IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.4833 of 2009
and
W.M.P.No.1 of 2009

1.S.Ganga
2.K.Sulochana
3.N.Saraswathi
Legal heirs of late Shri S.Govindaraja Mudaliar,
19, 5th West Cross Street,
Shenoy Nagar, Chennai - 600 030. ... Petitioners

Vs.

1.The Tax Recovery Officer - XXVI,
Second Floor,
15, Sufi Mohammed Road,
Chennai - 600 006.

2.The Commissioner of Income Tax,
Chennai X,
121, M.G.Road, Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records in C.No.10148 (5)/2005-06/CIT-X/08-09 dated 27.01.2009 on the file of the 2nd respondent and quash the same and directing the 2nd respondent to waive the interest in full.

For Petitioner :Mr.M.P.Senthilkumar
For Respondents:Mr.Prabhu Mukunth Arunkumar
for
M/s.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The case of the petitioner in this writ petition is that the petitioner's father passed away on 16.04.1997. He was reportedly in arrears of tax for the period commencing from 1964 onwards upto 1980. They were unaware of the fact that late father Shri S.Govindaraja Mudaliar was in arrears of Tax for the aforesaid period.

2.It is submitted, after the notice was issued, an amount of Rs.5,42,425/- was demand which was subsequently reduced to Rs.4,25,671/- after adjustments of the amount paid during the period between 1977-78 and 1979-1980. Thus, arrears of tax was redetermined as Rs.4,25,671/- and was paid by them promptly.

3.The learned counsel for the petitioner submits that the petitioners are senior citizens aged about 91,87 and 89 years born in the year 1930 and therefore interest burden was heavy. The learned counsel for the petitioner submits that the petitioner satisfied the requirement of Section 220(2)(A) of the Income Tax Act. He submits that they satisfied with three conditions stipulated therein and therefore they were entitled for waiver as below:-

> (i)Payment of such amount has caused or would cause genuine hardship to the assessee;
> (ii)default in the 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; and
> (iii)the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

4.The learned counsel for the petitioner admits that the petitioners as the legal representatives of their father late Shri S.Govindaraja Mudaliar are deemed to an assessee within the meaning of Section 159(3) of the Income Tax Act, 1961 read with Section 2(7)(b) of the Act and therefore they are entitled for waiver of the interest and penalty.

5.Per contra, the learned counsel for the revenue Income Tax Department submits that the petitioners father obtained a certificate under Income Tax clearance certificate under Section 230A of the Income Tax Act, 961 as it stood then and by paying merely 10% of the tax liability thereafter proceeded to sell the properties by executing 20 documents for a total consideration of Rs.58,08,085/- but failed to pay the arrears of the tax. It is submitted that with great difficulty the petitioners were identified who have inherited some of the assets from their late father Shri.S.Govindaraja Mudaliar.

6.It is submitted that with great difficult the Tax Recovery Officer was able to locate the petitioners who are the legal representatives of their father late Shri S.Govindaraja

Mudaliar, it is only after enquiry, notice were issued to them and that the amount of tax arrears was reduced and therefore it cannot be said that they were not aware of their further tax liability.

7.It is submitted that the petitioners are liable to pay an interest of Rs.10,51,030/- as that the deceased Shri.Govindaraja Mudaliar had left several immovable property and bank balance in fixed deposit amounting to Rs.64,56,675/- together with accumulated interest of Rs.8,12,856/- which was inherited by them and therefore no premium should be given to defaulters particularly when the conditions of Section 220(2)(A) of the Income Tax Act were not satisfied. He submitted that neither it can be said that there was a genuine hardship nor default in payment of interest was due to circumstances beyond the control of the petitioners or that the petitioners are co-operated in the enquiry.

8.I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

9.The petitioners being the legal representative of the deceased of late Shri.Govindaraja Mudaliar have not only inherited the immovable property but also fixed deposit of Rs.64,56,675/- together with accumulated interest of Rs.8,12,856/-. There is no dispute that the deceased late Shri.Govindaraja Mudaliar, the father of the petitioners was an arrears of the tax which amount finally reduced to Rs.4,25,671/-. One Shri.Navadneedam of M/s.Pichaikutty & Co appeared on 12.07.2005 submitted copies of Appellate Assistant Commissioner of Income-Tax for the Assessment years 1977-78 to 1979-80 and crystallized the arrears of tax to Rs.4,25,671/-. The petitioners not only received the amounts which was lying in the fixed deposit amounting to Rs.64,56,675/- together with interest amounting to Rs.72.70 lakhs in cash as against the interest of Rs.10,51,030/- but have also inherited valuable immovable property. They are not required to pay any amount of their pocket.

10.Therefore, payment of interest on arrears of tax cannot be said to cause undue hardship to the petitioner. The petitioners have not only inherited immovable assets but also fixed deposit and the interest accrued thereon amounting to Rs.72.20 lakhs. The petitioners herein were duty bound to discharge the tax liability of the father to the extent they have inherited property and assets from their father by applying the principle pious obligation.

11.The records also indicates that the petitioners father had sold several properties by executing 20 different documents after obtaining certificate under Section 230A of the Income Tax Act, 1961 as it stood then. The certificate was obtained by him by paying a fraction of the tax due and thereafter it appears that he vacated the address and was not traceable.

12.Therefore, default in payment of amount on which the interest was payable under Sub-Section 2 of Section 220 cannot be said due to circumstances beyond the control of the petitioner's father and payment of interest upto the date of his death on 16.07.1997 cannot be reduced. The period thereafter when the assets came to be transferred the petitioner can be particularly waived as they may not have been fully aware of the default during his life time. There are also no records to substantiate the aware of the same except for the fact that they came with the tax consultant who had the records of their father reduced the Tax liable for Rs.5,42,425/- to Rs.4,25,671/-.

13.Under these circumstances, the petitioners are entitled for partial waiver under Section 220(2)(A) of the Income Tax Act, 1961 for the period after the petitioner's father death on 16.04.1997. Accordingly, the impugned order passed by the respondent is liable to be modified and the case is remitted back to the first respondent Tax Recovery Officer to re-determine the interest payable for the period during the default upto the petitioner's father death on 16.04.1997 and thereafter from the date of summons issued to the petition under Rule 83 of the Income Tax Act, 1961 on 04.05.2005 till the actual date of payment of arrears of tax of Rs.4,25,671.

14.The first respondent Tax Recovery Officer is directed to re-calculate the interest payable by the petitioners and serve a notice on the petitioner for payment of interest within a period of 4 weeks form the date of receipt of a copy of this order. On receipt of such notice/calculation from the firs respondent/Tax Recovery Officer, the petitioners are directed to pay the amount.

15.The Writ Petition stands partly allowed in terms of the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Tax Recovery Officer – XXVI,
Second Floor,
15, Sufi Mohammed Road,
Chennai – 600 006.

2.The Commissioner of Income Tax,
Chennai X,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

+1cc to Ms.Hema Murali Krishnan, Advocate, S.R.No.17279
+1cc to Mr.G.Baskar, Advocate, S.R.No.17650

W.P.No.4833 of 2009
and
W.M.P.No.1 of 2009

BR(CO)
CB(14/07/2021)