IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.751 OF 2009

M/s. Eversmile Properties Pvt. Ltd. ...Petitioner
vs.
The Chief Commissioner of Income Tax
City-II and Another ...Respondents

Mr. P.J. Pardiwalla, Senior Advocate i/b. Ms. Vasanti Patel, for the Petitioner.
Mr. Suresh Kumar, for the Respondents

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.

DATE : FEBRUARY 18, 2022

P.C.:

1. Petitioner is impugning an order dated 16th October, 2008 passed by Respondent No. 1 rejecting Petitioner's application for waiver of interest chargeable under section 234B and 234C of the Income Tax Act, 1961 for A.Y. 2005-06.

2. Petitioner is engaged in the business of development and construction of immovable properties. The return of income for A.Y. 2050-06 was filed declaring total income as NIL in line with return for the earlier years. There was a survey conducted under section 133A of the Act on 26th November, 2005. It is recorded in the impugned order that Director of Petitioner Mr. Shivkumar Dalmia voluntarily offered an amount of Rs. 14,00,35,322/- as income for

A.Y. 2005-06 and subsequently, revised return for the said A.Y. was filed on 9th January, 2006 declaring total income at Rs. 13,94,30,051/-. The amount of interest payable as per Petitioner's computation enclosed with the return aggregated to Rs. 76,72,681/-. Taxes totaling to Rs. 5,09,81,264/- attributable to the disclosure made on account of survey were paid by 31st March, 2006.

3. The crux of Mr. Pardiwalla's submission today is that Petitioner being in the business of development and construction of immovable properties, could have adopted either the project completion method of accounting or percentage completion method of accounting and Petitioner was following the project completion method of accounting. In view of the survey conducted, Petitioner decided to change its accounting policy to avoid protracted litigation and to buy peace had changed accounting policy to percentage method of accounting. Mr. Pardiwalla submitted that therefore there was no attempt to not to pay the taxes and it was a genuine error in changing accounting policy. Therefore Petitioner applied to Respondent No. 1 for waiver of interest under section 234B and 234C of the Act. Petitioner made its submissions before Respondent No. 1 stating that its case was squarely covered by

paragraph 2(d) of the order under section 119(2)(a) dated 26th June, 2006 issued by CBDT.

4. The powers of waiver of interest under section 234B and 234C of the Act have been delegated by the CBDT to the Chief Commissioner of Income Tax. The order dated 26th June, 2006 relied upon by Petitioner's representative before Respondent No. 1 provides that the power of waiver of interest can be exercised only upon the fulfillment of certain conditions specified in the order dated 26th June, 2006. Paragraph 2(d) on which Petitioner relied, reads as under:

> "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".

5. This paragraph 2(d) applies in a case where there has been a delay in filing of return of income and cannot apply in a situation where the return of income has already been filed. Therefore, we agree with the finding of Respondent No. 1 that said paragraph is not applicable to Petitioner's case.

6. In any event, in our view the said order dated 26th June, 2006 could not apply because the assessment year relevant for this

matter is 2005-2006 and the order is dated 26th June, 2006 which was not in force during the relevant assessment year.

7. Mr. Pardiwalla also submitted, as recorded in the impugned order, that during the course of hearing, Petitioner's representative had raised alternate ground that the case would be covered by earlier instructions on the subject which would be the order dated 23rd May, 1996. We have considered the order dated 23rd May, 1996. Paragraph 2 of the said order provides the classes of income or class of cases in which the reduction or waiver of interest under section 234A or 234B of the Act, or as the case may be, section 234C can be considered. Paragraph 2 provides for five classes of income or classes of cases. In our view, Petitioner's case will not fall under any of the classes of income or classes of cases, mentioned in the order of 1996.

8. In the circumstances, we do not find anything wrong in the order impugned.

9. Petition dismissed with no order as to costs.

(N. J. JAMADAR, J.) **(K. R. SHRIRAM, J.)**