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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.03.2021
Pronounced On	19.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.28818 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

R.Darampal Pandia,
M/s.Hermes India (Madras)
No.117, Nyniappa Naicken Street,
Park Town, Chennai - 600 003.

... Petitioner

Vs.

1.The Chief Commissioner of Income Tax,
Chennai - V, 121, Mahatma Gandhi Road,
Chennai - 600 034.

2.The Deputy Commissioner of Income-tax,
Business Circle X,
Kannammai Building, 3rd Floor,
No.611, Anna Salai, Chennai - 600 006.

3.The Central Board of Direct Taxes,
rep. by its Chairman,
North Block, New Delhi.

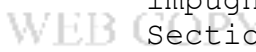
... Respondents

(third respondent impleaded as suo motu by
this order)

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in F.No.CC-V/24 ((9)/2010-11 dated 29.10.2010 on the file of the first respondent and quash the same and direct the said respondent to waive the interest levied under Sections 234A, 234B and 234C of the Income Tax Act, 1961.

For Petitioner : Mr.Pramod Kumar Chopda

For Respondents: Mr.Prabhu Mukunth Arunkumar
Standing Counsel.





6. It is submitted that the erstwhile Chief Commissioner of Income Tax - V vide his communication dated 13.06.2008 bearing reference C.No.C.C.V/24(9)/24(10)/2008-09 had found that the payment of interest by the petitioner would cause in undue hardship to the petitioner and recommended waiver of interest to petitioner. The learned counsel for the petitioner drew my attention to the recommendation of the then first respondent which reads as under:-

"5. This is the case of genuine hardship in the unusual circumstances. After the survey on 14.12.2004, the assessee's business was hit by unforeseen natural calamity, viz, tsunami on 26.12.2004. As mentioned above, the assessee was not able to collect substantial amount from the Debtors and substantial portion of trade debts had to be written off as bad debts. His business turnover too was adversely affected. The assessee's two properties had already been attached by the Department. The fair market value of the two properties, as declared by the assessee and Rs.3,90,00,000/- (property at Kilpauk Garden Road, Chennai) and Rs.84,00,000/- (property at Kannathur Reddy Kuppan Village, Kancheepuram) aggregating to Rs.4,74,00,000 in aggregate as on 07.05.2008. The assessee is willing to dispose off any of the two properties to meet his tax liabilities. It may be mentioned here that the assessee has not gone back on his declarations during the survey and filed the returns of income accordingly. He has also cooperated in completion of assessments, despite his adverse position.

6. None of the clause / sub clauses mentioned in the Board's order dated 26.06.2006 issued under section 119(2)(a) read with Rule 111b of the I.T.Rules, as such is found to be applicable to the circumstances under which the case of the assessee is placed. These clauses/subclasses appear to be not in consonance with the terms of Sec.119(2)(a) as mentioned in para 4 above. However, in view of the above facts and in the circumstances, I am of the considered opinion that this is a case of not only "genuine hardship" but also a typical case of "public interest" too as well. In this connection, kind attention of your goodself is invited to the Board's order u/s 119(2)(a) in



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F.No.275/33/2008-IT(B) dated 13.06.2008 waiving such interests considering the genuine hardship of Kashmiri migrants. It is therefore, requested that the Board may consider to relax the guidelines issued vide order dated 26th June 2006 in this case for waiver of interest in full, after the payment of entire income tax (the principal component of the demand outstanding in this case). Necessary instructions may kindly be issued in this regard".

7. The learned counsel for the petitioner further submits that the petitioner is entitled for waiver of interest in terms of the Board Circular F.No.400/29/2002/IT (B) dated 26.06.2006 under Sections 234A, 234B and 234C of the Income Tax Act, 1961. The learned counsel for the petitioner further submits that the case of the petitioner would fall within the circumstances specified in Clause 2(b) of the aforesaid circular which 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)

(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.

8. The learned counsel for the petitioner further submits that despite loss of business opportunities after Tsunami on 24.12.2004, the petitioner had paid the income tax of Rs.2,05,12,164/- on various dates and particularly submits that for the Assessment Years 1999-2000 and 2000-2001, the arrears of tax were paid before the filing of the returns. Therefore, to that extent, the petitioner should be granted waiver of interest in terms of the aforesaid Circular of Central Board of Direct Tax.



9. Finally, the learned counsel for the petitioner alternatively submitted that the interest calculated by the respondent was exaggerated and contrary to the rate prescribed under the Successive of Finance Act. He submits that the interest that has been calculated for the Assessment Years 1999-2000 to 2005-2006 was exorbitant. The interest calculated in excess was to be reversed as it was contrary to the rates prescribed under Sections 234A, 234B and 234C of the Income Tax Act, 1961.

10. The learned counsel for the petitioner relied on the following decisions:-

- i. Commissioner of Income-tax Vs. M.Chandra Sekhar, [1985] 20 Taxman 3 (SC).
- ii. Dr. Prannoy Roy Vs. Commissioner of Income-tax, [2002] 121 Taxman 314 (Delhi).
- iii. Bharatbhai B. Shah Vs. Income-tax Officer & Others, [2013] 31 taxmann.com 34 (Gujarat).
- iv. S. Nagoor Babu @ Mono Vs. The Chief Commissioner of Income Tax - II and Another, passed by this Court in W.P.Nos.379 to 382 of 2005, order dated 20.04.2009.
- v. Bhanuben Panchal and Chandrikaben Panchal Vs. Chief Commissioner of Income-tax, [2004] 136 TAXMAN 237 (GUJ.)

11. The learned counsel for the respondent submits that law relating to Circular is no longer res integra and drew my attention to the following decisions:-

- i. Chief Commissioner of Income-tax, Chennai - 34 Vs. Rajanikant and Sons, [2017] 83 taxmann.com 162 (Madras).
- ii. Tushin T. Mehta Vs. Chief Commissioner of Income-tax, Chennai - II, [2019] 108 taxmann.com 257 (Madras).
- iii. M/s. Rayala Corporation Pvt. Ltd. Vs. The Chief Commissioner of Income Tax and Another, passed by this Court in W.P.Nos.15399 & 15400 of 2007.

12. He submits that the impugned order of the first respondent is in the line of the decision of S. Nagoor Babu @ Mono case referred to supra and therefore, this Writ Petition is liable to be dismissed. That apart, the learned counsel for the respondent submits that the petitioner was prompted in paying its tax under the provisions of TNGST Act, 1959 and therefore, it cannot be said that the petitioner was not aware of the tax liability.



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13. Under these circumstances, the learned counsel for the respondent submitted that the Writ Petition filed by the petitioner should be dismissed as the petitioner has not satisfied the requirements with regard to waiver of interest under the provisions.

14. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondent. The CBDT Circular dated 26.06.2006 bearing reference F.No.400/29/2002-IT (B) under which the petitioner is sought for waiver from the first respondent reads as under:-

In exercise of the powers conferred under clause (a) of sub-section (2) of section 119 of Income-tax Act, 1961, Central Board of Direct Taxes, hereby directs that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 234A or section 234B or section 234C of the Act in the classes of cases or classes of income specified in paragraph 2 of this Order for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the assessee has filed the return of income for the relevant assessment year and paid the entire income-tax (principal component of demand) due on the income as assessed. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other conditions as deemed fit for the said reduction or waiver of interest.

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



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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.

3. The class of cases referred to in paragraphs 2(a) and 2(d) are specified only for the purposes of waiver of interest charged under section 234A of the Income-tax Act.



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4. Earlier Orders under section 119(2) (a) dated 23-5-1996 and 30-1-1997 on the subject stand superseded by this Order. If any petition in the past has been rejected because the Board had not issued this direction earlier, such petition may be reconsidered and decided in accordance with this Order. If any petition in the past was allowed in accordance with the Orders under section 119(2) (a) dated 23-5-1996 and 30-1-1997, such Orders allowing waiver should not be reopened/revised as per the guidelines contained in this Order.

15. There is no doubt that the petitioner had not only delayed in filing returns but had also delayed in paying advance tax and tax under self-assessment procedure therefore interest under Sections 234 A, 234B and 234C were attracted. The petitioner has given reason which according to him warrants a sympathetic consideration of the view.

16. It is further submitted that the petitioner was a young person aged between 29 and 30 years and was a first time entrepreneur and did not realise the seriousness of not filing the returns and paying income tax in time and was not properly advised by its auditor to file returns in time. It is further submitted that the nature of business in the aquaculture was highly volatile and was subject to several vagaries and most of the customers were farmers engaged in prawn culture who invariably delayed in making payments and therefore to recover the past dues from them, he had to keep the business going by making credit sales and thus the petitioner did not have surplus cash to pay tax even though the petitioner had booked profit on paper.

17. It is further submitted that after the survey was conducted under Section 133A of the Income Tax Act, 1961 during October, 2004, the petitioner suffered huge losses due to Tsunami and had to write off bad debts and despite the same, the petitioner paid the tax due for these Assessment Years.

18. It is submitted that as an individual, he was incapable of raising working capital from banks and was thus incapacitated from paying tax in time and also lacked the imagination to borrow capital from banks to pay tax liability and therefore the interest imposed in the assessment orders pursuant to notices issued under Section 148 of the Income Tax Act, 1961 to the petitioner should be waived.



19. It is further submitted that for some of the Assessment Years, the petitioner has also paid tax in excess and therefore, the petitioner's case may be considered sympathetically even though the petitioner's case may not be covered by four situations in the Notification dated 26.06.2006 issued by the Central Board of Direct Taxes.

20. It is further submitted that the then Chief Commissioner of Income Tax had also considered the hardship faced by the petitioner and had written a letter dated 13.06.2008 to the Central Board of Direct Taxes to relax the guidelines issued by order/notification dated 26.06.2006 as a special case to the petitioner for full waiver of interest.

21. The Honourable Supreme Court in Commissioner of Income Tax Vs. M Chandrashekar, [1985] 20 Taxman 3, while considering the scope of proviso to Section 139 of the Income Tax Act, 1961 as it stood during the period in dispute in the aforesaid case, held that interest becomes payable if the assessee has, without reasonable cause, failed to file returns within the time allowed.

22. The Delhi High Court in Prannoy Roy Vs. Commissioner of Income Tax, (2002) 254 ITR 755, has traced out the history of the amendments brought to the provisions of the Income Tax Act, 1961 in the year 1987 with the insertion of Sections 234A, 234B and 234C by the Amending Act, 1987. There the Delhi High Court has noted that Section 234A was an amalgam of Sections 139(8), 271(1)(a) and Section 140A(3) of the Act as it stood then.

23. The Court has merely held that the Section 234A cannot be construed to be penal nature in the background of insertion of Section 271F in the year 1998 vide Finance (No 2) Act, 1998. The Court ultimately held that interest would be payable in a case where tax has not been deposited prior to the due date of filing of income tax returns. Therefore, the said decision of the Delhi High Court does not further the case of the petitioner.

24. Similarly, the Gujarat High Court in the case of Bharathhai B Shah Vs. Income Tax Officer, [2013] 31 Taxmann.com 34 relies on the decision of the Delhi High Court in Prannoy Roy Vs. Commissioner of Income Tax, (2002) 254 ITR 755. It is also of no relevance to the facts of the present case of the petitioner as the tax was paid before the due date for filing of returns had expired. There interests waived. It was levied for short payment of tax under Section 140A of the Income Tax Act, 1961. None of the above cited decisions further case of the petitioner.



25. In my view, the only issue to be considered in the present case is whether this Court can overlook the situations contemplated in Notification dated 26.06.2006 of the Central Board of Direct Taxes and grant complete or partial waiver of tax to the petitioner considering nature of business of the petitioner and the age of the petitioner by applying the ratio in Tvl. SonMac Motor Finance Ltd. Vs. Chief Commissioner of Income Tax, [2020] 116 taxmann.com 437 (Madras) and in the decision of the Gujarat High Court in Bhanuben Panchal and Chandrben Panchal Vs. Chief Commissioner of Income Tax, [2004] 136 Taxman 237 (Guj).

26. In Tvl. SonMac Motor Finance Ltd Vs. Chief Commissioner of Income Tax referred to supra, this Court had relaxed the conditions in the peculiar facts and circumstances of the case which incapacitated the said company/assessee from filing returns and/or paying tax in time as it had been wound up by an order of the Court which order was subsequently set aside in an appeal before the Division Bench.

27. In Bhanuben Panchal and Chandrben Panchal Vs. Chief Commissioner of Income referred to supra, the Court overlooked the conditions of Notification dated 23.05.1996 issued under Section 119 of the Income Tax Act, 1961. The particular circumstances which impelled the Court to extend olive branch to the assessee there was the age of the assessee who was in her advanced age of 78 years who faced tragedy and catastrophe within the family and was unaware of the income tax liability which was handled by her husband until his death. The Court therefore considered that there were unavoidable circumstances due to which the returns could not be filed in time and therefore granted 75% waiver from payment of interest under Section 234A, 234B and 234C of the Income Tax Act, 1961.

28. There the Commissioner of Income Tax had already granted a waiver of 50% to the petitioner by applying Clause (e) of Notification dated 23.05.1996 which reads as under:-

(e)Where a return of income could not be filed by the assessee you do unavoidable circumstances and such return of income is filed voluntary by the assessee or his legal heirs without detection by the Assessing Officer.

29. The above clause is similar to Clause (d) of CBDT's Notification dated 26.06.2006 which was in force during the period in dispute. Though some amount of latitude and discretion is vested with the officers, such discretion is to be exercised cautiously and cannot be overlooked while granting waiver.



30. As an officer of the Income Tax Department, the first respondent is also not expected to overlook limitation under the said Notification. Therefore, the first respondent also cannot go beyond the scope of the aforesaid Notification issued by the Central Board of Direct Taxes. Therefore, there is no error in the impugned order.

31. The petitioner appears to be genuine as has been noted by the then Chief Commissioner of Income Tax in his communication dated 30.06.2008 to the Central Board of Direct Taxes. He has also recommended waiver of interest for the petitioner.

32. It should also not be forgotten that errant assessee like the petitioner may have however contributed to the economy unknowingly by providing employment in the unorganised sector. Therefore, their contribution cannot be ignored altogether.

33. The petitioner deserves a chance to rehabilitate himself under the liberalised atmosphere. Therefore, to meet the ends of justice, this Court is inclined to direct the Central Board of Direct Taxes to re-visit the norms for relaxation / waiver of interest.

34. Payment of tax and the compliance with the tax laws by the assessee whether under direct or indirect tax still remains big challenge in the country. This could be partially attributed to the complex nature of the provisions in the tax enactments and higher rate of tax which either encourage the assessee to resort to tax avoidance and/or they choose to remain ignorant and continue to evade tax until they are issued with notice. Either way, collection of tax is a casualty.

35. Tax friendly regime with simplified tax procedure is therefore the need of the hour with a liberalized outlook. In case of genuine hardship, a liberalized mechanism should be evolved to rehabilitate errant tax assessee like the petitioner who show remorse and cooperate with the tax department and agrees to pay tax.

36. Recession in the economy and seasonal crisis peculiar to an industry also contribute to such evasion. It has also buried many entrepreneurs and their industry in the past. It has never been easy for an individual to set up a business and survive the onslaught of the time and vagaries of competition and global recessions.



37. A tax friendly regime which not only collects tax responsibly but also allows a deviant assessee to rehabilitate themselves will not only spur growth in the economy but will also instil a sense of pride and dignity among such assessees in participating in the nation building by contributing to the revenue to the Government.

38. The legislatures have also been rolling out several schemes including Voluntary Disclosure Schemes and latest Vivad Se Vishwas Scheme under the Vivad Se Vishwas (VSV) Act, 2020 to encourage evaders some reprieve.

39. Therefore, this Court is inclined to implead the Central Board of Direct Taxes suo motu as the third respondent. The Central Board of Direct Taxes may examine whether the Notification dated 26.06.2006 bearing reference F.No.400/29/2002-IT(B) issued under Section 119(2)(a) read with Rule 111b of the Income Tax Rules, can be further relaxed and suitable amendment can be issued to deal with the situations like the petitioner.

40. The officers responsible for granting partial or complete waiver under Section 119 of the Income Tax Act, 1961 may be given more discretion to grant waiver, so that, assessees like petitioner do not continue to be defaulters despite having paid the tax. The scheme under Section 119 of the Income Tax Act, 1961 can be further liberalized.

41. The third respondent Central Board of Direct Taxes may also consider recommendation of the then Chief Commissioner of Income Tax who by his communication dated 30.06.2008 had exhorted the third respondent Board to relax the conditions of the Notification dated 26.06.2006 issued under Section 119(2)(a) as the special category as was done in the case of Kashmiri migrants while issuing fresh guidelines pursuant to this order. It is made clear that until such fresh guidelines are issued, operation of the existing guidelines in force shall not be affected.

42. The third respondent Central Board of Direct Taxes may therefore revisit Notification dated 26.06.2006 bearing reference F.No.400/29/2002/IT (B) issued under Section 119(2)(a) and may issue fresh guidelines taking note of the above factors.

43. This exercise may be carried out by the third respondent Central Board of Direct Taxes within a period of six months from date of receipt of a copy of this order. Pending such consideration by the third respondent Central Board of Direct Taxes, the second respondent shall maintain the status quo and not proceed against the petitioner. The petitioner shall be



informed of the outcome of the fresh guidelines on way or the other.

44. The above Writ Petition stands disposed of with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Chief Commissioner of Income Tax,
Chennai - V, 121, Mahatma Gandhi Road,
Chennai - 600 034.

2.The Deputy Commissioner of Income-tax,
Business Circle X,
Kannammai Building, 3rd Floor,
No.611, Anna Salai,
Chennai - 600 006.

3.The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

+1CC to M/s.Hema Muralikrishnan, Advocate (SR No.23873)

+1CC to Mr.T.Pramod Kumar Chopda, Advocate (SR No.24085)

W.P.No.28818 of 2010
and M.P.No.1 of 2010

RLD (CO)
PR (20/07/2021)