the date it was drafted by the Department, and kept in its filed, as it is not disputed, that the notice in fact, served on the petitioner only on 24.07.1996.

20.It was also the contention of the learned Standing Counsel for the respondents, that the stand of the petitioner that it was due to unavoidable circumstances, that the amount was not included also cannot be accepted, as the petitioner was in know of the receipt of the gift, as it was shown even in the Original Return filed.

21.This contention again cannot be accepted, as a positive finding is required to be given on the facts, as to whether the petitioner was justified in excluding this amount, as it is not disputed, that the gift from Non Resident Indian was exempted from taxable income, subject to proving of the source, and its genuineness. This question was required to be determined by the competent authority, and cannot left to presumptions.

22.Therefore, for the reasons stated herein above, these writ petitions are allowed, the impugned orders are set aside, and the cases are remitted back to the learned Chief Commissioner of Income Tax, Trichy to reconsider the question of waiver, or reduction of Interest afresh, by taking into consideration facts and circumstances, by taking the filing of the Revised Return to be voluntarily."

3.After hearing the learned counsel on either side, we are satisfied that since the matter has been only remanded back to the learned Chief Commissioner of Income Tax for reconsidering the applications for waiver of interest for the assessment years 1993 – 1994 and 1994 – 1995, we are not inclined to interfere with the same. However, we make it clear that any observation made by the Learned Single Judge, will not influence the reconsideration of these applications for waiver of interest at the hands of the Chief Commissioner of Income Tax, as the same cannot be treated as finding of facts by the learned Single Judge, but it is only the reasons or observations made for remanding back the matter. Therefore, the Chief Commissioner of Income Tax shall decide the applications for waiver of interest afresh in accordance with law uninfluenced by the observations of the Learned Single Judge.

4.The Writ Appeals are disposed of accordingly. No order as to costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

TO

1)THE CHIEF COMMISSIONER OF INCOME TAX, TRICHY.

2)THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1(1), WARD -1(3), SALEM-636 007.

+1cc to Mr.N.DILIP KUMAR,Advocate, SR.No.57544

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KK/SAR/13.05.2019/ 5P- 4C