THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.23900 OF 2019

ORDER: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

Heard Mrs. S. Madhavi, learned counsel representing Mr. C. Raghu, learned counsel for the petitioner and Mr. K. Raji Reddy, learned standing counsel for respondent No.2.

2. The petitioner, in this writ petition, assails the order, dated 30.08.2018, passed by the 2nd respondent under Section 220 (2A) of the Income Tax Act, 1961 dismissing the application filed by the petitioner for waiver of interest.

3. The petitioner was engaged in real-estate business. In 2005, a search operation was conducted under Section 132 (1) of the Income Tax Act, 1961 (for short 'Act, 1961') in the petitioner's house. Assessment Proceedings were completed under Section 143 (3) read with 153A of the Act, 1961 for the years 2000-01 to 2005-06 on 28.12.2007 by the Principal Commissioner of Income Tax Jurisdiction of Ward - 14 (1), Hyderabad.

4. This was questioned by the assessee before the CIT (Appeals) - I, Hyderabad, who partly allowed the appeals of the assessee.

5. Against the CIT (Appeals)'s order, the assessee and the department preferred appeals before the Income Tax Appellate Tribunal.

6. The Income Tax Appellate Tribunal had allowed the appeals of the assessee, and portion of the order passed by the Assessing Officer was also set aside.

7. The Assessing Officer, while passing the consequential orders giving effect to the orders of the Income Tax Appellate Tribunal, charged interest under Section 220 (2) for non-payment of taxes for the assessment years 2000-01 to 2005-06.

8. The petitioner then filed an application on 21.11.2017 seeking waiver of interest amounting to Rs.67,70,444/- pertaining to the assessment years 2000-01 to 2005-06.

9. The total demand pending as on that date excluding interest under Section 220 (2) of the Act, 1961 was Rs.36,93,821/- and the interest under Section 220 (2) pending as on that date was Rs.48,22,270/- for the assessment years 2002-03, 2003-04 and 2005-06.

10. It is the contention of the petitioner that he was 73 years old and afflicted with Dementia and Parkinson's diseases associated with old age; that he owns two pieces of land in Rangareddy District, which are under dispute; and that he is staying in United States of

America along with one of his sons. According to him, on these grounds, he is not liable to pay any income tax arrears or interest under Section 220 (2) of the Act, 1961.

11. Before the Chief Commissioner of Income Tax, Hyderabad, it was contended on behalf of the petitioner that he had filed his return of income for the assessment year 2012-13 as per which he had sold a capital asset for a consideration of Rs.9.25 lakhs during financial year 2011-12 and invested in another asset to claim deduction of Rs.3,59,10,686/-. But, no documents regarding purchase and sale of the property were produced before the Principal Commissioner of Income Tax - 6, Hyderabad or before the Chief Commissioner of Income Tax, Hyderabad.

12. It is not in dispute that the Principal Commissioner of Income Tax - 6, Hyderabad had recorded that the assessee did not cooperate with the department either during the course of assessment proceedings or during recovery of proceedings for recovery of the tax dues though assesseee had finances to pay the tax demands and the department had to collect the taxes by attaching the bank accounts and rental income of the assessee.

13. One of the conditions precedent necessary for grant of waiver of interest to an assessee under Section 220 (2A) of the Act, 1961 is that such payment has caused or would cause genuine hardship to the assessee, or that default in 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. But, the said provision required the assessee to cooperate in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

14. From the facts narrated above, it was clear that the petitioner had not cooperated with the department for recovery of the amount due from him, and when the petitioner had with him more than Rs.5.00 crore after the alleged sale of asset in financial year 2011-12, it cannot be said that there was any genuine hardship to the assessee. In fact, the petitioner, by not producing the documents relating to purchase of the property in the financial year 2011-12, cannot now contend that it would cause hardship to him. His further plea that some property is under litigation and money had not come also cannot be accepted. Therefore, we are of the opinion that the Chief Commissioner of Income Tax, Hyderabad, did not commit any error of law in refusing to grant waiver of interest under Section 220 (2) of the Act, 1961 to the petitioner by the impugned order dated 30.08.2018.

15. In view of the above discussion, the Writ Petition fails and accordingly the same is dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

November 05, 2019
Mgr