

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.02.2020
Pronounced On	10.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.12500 of 2010

and

M.P.No.1 of 2010

Tvl. Sanmac Motor Finance Ltd.,
Represented by its Managing Director,
Mr. T. Arunachalam
Now carrying on business at
Old No. 53 C, Second Floor,
Bajanai Koil Street, Choolaimedu,
Chennai - 600 094. ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax,
Ayakar Bhavan, 121, MG Road,
Nungambakkam,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Company Circle VI (1),
121, MG Road, Nungambakkam,
Chennai - 600 034.

3. Tax Recovery Officer VII
Company Range IV
121, M.G. Road
Nungambakkam, Chennai 600 034

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent herein in C.No.CCII/B(14)2006-07 dated 16.03.2010 and quash the impugned order and consequently direct the first respondent herein to waive the interest u/s 234A, 234B and 234C of the Act.

For Petitioner : Mr.R.Sivaraman
For Respondents: Mr.A.N.R.Jayaprathap
Standing Counsel.

O R D E R

The petitioner is aggrieved by the impugned order dated 16.03.2010 passed by the 1st respondent Chief Commissioner of Income Tax rejecting the request of the petitioner for waiver of interest under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961 read with Section 119 (2) (a) of the Income Tax Act, 1961 in terms of CBDT's Circular dated 26.06.2006 bearing reference No.400/29/2002-IT(B).

2. Petitioner an income tax assessee had filed regular returns under Section 139 of the Income Tax Act, 1961 for the Assessment Years 1995-96, 1996-97 and 1997-98 on 29.11.1995, 29.11.1996 and 01.12.1997 respectively.

3. For the Assessment Year 1995-96, the petitioner had declared taxable income of Rs.79,17,837/- and had earlier paid an advance tax of Rs.38,75,000/- and adjusted the TDS of Rs.22,635/- in their returns. The assessment was completed on 16.03.1998. On appeal the Commissioner of Income Tax (Appeals) by an order dated 13.03.1999 remanded the case back for re-computation.

4. Pursuant to the said remand, an order dated 14.09.2000 came to be passed by the Joint Commissioner of Income Tax and a total income of Rs.1,09,32,490/- was assessed in the hands of the petitioner. Accordingly, the income payable by the petitioner was determined at Rs.50,28,945/- and after adjusting the payment already made, the petitioner was required to pay a sum of Rs.11,31,310/-. The petitioner has accepted the same and was also asked to pay interest under Section 234B and Section 234C of the Income Tax Act, 1961.

5. For the Assessment Year 1996-97, the original assessment was completed on 25.03.1999. The assessment was reopened pursuant to a notice dated 13.06.1999 issued under Section 148 of the Income Tax Act, 1961. The said proceeding culminated in a revised order of assessment dated 26.03.2002. As against the net loss of Rs.10,244/-, a positive income of Rs.67,80,870/- was arrived in the said proceedings. The tax liability was determined as Rs.31,27,945/-. As the petitioner had not paid advance tax during the aforesaid Assessment Year, interest under Section 234 A and 234 B for a sum of Rs.13,93,893/- and Rs.16,08,338/- was imposed on the petitioner.

6. For the Assessment Year 1997-98, the petitioner had filed the returns on 01.12.1997. The assessment was completed on 31.03.1999. Thereafter, on 26.03.2002 based on best judgment method the petitioner was assessed to a total income of Rs.3,27,34,870/- and was required to pay a tax of

Rs.1,00,90,165/. Petitioner was also called upon to pay interest under Section 234A and 234B of the Income Tax Act, 1961 for an amount of Rs.21,69,372/- and Rs. 52,97,303/- respectively.

7. It is the contention of the petitioner that the petitioner company was engaged in business of sale of motor vehicles and also operated as a Non-Banking Financial Company (NBFC) and it had encountered difficulties in servicing the deposits to its depositors as a result of which it faced several hardships including arrest of its Managing Director T. Arunachalam. All the other directors and principal and responsible officers of the petitioner company had resigned, as a result of which the interest of the company could not be protected. The official liquidator also failed to protect the petitioner.

8. The petitioner has accepted the tax liability but prayed for waiver of interest under Sections 234A, 234B and 234C of the Income Tax Act, 1961 before the 1st respondent on 07.03.2007, on the ground that at the time when the reassessment proceedings were taken up pursuant to remand order dated 30.03.1999 of Commissioner of Income Tax (Appeals) for the Assessment Year 1995-96 and notice dated 30.06.1999 for Assessment Year 1996-97 and notice dated 11.10.2000 for Assessment Year 1997-98 were issued under Section 148, the petitioner company was already undergoing financial strains and was on the verge of being wound up before this court in C.P.No.323 of 1998.

9. It is submitted that by the time the re-assessment orders were passed pursuant to notice issued Section 148 of the Income Tax Act, 1961 for the Assessment Year 1996-97 and Assessment Year 1997-98 on 26.03.2002, the petitioner company had been directed to be wound up by an order dated 18.06.2001 of this Court in C.P.No.323 of 1998 and the said order was set aside by a Division Bench of this court only on 27.10.2006 under Sections 391-394 of Companies Act, 1956 and after that the petitioner company has been revived and the tax that was re-determined pursuant order dated 14.09.2000, 26.03.2002 and 26.03.2002 respectively were paid to the credit of the Income Tax Department on 27.01.2007.

10. It is therefore submitted that when the orders were passed pursuant to remand for the Assessment Year 1995-96 and pursuant to reopening of the assessment under Section 148 of the Income Tax Act, 1961, nobody represented the interests of the petitioner company. With great difficulty the petitioner company has been revived pursuant to order passed by this court on 27.10.2006 in C.P.No.146 of 2006 under Section 391-394 of the Companies Act, 1956.

11. The 1st respondent has rejected the application filed for waiver of interest on the ground that the case of the petitioner did not fall within any of the circumstances specified in the Central Board of Direct Taxes Notification dated 26.06.2006 bearing reference F.No.400/29/2002-IT(B).

12. In the impugned order, it has also been stated that the petitioner had sufficient liquidity to pay the advance tax and income tax and therefore it cannot be stated that the petitioner had encountered any hardship to pay the tax or file the returns on time.

13. The learned counsel for the petitioner relied on the decision of this Court in R.Mani Vs. The Chief Commissioner of Income Tax, Tiruchirapalli, 2017 SCC OnLine Mad 15884, wherein it was held that the circular issued by the Board empowering the Chief Commissioner to consider the waiver petition for waiver of interest under Section 234A as well as 234B would show that even if these provisions are compensatory in nature and are covered by Section 234B, special orders for grant of relaxation could be passed.

14. Per contra, the learned Standing Counsel for the respondent submitted that the issue is squarely covered against the petitioner by decisions of the Division Bench of this court rendered in Chief Commissioner of Income-tax, Chennai-34 Vs. Rajanikant & Sons, dated 06.06.2017 in W.A.Nos.2020 to 2024 of 2010 and in Tushin T.Mehta Vs. The Chief Commissioner of Income Tax, dated 14.08.2019 passed by this Court in W.P.No.15097 of 2007 and therefore the impugned order cannot be assailed.

15. In Chief Commissioner of Income-tax, Chennai-34 Vs. Rajanikant & Sons (supra), while dealing with Circular dated 26.06.2006, the Court held that what emanates upon perusal of the Circular is that, unless the Assessee's case falls under the circumstances set out in paragraph 2(a) to 2(d) of the Circular dated 26.06.2006, which includes classes of case and/or classes of incomes, the Chief Commissioner / Director General of Income Tax has no power to reduce or waive interest. It followed the decision of the Division Bench of the Bombay High Court in De Souza Hotels (P.) Ltd. Vs. Chief of CIT, [2012] 2017 Taxman 84/20 taxmann.com 343, wherein, the court held that unless the Assessee's case comes within the ambit and scope of the Circular dated 26.06.2006, the Chief Commissioner would have no power to reduce or waive interest under Sections 234A, 234B and 234C.

16. In Tushin T.Mehta (supra), the Court held that unless the case of the assessee can be brought within one of the five clauses of 1996 circular, there can be no scope for claiming

reduction or waiver. It is not the case of the petitioner that his case will fall under clause 2 (a) or (b) or (c) or (d) of the notification.

17. I have considered the arguments advanced on behalf of the petitioner and the respondents. Section 119 of the Income Tax Act, 1961 has been incorporated to grant waiver from payment of interest in case of genuine hardship. Therefore, the Central Board of Direct Taxes has given power to issue instructions and direction to be followed while granting waiver of interest.

18. This power is either exercised by the Board and/or by senior officers of the Income Tax Department like the first respondent. CBDT's Notification dated 26.06.2006 bearing reference No.400/29/2002-IT(B) which is relevant to the facts of the present case, reads as under:-

2.The class of incomes or class of cases in which the reduction or waiver of interest under section 234A or section 234B or, as the case may be, section 234C can be considered, are as follows :

(a) Where during the course of proceedings for search and seizure under section 132 of the Income-tax Act, or otherwise, the books of account and other incriminating documents have been seized, and the assessee has been unable to furnish the return of income for the previous year, during which the action under section 132 has taken place, within the time specified in this behalf, and the Chief Commissioner/Director General is satisfied, having regard to the facts and circumstances of the case, that the delay in furnishing such return of income cannot reasonably be attributed to the assessee.

(b) Any income chargeable to income-tax under any head of income, other than Capital gains is received or accrued after due date of payment of the first or subsequent instalments of advance tax which was neither anticipated nor was in the contemplation of the assessee, and the advance tax on such income is paid in the remaining instalment or instalments, and the Chief Commissioner/Director General is satisfied on the facts and circumstances of the case that this is a fit case for reduction or waiver of the interest chargeable under section 234C of the Income-tax Act.

(c) Where any income was not chargeable to income-tax in the case of an assessee on the basis of any order passed by the High Court within whose jurisdiction he is assessable to income-tax, and as result, he did not pay income-tax in relation to such income in any previous year, and subsequently, in consequence of any retrospective amendment of law or the decision of the Supreme Court of India, or as the case may be, a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final), in any assessment or reassessment proceedings the advance tax paid by the assessee during such financial year is found to be less than the amount of advance tax payable on his current income, and the assessee is chargeable to interest under section 234B or section 234C, and the Chief Commissioner/Director General is satisfied that this is a fit case for reduction or waiver of such interest.

(d) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer.

19. From a reading of the above circular, it is evident that the case of the petitioner is not specifically covered by any of the situation contemplated in the above notification. Therefore, no fault can be found with the impugned order of the 1st respondent as the 1st respondent is bound by the above notification though the petitioner company was ordered to be wound up by an order dated 18.06.2001 in C.P.No.323 of 1998.

20. The Central Board of Direct Taxes while issuing the above notification has not factored a situation like the present case where an assessee is legally incapacitated from making any payments as it was ordered to be wound up. It was under a legal disability.

21. Though the notification has not considered the above situation, I am of the view that the petitioner is entitled for a partial relief for the above reason dehors the above notification. The date of winding up dates back to the date of petition and during the aforesaid period, there was a legal disability to pay the tax by the company as the official

liquidator obtained leave of the company court under the Companies Act, 1956.

22. Since the 1st respondent has no power to grant waiver of interest in the light of the specific instruction of the Central Board Of Direct Taxes, the Court in the exercise of its power under Article 226 of the Constitution of India can order waiver applying the legal principles applicable in the case of winding up of a company,

23. The effect of an order of winding up is to put the company into the hands of the official liquidator for completing the process of liquidating it. Till an order of the Court for distribution of the company's assets is obtained and assets are distributed, the properties of the company continue to be that of the company. The company under liquidation continues to exist as a juristic personality only till an order under Section 481 of the Companies Act, 1956 is passed for its eventual dissolution.

24. It is only thereafter, the company ceases to exist in the eye of law. Thus, during the period in dispute between 18.06.2001 and 27.10.2006, the petitioner company by itself was under a disability and could not discharge any liability without the permission of the court. In this case no attempt was made for recovery of tax from the petitioner company by the Income Tax Authorities by obtaining suitable orders of this court nor the official liquidator took any steps in that direction.

25. It should also be borne in mind that the petitioner had filed income tax return in time which also culminated in separate assessment orders of the assessing officers on 16.03.1998, 25.03.1999 and 31.03.1999 respectively for the respective Assessment Years.

26. During this period, the petitioner company was facing a threat of being wound up apart from threat of arrest of its directors. The petitioner has also demonstrated that there was an en mass resignation by the directors of the company on account of financial difficulties which plagued the petitioner company and that the petitioner company was unable to defend itself effectively in these proceedings. The Managing Director of the petitioner company was also later arrested and was remanded to judicial custody. During the aforesaid period, the company had become a shell company.

27. During the aforesaid period, notices under Section 148 of the Income Tax Act, 1961 were issued to the petitioner for the Assessment Year 1996-1997 on 13.06.1999 and for the Assessment Year 1997-98 on 11.10.2000 to reopen the assessment.

28. Thus, the petitioner company was handicapped from paying the tax that was re-assessed as it was ordered to be wound by an order dated 18.6.2001 in C.P.No.323 of 1998. At that stage, the interest of the petitioner was to be represented by the Official Liquidator before the Income Tax Authorities by filing appeal against the re-assessment orders who failed to do so.

29. In fact, prior to the winding up of the petitioner company, the Income Tax Authorities also could have also participated in C.P.No.323 of 1998 by either supporting or opposing the winding up of the petitioner company. Perhaps, no steps were taken by the Income Tax Department to recover the arrears of tax which came to be determined since the petitioner company was ordered to be wound up.

30. Since the company was ordered to be wound up by the creditors, attempts were also made to settle the dues of the various creditors by reviving the company. Under these circumstances, C.P.No.146 of 2006 was filed under Sections 391-394 of the Companies Act, 1956.

31. In this proceeding also wide publicity would have been given by way of advertisement under Company Court Rules. It was open for Income Tax Department to participate by either supporting or opposing the compromise to protect its interests. However, it appears that the Income Tax Department also failed to participate in the said proceeding.

32. Eventually, an order was passed on 27.10.2006 in C.P.No.146 of 2006. By the said order, a scheme of arrangement for reconstruction and revival of operation of the petitioner company was ordered so as to bind on all the secured creditors, unsecured creditors, depositors and members of the petitioner company. It is only pursuant to the aforesaid order that the Official Liquidator was directed to transfer the accounts of the company and relevant books to the Sponsors to enable the latter to settle the claims of the creditors immediately.

33. Thus, the Official Liquidator was discharged of his responsibilities only thereafter. The said order was followed by a final order dated 13.11.2007 in C.P.No.146 of 2006, wherein the promoters and directors of the petitioner company were also discharged from all pending proceedings. Since the petitioner company was being wound up, there cannot be any levy of interest under the provisions of the Income Tax Act, 1961 as it suffered a legal disability to pay the tax.

34. As the petitioner was under a legal disability during the period between 18.06.2001 and 27.10.2006, during the

subsistence of winding up order and since the petitioner company was under the control of this court and the official liquidator, I am of the view, this is a fit case for granting partial relief to the petitioner.

35. Under these circumstances, I am of the view that there should be a waiver of interest under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961 for the period between 18.06.2001 and 27.10.2006 alone.

36. I therefore remit the case back to the 2nd respondent to compute the interest payable by the petitioner from the due date upto 18.06.2001 and for the period commencing from 27.10.2006 upto the actual date of payment under the aforesaid provision of the Income Tax Act, 1961. While computing the interest payable by the petitioner, the 2nd respondent shall exclude the period between 18.06.2001 and 27.10.2006.

37. The 2nd respondent shall compute the interest and communicate to the petitioner for the aforesaid period within a period of 30 days from date of receipt of a copy of this order. Petitioner shall pay the amount determined by the 2nd respondent within 15 days thereafter. In case, there is a failure on the part of the petitioner to pay an amount within the aforesaid period, the relief granted to the petitioner herein shall come to an end sine die and the impugned order shall stand revived.

38. The present Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

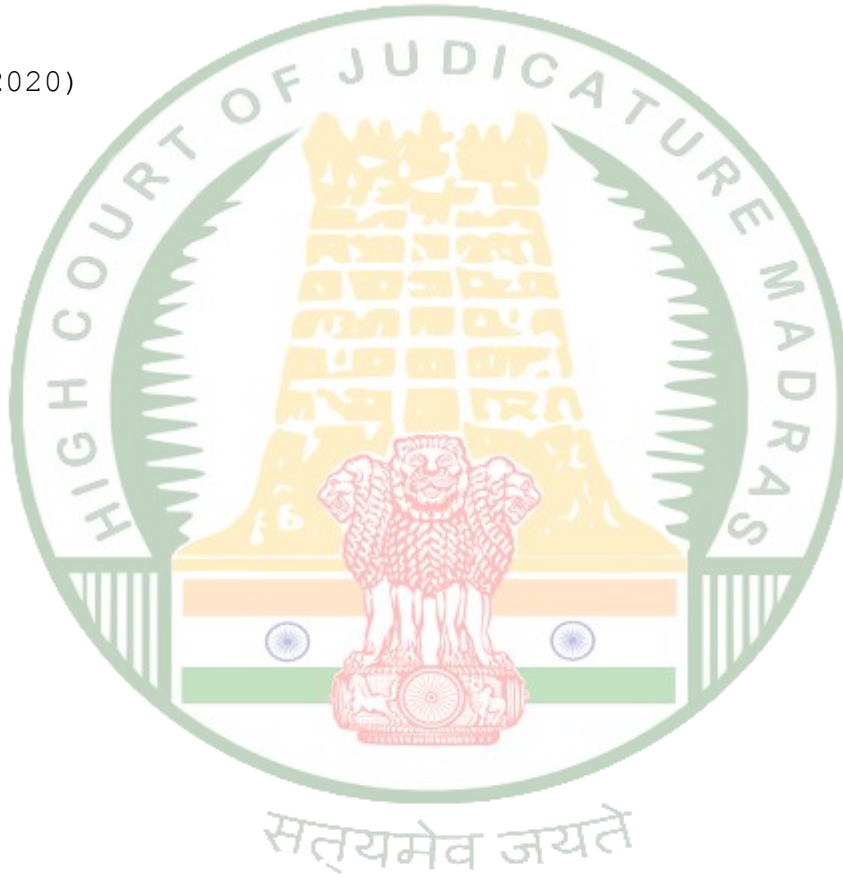
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+1 CC to Mr.A.P. Srinivas, Advocate sr 10479.

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