BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11321 of 2017 and

W.M.P.(MD)No.8695 of 2017

C.Panneer Mohamed ... Petitioner

Vs.

The Principal Commissioner of Income Tax,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the case relating to the impugned order in C.No.419/02/CIT-1/MD/2010-11 dated 31.05.2017 passed by the respondent and to quash the same and consequently direct the respondent to grant waiver of interest of Rs.2,50,114/- claimed by the petitioner for the assessment year 2006-07.

For Petitioner : Mr.T.Ramesh
For Respondent : Mrs.S.Srimathy,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is an assessee coming under the jurisdiction of the respondent. He was periodically assessed to Income Tax right from the year 2002-03. The petitioner belatedly remitted the tax dues. Therefore, the Assistant Commissioner of Income Tax, Circle II, Madurai, vide proceedings dated AGAPP5802D/CIR II/Mdu/2010-11 dated 12.05.2010 charged interest of Rs.2,50,114/- under Section 220(2) of the Income Tax Act for non-payment of the tax demanded on the due dates. The petitioner thereupon filed a petition under Section 220(2A) of the Income Tax Act seeking waiver of the interest. The said petition was rejected by the impugned order dated 31.05.2017. Questioning the same, this writ petition has been filed.

3. The respondent has filed a detailed counter affidavit seeking to sustain the impugned order and the learned Standing counsel took me through the contents set out therein.

4. The learned counsel appearing for the writ petitioner submitted that the petitioner had fully co-operated with the assessment proceedings and that he had suffered severe economic hardship and therefore the respondent ought to have waived the amount of interest demanded on the petitioner vide proceedings dated 12.05.2010. He would also submit that the impugned order is virtually non-speaking.

5. I carefully considered the rival contentions and went through the materials on record.

6. Section 220(2A) OF THE INCOME TAX ACT, 1961 reads as under:-

> "**220. When tax payable and when assessee deemed in default-**
>
> ...
>
> (2A) Notwithstanding anything contained in sub-section (2), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if, he is satisfied that—
>
> (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 inquiry relating to the assessment or any proceeding for the recovery of any amount due from him:
>
> Provided that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received:
>
> Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard: Provided also that where any application is pending as on the 1st day of June, 2016, the order shall be passed on or before the 31st day of May, 2017."

7. It can be seen from the statutory provision that the authority can grant waiver of the amount of interest if the assessee fulfills the three conditions. In other words, the conditions (i) to (iii) set out in Section 220(2A) of the Act are cumulative and conjunctive. The assessee has to fulfill all the three conditions. Of course the assessee in this case has fulfilled the third condition, namely, to extend cooperation during the assessment proceedings. One can also safely assume that the payment of the amount would cause hardship to the assessee. Fulfillment of the other conditions is also equally vital and important. The default in the payment of the amount on which interest was payable must have been due to circumstances beyond the control of the assessee.

8. In the case on hand, levying of interest was occasioned for belated payment of tax made for the assessment years 2002-2003 and 2003-04. It is true that the returns in respect of those years were finalised only in the year 2007. It was obviously the duty of the assessee to have paid the Income Tax properly. The assessee's contention is that business turnover had fallen. During the financial year 2006-07, his business turnover was around Rs.10.46 Crores. Even in the financial year 2007-08, it was around Rs.5.63 Crores and during the financial year 2008-09, it was around Rs.3.72 Crores. Though the gradual fall in turnover is a fact, even the reduced figures are substantial. The petitioner had a running business. It has not been shown that the default in payment of tax was due to circumstances beyond the assessee's control. The assessee who ought to have paid taxes promptly had failed to do so and the authority was justified in levying interest on the petitioner for the belated remittance of tax.

9. I do not find any ground to interfere with the impugned order. However, taking note of the fact that the assessee's business turnover has been witnessing a downtrend over the years and particularly, the fact that we are still in pandemic times, the petitioner cannot be called upon to make any payment of interest on interest.

10. The petitioner's counsel states that at the time of admission, this Court had granted interim order on condition that the petitioner should pay a sum of Rs.50,000/- and that he had complied with the condition. Therefore, the balance amount to be paid by the petitioner will be 2,00,114/- (Rupees Two Lakhs One Hundred and Fourteen only). If the petitioner pays the said amount within a period of sixteen weeks from the date of receipt of a copy of this order, he need not pay interest on interest.

11. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: 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 CC to M/s.S.SRIMATHY, Advocate (SR-12525[F] dated 19/03/2021)

W.P.(MD)No.11321 of 2017

18.03.2021

MR(11.05.2021) 4P 2C