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W.P.Nos.950 & 955 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.10.2022

Pronounced on: 14.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.950 & 955 of 2020 and
WMP.Nos.1155, 1156, 1159, 1163 & 17657 of 2020

Mrs.Malini Ravindran

... Petitioner in both WPs

Vs

1.The Commissioner of Income Tax (Appeals),
121, Mahatma Gandhi Road,
Chennai – 600 034.

2.The Principal Chief Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Chennai – 600 034.

3.The Assessing Officer of Income Tax,
121, Mahatma Gandhi Road,
Chennai – 600 034.

4.The Deputy Commissioner of Income Tax,
Non Corporate Circle 21(1),
121, Mahatma Gandhi Road,
Chennai – 600 034.

... Respondents in both WPs

PRAYER in WP.No.950 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the order of Chief Commissioner of Income Tax dated 19.12.2019 passed by the 2nd Respondent in CCIT-1/52(1)/waiver/2019-20 and quash the



same and direct the 4th Respondent to recalculate the interest payable u/s 234B by adjusting the tax paid in the year 2012-13 and 2013-14.

PRAYER in WP.No.955 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to order of Commissioner of Income Tax (Appeals)-9 dated 31.01.2019 passed by the 1st Respondent in ITA No.45, 46, 47/CIT(A)-9/2017-18 and the consequential giving effect order u/s. 250 of the Deputy Commissioner of Income Tax dated 28.03.2019, passed by the 4th Respondent in PAN: AABPR2265B/2018-19 and quash the same with respect to the rejection of adjustment of tax paid for the Assessment year 2012-13 and 2013-14 to the assessment year 2011-12 and direct the concerned Authorities to recalculate the interest payable u/s 234B by adjusting the tax paid in the year 2012-13 and 2013-14.

(In both WPs)

For Petitioner : Mr.R.V.Easwar, Senior Counsel
for Mr.C.Harsha Raj

For Respondents : Mr.Prabu Mukund Arunkumar,
Junior Standing Counsel

COMMON ORDER

The petitioner is an individual, who challenges, in W.P.No.955 of 2020, an order passed by the Commissioner of Income tax (Appeals) dated 31.01.2019 and consequential order passed by the Assessing officer dated 28.03.2019, and in W.P.No.950 of 2020 an order dated 19.12.2019, passed by the Chief Commissioner of Income Tax/R2.



2. The facts relevant to decide the Writ Petitions, as put forth by Mr.R.V.Easwar, learned Senior Counsel appearing for Mr.C.Harsha Raj, learned counsel on record for the petitioner are as follows:

- (i) The petitioner is a sister of one Late Sri.V.S.Ranganathan (in short 'assessee'), who was assessed to income tax under the provisions of the Income Tax Act, 1961 (in short 'Act').
- (ii) For Assessment years (AY) 2011-12, 2012-13 and 2013-14, assessments had been framed that involved capital gains on the sale of a property at Uthandi Village, Shollinganallur Taluk, admeasuring 23.17 acres (in short 'property'/'property in question').
- (iii) The assessee had entered into a Memorandum of Understanding (in short 'MOU') on 12.12.2010 with a company by name, Shreyas Investments (in short 'Company') for sale of the property in question for a total sale consideration of Rs.1,21,65,21,000/-.
- (iv) The sale had taken place over the course of the three assessment years in question and the petitioner had computed and paid capital gains for each of the years, prior to which advance tax had also been paid in the financial years relevant to assessment years in question.



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- (v) The consideration received for the lands sold and the capital gains offered are tabulated as under:

AY	Extent of land sold	Consideration received	Capital gains offered
2011-12	20,471 sq. Ft (0.47 acres)	Rs.2,46,70,661/-	Rs.2,46,20,123/-
2012-13	8,89,195 sq. Ft (20.413 acres)	Rs.1,06,19,12,311/-	Rs.1,05,45,08,680/-
2013-14	66,901 sq. Ft (1.48 acres)	Rs.8,04,62,873/-	Rs.7,52,66,827/-
		Rs.1,16,70,45,845/-	Rs.1,15,43,95,630/-

- (vi) Returns of income had been allowed to become final and re-opened thereafter for the purposes of re-assessment of escaped tax.
- (vii) After adhering to the procedure prescribed, orders of re-assessment had been passed, the Assessing Officer holding that the transfer of capital asset, the property in question, had taken place with the execution of MOU on 12.12.2010 and bringing to tax the entire sale consideration in that year, i.e., AY 2011-12.
- (viii) Assessments had been made for subsequent years as well, on protective basis.
- (ix) The additions for each of the years on substantive and protective basis are as follows:



AY	Addition (Rs.)	Assessed total income (Rs.)	Remarks
2011-12	117,91,04,124/-	120,62,64,040/-	Substantive Assessment
2012-13	71,64,77,689/-	181,50,39,310/-	Protective Assessment
2013-14	8,06,97,130/-	22,75,82,620/-	Protective Assessment

- (x) The assessee had preferred appeals before the first appellate authority and, pending appeals, passed away on 23.06.2018.
- (xi) The petitioner thus prosecuted the appeals as his legal heir before the first appellate authority and acquiesced to the assessments, agreeing that the entirety of the demand arose in the first year, i.e., AY 2011-12. Amounts of Rs.3.00 crore and Rs.1.00 crore had been made towards part of the tax payable, in AYs 2018-19 and 2019-20 respectively.
- (xii) She confirms her acquiescence in letter dated 23.01.2019 to the effect that the substantive assessment for AY 2011-12 could be confirmed and the protective assessments for the subsequent two years be cancelled.
- (xiii) Certain caveats were also laid which are not relevant for deciding the issue that arises for determination in these matters and are hence, not alluded to herein.



- (xiv) The offer of the assessee was accepted by an order passed by the Commissioner of Income Tax (Appeals) on 31.01.2019 confirming the position that transfer of the property in question for the purpose of computation of capital gains, took place in the financial year relevant to AY 2011-12. No statutory appeal has been filed as against the aforesaid order.
- (xv) Consequently, a portion of the same income that had been brought to tax in the subsequent two years were directed to be excluded, to avoid double taxation.
- (xvi) Effect was given to the order of the first appellate authority on 28.03.2019, the assessing authority passing separate orders in respect of assessment years 2011-12, 2012-13 and 2013-14.
- (xvii) The orders giving-effect determined the total tax and interest payable in respect of AY 2011-12 at a figure of Rs.40,78,17,870/-.
- (xviii) Refund of a sum of Rs.30,50,88,980/- was determined for AY 2012-13 and adjusted as against the demand for AY 2011-12.
- (xix) Likewise, the order giving-effect for AY 2013-14 determined a refund of a sum of Rs.1,97,23,600/- and adjusted the same as against the demand for AY 2011-12.



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- (xx) The petitioner sought an adjustment of refunds arising in the latter two years with the demand arising for AY 2011-12, and after adjustment, the net tax payable was determined at a sum of Rs.8,30,05,290/-.
- (xxi) The total demand of a sum of Rs.40.78 crores for AY 2011-12, includes interest under Section 234 B of a sum of Rs.19,43,57,718/.
- (xxii) Since the petitioner had remitted advance/self-assessment tax in the financial years relevant to AYs 2012-13 and 2013-14 on the premise that capital gains was payable in those years, she submitted a request for waiver of interest under Section 234B on the ground that the advance/self-assessment payments made for the subsequent two years be considered as tax paid for AY 2011-12.
- (xxiii) This request was not acceded to, the officer being of the view that there was no provision for adjustment of tax paid in one year as against the tax liability for any other year.
- (xxiv) The only situation when such set-off was possible, according to the officer, is where excess tax had been paid for a particular assessment year as against outstandings in other assessment years; in such a situation, after a refund of excess tax had been



determined for the year in question, the refund determined could be adjusted against the tax demanded for other years as per Section 245 of the Act.

(xxv) This too, was only after due intimation was given to the assessee of such proposed adjustment.

(xxvi) It is as against the aforesaid order of rejection of waiver, as well as the order of the appellate and assessing authorities that the present challenges are laid.

3. Reliance is placed on the provisions of Section 234B, reading as follows:

Interest for defaults in payment of advance tax.

234B .(1) *Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.*

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(2) *Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,-*

(i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

4. Stress is laid by the petitioner on the use of the phrase '*or otherwise*' in sub-section (2) of Section 234B to state that both self-assessment tax as well as other amounts paid by the assessee prior to completion of regular assessment under Section 143(3) can be considered for reduction from assessed tax for charge of interest under Section 234B of the Act. Reliance is placed on a judgement of the Hon'ble Supreme Court in the case of *Smt. LilaVati Bai V. State of Bombay* (AIR 1957 SC 521) and a decision of the Delhi High Court in the case of *Commissioner of Income-tax V. Jindal Exports Ltd.* (314 ITR 137).

5. Per contra, Mr.Prabhuhas stoutly defended the impugned order arguing that there is no situation whereby advance tax payments for one year could be adjusted to make good tax payments for another year. He urges that such a situation is not contemplated under the Act and there is no statutory sanction for accepting the request of the petitioner.



6. He draws attention to Notification in F.No.400/234/95-IT(B), dated 23.05.1996, which sets out certain explicit situations where waiver of interest under Section 234B may be considered. Reference is made to capital gains in clause (c) of paragraph 2 of that Notification, reading thus:

NOTIFICATION NO. [F.NO.400/234/95-IT(B)], DATED 23-5-1996

.....

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:

.....

(c) Where any income chargeable to income-tax under any head of income, other than "capital gains" is received or accrues after the 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 or Director-General is satisfied on the facts and circumstances of the case that this is a fit case for reduction or waiver of interest chargeable under section 234C of the Income-tax Act.

7. Since 'capital gains' has been specifically excluded under clause (c) of the above Notification, learned counsel argues that it is a conscious decision of the Legislature and of the Central Board of Direct Taxes, to exclude capital gains, as a head of income, from the ambit of waiver.

8. I am of the considered view that the above Notification is not relevant for the purposes of this case. The situation contemplated in clause (c) is one



where income chargeable under a head other than ‘capital gains’, is received or has accrued after the due date of payments of the first or second instalments of advance tax. Such a situation does not arise in this matter as the entire consideration has not just been received but also offered to tax in the respective assessment years.

9. That apart, the contents of a Notification cannot stand in the way of this Court, or limit its interpretation, of statutory provisions. Reliance upon the Notification is thus found to be misplaced and this argument rejected. Separately, he also relies on a decision in the case of *Commissioner of Income-tax v. Atlas Cycle Industries* ((1989) 46 Taxman 315 (Punjab & Haryana)), which, in his opinion, supports the impugned order.

10. It is an admitted position that the advance taxes relevant to AYs 2012-13 and 2013-14 have been paid in time, in the course of financial years 2011-12 and 2012-13 respectively. The re-assessments in this case transpired on 29.12.2017.

11. The provisions of Section 234B provide for interest in defaults in payment of advance tax. Sub-section (2) thereof, includes for the purpose of determination of the amount of advance tax paid, any amounts remitted under Section 140A as self-assessment tax, and any other amount paid, ‘otherwise’.



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12. The charge of interest under Section 234 B is mandatory and to compensate in delay in payment of advance tax as has been categorically settled by the Hon'ble Supreme Court in the case of *CIT V. Anjum Ghaswala* (252 ITR 1). Thus, there is no doubt in my mind that the request for waiver is to be considered strictly in light of the statutory prescription.

13. The use of the word '*otherwise*' has been considered by the Apex Court in *Smt. LilaVati Bai V. State of Bombay* in the context of the Bombay Land Requisition Act (Act 33), 1948. Section 6(4)(a) of the aforesaid Act came to be attacked on the grounds that it violated fundamental rights under Articles 19(1)(f) and 31(2) of the Constitution of India.

14. The aforesaid provision contemplated a vacancy in a premises when a tenant ceased to be in occupation, and the situations contemplated included the termination of his tenancy, eviction, assignment, transfer of his interest in the property, 'or otherwise'. The phrase '*or otherwise*' was construed ejusdem generis with the words preceding that phrase by the High Court that dismissed the writ petition.

15. While confirming the dismissal, the argument that the phrase 'or otherwise' should be read ejusdem generis was not accepted by the Hon'ble Supreme Court, the Bench taking a far more expansive view of the matter and concluding that the phrase has been used in an all-inclusive sense.



16. A Constitutional Bench of the Apex Court held that the Legislature, in using the phrase 'or otherwise' intended to cover all possible cases of vacancy arising on account of any factor or reason, whatsoever. The discussion reads as follows:

....

As an offshoot of the argument that we have just been examining it was contended on behalf of the petitioner that Explanation (a) to s. 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) "ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner of his interest in the premises or otherwise ". The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words " or otherwise" must be construed as ejusdem generis with the, words immediately preceding them: and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a



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third party. The legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the legislature used those words in an all-inclusive sense. No decided case of any court, holding that the words "or otherwise" have ever been used in the sense contended for on behalf of the petitioner, has been brought to our notice.

On the other hand, by way of illustration of decisions to the contrary may be cited the case of Skinner & Co. v. Shew & Co. In that case the Court of Appeal had to consider the words of s. 32 of the Patents Designs & Trade Marks Act, 1883 (46 & 47 Vict. c. 57), to the following effect:-

"Where any person claiming to be the patentee of any invention, by circulars, advertisements or otherwise threatens any other person with any legal proceedings....."

Their Lordships repelled the contention that the words "or otherwise" occurring in that section had to be read ejusdem generis with "circulars", and "advertisements". They observed that by so doing they will be cutting down the intendment of the provisions of the statute when clearly the word,,; "or otherwise" had been used with a contrary intention. The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and mischief of the enactment there is no room for the application of the rule of ejusdem generis. Hence



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it follows that the vacancy as declared by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise".

17. Applying the ratio of the above judgement to the present case, the use of the phrase '*or otherwise*' would apply to all and any payments made by an assessee, including, in this case, advance tax paid for the subsequent two assessment years. Needless to state, any delay in effecting such remittances would have to be duly compensated by the petitioner.

18. Applying the ratio of the above matter to the present case, the phrase '*or otherwise*' used in Section 234B(2) would encompass situations of remittances made in any other context, wherein the amounts paid stood to the credit of the petitioner.

19. Incidentally, Courts have held that adhoc parking of funds by an assessee would not satisfy the requirements under the scheme of advance tax. Payments, to be characterized as adhoc would have to be unrelated to any particular year, issue or demand and hence Courts have held that such payments cannot be taken note of by the authorities as payments towards advance tax or self-assessment tax.

20. The payments in the present case are not adhoc, and have been made specifically towards advance tax for liability towards capital gains in FYs 2011-12 and 12-13. Moreover, the Department has been in possession of the entire



amounts from FY 2011-12 and 12-13, as the assessee has long satisfied the demands for the corresponding assessment years by way of advance and self-assessment taxes. It is the aforesaid amounts that have been adjusted against the liability for AY 2011-12.

21. Thus, the exercise is substantially revenue neutral. However, liability to advance tax commences from the financial year relevant to the assessment year in question, in this case being 2011-12. In the present case, the petitioner seeks credit in respect of the advance tax remitted during FY 2011-12 and 12-13, relevant to AY 2012-13 and 13-14.

22. Thus, there is a delay of one and two years respectively, as the amounts for which credit is sought ought to have been remitted in FY 2010-11, relevant to AY 2011-12. To this extent, the petitioner is liable to interest in terms of Section 234B.

23. The impugned order rejecting the prayer for waiver of interest is set aside, to the extent as indicated above. However, I agree with the revenue that there is no justification in the challenge to appellate order dated 31.01.2019 and consequential order passed by the Assessing officer dated 28.03.2019, and reject the same in limine. W.P.No.950 of 2020 is allowed and W.P.No.955 of 2020, dismissed. No costs. Connected Miscellaneous Petitions are closed.



14.11.2022

Index : Yes
Speaking Order

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DR.ANITA SUMANTH, J.

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