BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02 / 08 / 2018

PRONOUNCED ON: 16 / 06 / 2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WP (MD) NO.5523 OF 2012

Janata Textiles
(Presently known as Kanika Texstyles)
21, V.P. Ratnasamy Nadar Road,
Madurai - 625 014. ... Petitioner

Vs.

Chief Commissioner of Income - Tax
Madurai. ... Respondent

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 the matter of waiver claim of the petitioner in File No.C.No.2118/24/CC/MDU/TECH/2006-2007 of the respondent for the assessment year 1999-2000 quash the order dated 27.07.2011 rejecting the claim of the petitioner and direct waiver of the interest levied under Section 234B and refund of amount paid with interest.

For Petitioner : Mr.R.Srinivasan
For Respondent : Mrs.S.Srimathy

O R D E R

The writ petitioner is a Manufacturer and Exporter of Handloom Goods. They filed returns of income for the year ended 31.03.1999 relevant for the assessment year 1999-2000. The Assessing Authority issued a notice dated 10.08.2000 for rectification of the mistakes in the returns filed under Section 154 of the Income Tax Act, 1961 *(Shortly "the Act")*. The petitioner filed an objection on 23.08.2000 stating that there is no mistake rectifiable under Section 154 of the Act. However, the same was rejected on 05.10.2000. The petitioner preferred an appeal against the order of rejection and the same was allowed by the Commissioner (Appeals) on 31.03.2002. The appeal filed by the Revenue before the Income Tax Appellate Tribunal was dismissed on 30.09.2005. Thereafter, in the year 2006, notice under Section 148 of the Act came to be issued. The writ petitioner filed a revised return on 24.04.2006.

2.According to the petitioner, the profit of business shall not be calculated on the gross interest, but it shall be based on net interest. On the other hand, the Assessing Authority rejected the claim of the petitioner and assessed on the basis of the gross interest. He has also levied interest for belated payment under Section 234-B of the Act to the tune of Rs.3,64,920/-. The petitioner has filed a petition on 12.02.2007 to waive the interest charged under Section 234-B of the Act to the Chief Commissioner of Income Tax based on the Notification of the Central Board of Direct Taxes in F.No.400/234/95-IT(B) dated 23.05.1996, as modified by order in F.No.400/234/95-IT(B) dated 30.01.1997. The Chief Commissioner of Income Tax rejected the petition on 27.07.2011. Against which, the petitioner preferred the present writ petition.

3.The learned counsel for the petitioner would vehemently contend that the judgment rendered by the High Court of Mumbai on this aspect as well as the judgment of the High Court of Karnataka in ***UB GLOBAL CORPORATION LIMITED VS. CHIEF COMMISSIONER OF INCOME TAX [2013 (87) DTR (KAR) 110-ED)*** was not considered. According to him, the erroneous computation of the Assessing Authority taking the gross interest lead to delayed payment of advance tax. Further, payment of advance tax had arisen due to the judgment in ***Thangapandi's*** Case which came to be delivered on 24.01.2006. Otherwise, there is no necessity to pay advance tax. Hence, payment of advance tax was existing as per the then existing provision. Therefore, the delay occurred due to the later decision. This is beyond the control of the assessee. At the time of filing the returns, the assessee could not make additional payments. Therefore, the Commissioner of Income Tax has power to waive the interest imposed under Section 234-B of the Act and as per Circular issued under Section 119 of the Act.

4.Per contra, it is the contention of the learned counsel for the respondent that the Circular dated 30.01.1997 was subsequently superseded. Even otherwise, the power to waive the interest is a delegated power and it shall be made within the frame work of the instructions issued in this regard. The judgment relied on by the petitioner pertaining to the subsequent years. On the date of passing of the assessment order, those judgments were not available. Overriding of those judgments subsequently or the subsequent judgments will not give any right to the petitioner to claim waiver. The petitioner should have produced the judgments on the previous year of the assessment. Once assessment order is made, the judgment which was rendered subsequently, will not take a retrospective effect and therefore, the claim of the petitioner to waive the interest under Section 234-B of the Act cannot be entertained. Therefore, the claim of the petitioner is not supported by any judgment, much less, the judgment of the territorial High Court or Supreme Court and hence, it has to be rejected.

5.I have considered the submissions.

6.At the outset, the Assessing Authority can issue a notice under Section 154 of the Act which was decided in favour of the petitioner. Later, the Assessing Authority issued a notice under Section 148 of the Act for the incorrect claim for incorrect deduction of the profit under Section 143 of the Act. In fact, the petitioner has filed a revised return on 24.04.2006 with modified computation. The Assessing Authority has also passed an order taking into account the gross profit of the business as an income, negativing the contention of the petitioner that only the net profit has to be taken for imposing tax. However, it is pertinent to note that the petitioner has not filed any objection or appeal against that assessment order, but he filed a petition on 12.02.2007 only against the imposition of interest under Section 234-B of the Act. It is the claim of the petitioner that due to the later pronouncement of High Court in Chinnapandi's Case, he was forced to file the revised return. There was deficit in payment of advance tax which is not under his control and therefore, he is entitled to waiver.

7.As noted above, the petitioner has accepted the assessment order and it has become final. What remains is only the waiver of interest imposed under Sections 234-B and 234-D of the Act. Now that he cannot go back and contend that there is wrongful calculation in the previous assessment. Both the proceedings issued under Sections 154 and 148 have attained finality. Therefore, the petitioner cannot question the merit of those assessment orders. In other words, he cannot state that there is a wrongful calculation which lead to deficit in advance tax payment.The request for waiver is a discretionary process under certain circumstances as envisaged under Section 119 of the Act. Section 119 (2) (b) and (c) of the Act empowers the Board to issue instructions for making deductions and granting waiver of interest under Section 234-B and 234-D of the Act.

8.Now that the petitioner has made a claim that as per the extant rules prevailing during the assessment year 1999-2000, he need not pay advance tax. Payment of advance tax arose only due to a subsequent judgment of High Court in Chinnapandi's case on 24.01.2006. The subsequent developments were not under the control of the petitioner. Even though the petitioner has raised a specific issue on this point, the appellate authority has not discussed the issue of delay, rather, proceeded on the basis of the judgments of High Courts and Hon'ble Supreme Courts.

9.When a specific issue relating to the cause of delay, pursuant to a notice under Section 148 of the Act issued after a period of seven years, the Authority is bound to consider the same and pass a reasonable order as to whether the petitioner is entitled to waiver of interest or not. But in the instant case, the appellate authority mixed up the merits of the case along with the relevant issue and rejected the claim. Therefore, this Court is inclined to interfere with the order and remit the matter back to the appellate authority for reconsideration and a further direction is issued to pass a reasoned order after affording an opportunity of personal hearing to the petitioner within a period of twelve (12) weeks after resumption of regular functioning.

10.The Writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TK

To

Chief Commissioner of Income - Tax
Madurai.

+1 CC to M/s.R.SRINIVASAN, Advocate (SR-19477[F] dated 17/06/2021)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-19476[F] dated 17/06/2021)

PRE-DELIVERY ORDER MADE IN
WP (MD) NO.5523 OF 2012
16 / 06 / 2021

AS(05.07.2021) 4P 4C