R.M. AMBERKAR
(Private Secretary)

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
**O.O.C.J.**

## WRIT PETITION NO. 1224 OF 1999

Vinay Dolatrai Valia .. Petitioner

Versus

A.S. Thakur & Ors. .. Respondents

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- Mr. K. Gopal a/w Mr. Tanmay Phadke & Ms. Neha Paranjpe for the Petitioner
- None for the Respondents

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**CORAM : UJJAL BHUYAN &**
**MILIND N. JADHAV, JJ.**

**DATE : FEBRUARY 13, 2020.**

**P.C.:**

**1.** Heard Mr. K. Gopal, learned counsel for the petitioner. None has appeared for the respondents.

**2.** By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of certificate dated 9.2.1999 (Exh. "C" to the writ petition) and seeks a direction to respondent No. 1 to issue a fresh certificate re-determining the amount payable under the Kar Vivad Samadhan Scheme, 1998 without taking into consideration the interest amount computed under Section 220(2) of the

Income Tax Act, 1961 (**"the Act"** for short).

**3.** A brief recital of facts is considered necessary.

**4.** Petitioner, an individual, had filed return of income for the assessment year 1980-81 on 10.9.1980. Assessment was completed under Section 143(3) of the Act vide order dated 21.1.1982 determining total income at Rs. 36,260.00

**5.** The assessment order was rectified under Section 155 of the Act vide rectification order dated 6.3.1984 revising total income at Rs. 36,600.00.

**6.** Subsequently, a notice under Section 148 of the Act was issued to the petitioner dated 28.3.1998 seeking reopening of the assessment. Following reopening of assessment, a fresh assessment order was passed under Section 143(3) read with Section 147 of the Act on 29.3.1989 determining total income of the petitioner for the said assessment year at Rs. 3,22,650.00. Assessing Officer also initiated proceedings under Section 271(1)(c) of the Act whereafter an order of penalty was passed on 19.3.1991 whereby penalty of Rs. 1,98,540.00 was imposed on the petitioner.

**7.** Aggrieved by the order of penalty, petitioner preferred appeal before the Commissioner of Income Tax (Appeals) i.e the first appellate authority. However, the appeal was dismissed on 30.3.1994 confirming the order of penalty.

**8.** Petitioner thereafter preferred further appeal before the Income Tax Appellate Tribunal which was pending.

**9.** It may be mentioned that Finance (No. 2) Act, 1998 introduced Kar Vivad Samadhan Scheme, 1998 w.e.f 1.9.1998. As per the said scheme, assessees whose appeals were pending and whose tax amounts were due were provided an opportunity to make a declaration to obtain waiver of interest and penalty as well as immunity from prosecution.

**10.** On 24.12.1998, petitioner made a declaration in the prescribed form under the above scheme before the designated authority determining the disputed income and the penalty payable at Rs. 2,86,050.00 and Rs. 1,98,540.00 respectively.

**11.** Petitioner was issued certificate dated 9.2.1999 under Section 90(1) of the Finance Act determining the amount payable under the scheme at Rs. 2,25,839.00 being the aggregate of 50% of the penalty and interest under Section 220(2) of the Act. It is stated that there was clerical error in computing the interest whereafter the amount was aggregated at Rs. 2,22,862.00.

**12.** Though petitioner objected to levy of interest under Section 220(2) of the Act, there being no specific order for levy of interest, nonetheless to show his bonafide, the amount due as per the scheme i.e Rs. 2,22,862.00 was paid which was intimated to the authority on 13.3.1999.

Thereafter, the present writ petition has been filed seeking the reliefs as indicted above.

**13.** An affidavit in reply has been filed by Smt. Rajlaxmi Krishnamurthy, Assistant Commissioner of Income Tax (Officer on Special Duty), Mumbai City - XIV, Mumbai justifying the levy of interest under Section 220(2) of the Act while issuing certificate under the scheme.

**14.** When the matter was heard on 30.1.2020, learned counsel for the petitioner was directed to produce a copy of the penalty order dated 19.3.1997 to ascertain as to whether any order was passed therein pertaining to levy of interest.

**15.** Today when the matter is called upon, Mr. K. Gopal, learned counsel for the petitioner submits that considering the long efflux of time and due to natural calamities, petitioner is not in a position to furnish the order of penalty. However, he has taken us to Section 156 of the Act which deals with notice of demand and thereafter Rule 15 of the Income Tax Rules, 1962 which says that notice of demand under Section 156 shall be in Form No. VII. Clause (3) of Form VII provides that the notice of demand under Section 156 of the Act shall contain a provision informing the concerned assessee that if he did not pay the amount within the period specified, he would be liable to pay simple interest at one and one-half percent for every month or part of a month from the date commencing after end of the period in accordance with Section 220(2) of the Act.

**16.** Mr. K. Gopal has fairly placed before the Court the following three decisions and submits that identical claims as made by the assessee were rejected by the High Courts of Madras and Andhra Pradesh:-

i. **P. Ramanathan Vs. Income Tax Officer[1];**
ii. **Rajam Pictures Circuit Vs. CIT[2];**
iii. **Punjab Crockery House Vs. CIT[3].**

**17.** In the above decisions, it has been held that the designated authority is within his powers in adding up interest under Section 220(2) of the Act though not quantified at earlier point while processing application under the Kar Vivad Samadhan Scheme, 1998.

1 [2002] 121 Taxman 137 (Madras)
2 [2000] 108 Taxman 26 (Mad)
3 [2014] 52 taxmann.com 71 (Andhra Pradesh)

**18.** We are in agreement with the views expressed by the Madras and Andhra Pradesh High Courts.

**19.** Consequently and in the light of the above, we do not find any merit in the contention raised by the petitioner. Accordingly, writ petition is dismissed. However, there shall be no order as to cost.

**[ MILIND N. JADHAV, J. ]** **[ UJJAL BHUYAN, J. ]**

Ravindra M. Amberkar

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