IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.5891 of 2020 and
WMP Nos.1520 of 2022 & 6898, 6899 & 6900 of 2020

M/s.Liberty Equipments Private Limited,
Represented by its Director,
R.Aravindhan,
No.373, SIDCO Industrial Estate,
Ambattur, Chennai-600 098. ... Petitioner

Vs

1.The Principal Commissioner of Income Tax-4,
301, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.The Income Tax Officer,
Corporate Ward-4(4),
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the 1st Respondent and quash the impugned ITBA/COM/F/17/2019-20/1025199265(1) u/s 220(2A) dated 14.02.2020 passed by the 1st Respondent as illegal and without jurisdiction and consequently direct the 1st Respondent to waive an amount of Rs.26,82,187/- levied as interest u/s. 220(2) of the Act.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.Prabu Mukund Arunkumar
Junior Standing Counsel

O R D E R

The petitioner is a company and an assessee under the provisions of the Income Tax Act, 1961, (in short 'Act') on the file of the second respondent/R2/ assessing officer. In respect of Assessment Year (AY) 2010-11, the petitioner did not file a return of income and hence, notice under Section 148 had come to be issued.

2. A return was filed thereafter in pursuance of the aforesaid Notice that contained, inter alia, particulars of income earned on sale of an immovable property for consideration of a sum of Rs.1,89,50,000/-. The return was taken up for assessment and an order was passed on 28.03.2014, wherein the capital gains arising on the sale of the property was computed, the assessing officer being of the view that the value of the sale must be based on the guideline value, being Rs.3,04,41,638/- and not the value as reflected in the return of income.

3. The petitioner carried the matter in first appeal before the Commissioner of Income Tax (Appeals). Pursuant to the framing of assessment, a demand of a sum of Rs.1,05,76,151/- was raised, vide notice of demand dated 28.03.2014. The demand notice called for the assessee to remit the aforesaid amount within a period of thirty days. No amount was paid

towards the disputed demand. Learned counsel for the petitioner also confirms that there was no stay of the demand granted by either the assessing officer, the appellate or administrative commissioner, pending first appeal.

4. The appeal came to be decided on 31.07.2017, the appellate authority confirming the order of assessment and the value of the property at a sum of Rs.2,77,49,120/- as against the sum of Rs.1,71,22,261/- adopted by the petitioner and Rs.3,04,41,638/- as computed by the assessing officer. The addition, to some extent, stood reduced by the first appellate authority.

5. A consequential order came to be passed on 04.09.2017 wherein the demand stood reduced to a sum of Rs.48,22,499/-. This order has attained finality and the petitioner has not filed any appeal thereupon. Despite the demand having been raised as early as on 28.03.2014, the petitioner had settled the same only on 16.09.2017 and 25.09.2017, in two installments of Rs.40,00,000/- and Rs.8,22,499/- respectively.

6. An order thereafter came to be passed by the second respondent on 27.09.2017 mulcting the petitioner with interest for the delay in payment of demand, and failute to remit the same within thirty days in terms of Section 156 notice. The interest levied is of a sum of Rs.26,82,187/-. On 13.12.2017, the petitioner moved the authority seeking waiver of the interest levied under Section 220(2A) of the Act that imposes the following conditions being:

> ***'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 of [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;]'*

7. An order was originally passed by the authority rejecting the waiver application as against which the petitioner filed a writ petition in W.P.No.5633 of 2019 that came to be allowed on 22.10.2019 by a learned single Judge of this Court setting aside the order and remanding the matter to the file of the assessing authority to pass an order on merits and in accordance with law.

8. At paragraph 11 of that order, learned Judge notes that the order passed by the assessing authority is only on the ground that the directors of the assessee company had given loans to the assessee that were utilized for

settlement of the disputed demand and that the assessee had been receiving rental income per month as well.

9. The petitioner thereafter filed written submissions on 10.02.2020 reiterating the request for waiver and the impugned order has been passed on 14.02.2020, wherein the officer concludes that the conditions under Section 220(2A) have not been satisfied.

10. I have perused the waiver application as well as the written submissions and the impugned orders in detail as well as heard the submissions of Mr.R.Sivaraman, learned counsel for the petitioner and Mr.Prabu Mukund Arunkumar, learned Junior Standing Counsel for the respondents.

11. The petitioner has cited the following judgments/decisions of the Courts in his favour:

(i) *B.M.Malani v. Commissioner of Income-tax* [(2008) 306 ITR 196 (SC)]

(ii) *TCV Engineering Ltd. v. Assistant Commissioner of Income tax, Central Circle II(2) Madras* [(2020) 113 taxmann.com 578 (Madras)]

(iii) *Arun Sunny v. C.R.Building, Chief Commissioner of Income-tax* [(2014) 43 taxmann.com 467 (Kerala)]

(iv) *Poompuhar Shipping Corporation Ltd. v. Assistant Commissioner of Income Tax, Co. Circle V(2), Chennai* [(2017) 88 taxmann.com 218 (Madras)]

12. The petitioner further relies on Circular No.784 dated 22.11.1999 issued in the context of Section 273(A)(4) of the Act clarifying what would constitute 'genuine hardship'. As far as reliance on the Circular is concerned, learned Standing Counsel would distinguish the same saying that the conditions set out under Section 273(A) and those arising under Section 220(2) are different.

13. The arguments of the petitioner revolve around the fact that the officer has not specifically dealt with the satisfaction of the conditions set out under Section 220(2A) of the Act. As far as the third condition is concerned, the officer has accepted that the petitioner has co-operated in the matter and hence, admitttedly, clause-3 stands satisfied.

14. However, clauses-1, 2 & 3 would have to be satisfied concurrently to entitle an assessee for waiver of interest under section 220(2) of the Act. The first condition relates to whether the payment of the amount, or insistence upon such payment, has, or would cause genuine hardship to the assessee.

15. According to the petitioner, the balance sheets reveal that it is running a loss in business operations and the entirety of its resources constitute

only rental income received. The income from rent has been utilised for settlement of statutory dues as well as for the running expenses of the company. These factors, according to it, constitute 'genuine hardship' that explain the failure to effect payments in time.

16. As far as the second condition is concerned relating to whether the default in payment of the tax was on account of circumstances beyond the control of the assessee, the petitioner would submit that it had not accepted the order of assessment, but had filed first appeal and hence was legitimately anticipating that the appeal would be allowed.

17. Per contra, revenue counsel argues that the conditions under section 220(2A) have not been satisfied in the least. That apart, the payments were ultimately made by the Directors of the company and thus the conclusion of the assessing authority that the petitioner had sufficient resources is incorrect.

18. The demand in this case has arisen on 22.03.2014. Admittedly, the petitioner has a statutory duty to have remitted the amount within thirty days from date of the notice of demand under Section 156, which has not been done. The aforesaid period expired on 21.04.2014.

19. Thereafter, Section 220 permits the petitioner to approach the authorities with an application for stay, even pending appeal and in the absence of such a stay application, the petitioner would be deemed to be an assessee in

default. In this case, admittedly, there has not even been an application filed seeking stay, let alone, such stay having been granted.

20. In such circumstances, the petitioner is an assessee in default, till such time the demand was settled. The fact that the matter was pending in appeal does not, in my considered view, take away from this aspect of the matter.

21. The order of assessment has attained finality and in such circumstances, the demand, though reduced in appeal, would be relatable to the date on which it was first raised, which is 23.02.2014. The assessing authority in the impugned order has noted the absence of any circumstances leading to genuine hardship and there is nothing in the pleadings either, to indicate any hardship or justification for the delay caused to the petitioner between 2014 and 2017. Furthermore, the admitted position is that the tax has ultimately been remitted by way of loans from the Directors, which had been extended on 16.09.2017 and 05.12.2017. The petitioner had also, the benefit of accumulated rental income quantified at a sum of Rs.6,00,000/-.

22. The amount of Rs.40,00,000/- received from one Director on 16.09.2017 has been remitted on the same date towards payment of taxes. The second loan has been received on 05.12.2017 and, has been used for settlement of the loan along with the accumulated rental income.

23. A mere statement to the effect that the business operations were running in a loss cannot justify the delay in settlement of statutory dues to the Government. If at all there were any such genuine circumstances that would mitigate the delay, it was incumbent on the assessee to have obtained a stay of the demand before the authorities, at the relevant point in time.

24. The company is stated to have been taken over by a new management in 2015 and hence, the Directors from whom the loan was taken in 2017, would well have been persuaded to advance the monies or to find the resources to settle the statutory dues, even in 2015 that would have reduced the liability substantially. Thus, in my considered view, the conditions set out under clauses-1 & 2 of Section 220(2A) have not been satisfied in the present case. Circular No.784 deals with genuine hardship which is a condition to be taken note of by the Commissioner of Income Tax while considering the waiver of penalty under Section 273(A) of the Act.

25. The Circular has no application in a case such as the present, where the default has been a continuous one from 2014 onwards. The conditions for waiver are statutorily enshrined in clause (2A) of Section 220 and the standards to be applied to decide the question of waiver must turn upon the concurrent satisfaction of all three conditions. The judgments referred to by the petitioner

are also not applicable insofar as the facts, as noticed in this case, are different and distinguishable from the facts as referred to in those cases.

26. In light of the discussion as above, this writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.

07.11.2022

Index : Yes
Speaking Order
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