IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.11160 to 11166 of 2011
and
M.P.Nos.1, 1, 1, 1, 1 & 1 of 2011

M/s.Sakthi Finance Ltd.,
Dr.Nanjappa Road,
Coimbatore - 641 018. ... Petitioner in all W.Ps.

Vs.

1.The chief Commissioner of Income Tax,
63, Race Course Road,
Coimbatore - 641 018.

2.The Assistant Commissioner of Income Tax,
Company Circle I,
Coimbatore. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the petitioner on the files of the first respondent in C.No.CCIT/CBE/1433(241)/CBE and quash the impugned order dated 24.07.2009 for the Assessment Years 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 & 1998-99 and consequently direct the first respondent to grant waiver of interest by exercising his discreation in accordance with law.

For Petitioner : Mr.Vengat Narayanan in all W.Ps.
For M/s.Subbaraya Aiyar

For Respondents: Mr.A.N.R.Jayaprathap
Standing Counsel in all W.Ps.

C O M M O N   O R D E R

By this common order all the 7 writ petitions are being disposed.

2.In these writ petitions, the petitioner has challenged the impugned orders dated 24.07.2009 passed by the 1st respondent in C.No.CCIT/CBE/1433(241)/CBE for the Assessment Years 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 & 1998-99.

3.By the impugned orders dated 24.07.2009, applications filed by the petitioner for waiver of interest under Section 12-A of the Interest Tax Act, 1974 has been rejected by the 1st respondent on the ground that the petitioner has not met with the conditions specified in Central Board of Direct Taxes Direct Circular No. 400/129/2002-IT (B) dated 26.06.2006.

4.The petitioner had earlier taken a stand that it was not liable to pay tax under the provisions of the Interest Tax Act, 1974 on the finance charges received on loans and advances made by it to its customers. By assessment orders for the respective assessment years 1992-93 to 1998-99, the contention of the petitioner was accepted. However, on revision, it was concluded that the petitioner was liable to pay tax on interest under the provisions of the Interest Tax Act 1974. The petitioner challenged these orders unsuccessfully before the Commissioner of Income Tax (Appeals) and thereafter before the Income Tax Appellate Tribunal, Chennai.

5.The petitioner has accepted the verdict and has paid the tax for these Assessment Years. Under these circumstances, the petitioner filed a petition before the 1st respondent for waiver of interest for the respective Assessment Years on 05.12.2002. It was the contention of the petitioner that Central Board of Direct Taxes Direct Circular No.1425 bearing reference F-No. 275/9/80-ITB dated 16.11.1981 had instructed that tax need not be deducted on high purchase finance charges as they are not to be treated as interest. According to the petitioner, this led to a bona fide belief that finance charges collected by the petitioner are not to be treated as interest for the purpose of payment of interest tax under the provisions of the Interest Tax Act, 1974.

6.It was further submitted that in the original assessment, hire purchase finance charges were not included and therefore no tax was paid and only during the course of reassessment proceedings, the petitioner has been made liable to pay tax on such finance charges. It is submitted that it was clarified by CBDT Circular No.738 dated 25.03.1996 that finance charges were liable to tax under the provisions of the aforesaid Act. The learned counsel for the petitioner submits that further clarification was given by the Central Board of Direct Taxes Direct Circular No.760 dated 13.01.1998 and therefore till 1998 there was no clarity as to whether finance charges in the hire purchase transactions were liable to tax or not.

7.The learned counsel for the petitioner relied on the decision of this Court in R.Anandakumar Vs. The Chief Commissioner of Income Tax, 2016 SCC OnLine Mad 24456, wherein, in paragraphs No.5 & 6, it was observed as follows:-

5. After noting the factual circumstances in

the said case, it was pointed out that if the circumstances have been considered to be unavoidable circumstances for the purpose of waiver of interest under section 234A, in the facts of the case, the same would have to be considered as unavoidable circumstances for the purpose of reduction/waiver of interest under sections 234B and 234C as well. Accordingly, whatever waiver granted under section 234A, shall also be extended with regard to waiver of interest under sections 234B and 234C of the Act.

6. As noticed above, the respondent was satisfied with the fact that the petitioner has made out a case for waiver of interest under section 234A of the Act and the respondent recorded that it is a reasonable cause for delay in filing the return of income. Applying the reasons assigned by the Hon'ble Division Bench of the Gujarat High Court, this Court is of the view that the same reasoning should be adopted while considering the claim of waiver of interest under sections 234B and 234C of the Act.

8.The petitioner therefore prayed for waiver of interest under section 12-A of the Interest Tax Act, 1974 before the 1st respondent in terms of Central Board of Direct Taxes Direct Circular No.400/129/2002-IT (B) dated 26.06.2006 which has been rejected by the impugned orders of the 1st respondent.

9.I have heard the learned counsel for the petitioner and the respondents. Short point that arises for consideration is whether the 1st respondent was justified in rejecting the request of the petitioner for waiver of interest on interest tax paid belatedly by the petitioner in the light of the Central Board of Direct Taxes Direct Circular No.400/129/2002-IT (B) dated 26.06.2006.

10.I have considered the provisions of the Interest Tax Act, 1974. Certain provisions of the Income Tax Act, 1961 have been made applicable to the provisions of the Interest Tax Act, 1974. Central Board of Direct Taxes Direct Circular No.400/129/2002-IT (B) dated 26.06.2006 has been issued in the exercise of power conferred by the Central Board of Direct Taxes under Section 119(2) of the Income Tax Act, 1961.

11.Among various provisions of Income Tax Act, 1961 which have been made applicable to provisions of Interest Tax Act, 1974 in Section 21 of the Interest Tax Act, 1974, Section 119 of the Income Tax, 1961 has not been made applicable to Interest Tax Act, 1974. The power to grant waiver from payment of interest under the Income Tax Act, 1961 stems from sub-clause (2) (a) to section 119. The Central Board of Direct Taxes has also delegated such powers in certain cases up to particular amount with the Principal/Chief Commissioner of Income Tax.

12.Since Section 119 of the Income Tax Act has not been incorporated in Section 21 of the Interest Tax Act, 1954, the petitioner cannot claim the benefit of the above circular for waiver of interest. Therefore, in absence of any power to grant waiver of interest under the provisions of the Interest Tax Act, 1974, the 1st respondent cannot grant waiver to an assessee under the provisions of the said Act. That apart, the authority has also decided that the petitioner was not entitled for waiver under the said circular since Finance Act No.2 of 1991 had extended the scope of interest tax to cover "credit institutions" and thus financial companies carrying on high purchase transactions were brought within the ambit of the Interest Tax Act, 1974. The petitioner also filed returns but failed to pay tax on such interest.

13.Though, the 1st respondent has denied the benefit of the above circular on merits, it is evident that the said circular cannot be made applicable to waiver of interest under the provisions of the Interest Tax Act, 1974 in absence of any statutory backup.

14.In the light of the above discussion, I find no merits in the present Writ Petitions. Accordingly, the present Writ Petitions are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The chief Commissioner of Income Tax,
63, Race Course Road,
Coimbatore - 641 018.

2.The Assistant Commissioner of Income Tax,
Company Circle I, Coimbatore.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 1467

W.P.Nos.11160 to 11166 of 2011
and M.P.Nos.1, 1, 1, 1, 1 & 1 of 2011

SSD(CO)
GN(04/03/2020)