IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.12.2021
Pronounced On	08.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.21058 of 2021
and
W.M.P.Nos.22319 & 22321 of 2021

(Through Video Conferencing)

Ravikumar Dhandhania ... Petitioner

Vs.

Income Tax Officer,
Ward I (4) Salem,
Room No.306, 3rd Floor,
New Building, No.3,
Gandhi Road,
Salem - 636 007. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned order referenced No.C.No.9503(1)/2018-19/PCIT/SLM dated 14.02.2019 passed by the Principal Commissioner of Income Tax , Salem as the same is arbitrary and devoid of merit and to direct the respondent to waive off sum of Rs.28,61,596/- (Rupees Twenty Eight Lakhs Sixty One Thousand Five Hundred and Ninety Six only) towards interest due on tax under Section 220(2) for the assessment year 2007-2008.

For Petitioner : Mr.R.Lakshmi Ratan

For Respondent : Mr.A.N.R.Jayapratap
Junior Standing Counsel

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned order dated 14.02.2019 bearing reference C.No.9503(1)/2018-19/PCIT/SLM passed by the Principal Commissioner of Income Tax, Salem and to direct the respondent to waive off a sum of Rs.28,61,596/- towards interest due on tax under Section 220(2) of the Income Tax Act, 1961 for the Assessment Year 2007-2008.

2. The petitioner had filed the return on 05.03.2009 for the Assessment Year 2007-2008 by admitting an income of Rs.1,57,410/-. Thereafter, the petitioner appears to have informed the Income Tax Officer that there was an inadvertent mistake in the return and therefore, the taxable income was to be recomputed as Rs.3,20,00,000/-, by which time, the time for filing revised return under Section 139 of the Income Tax Act, 1961 had expired.

3. Thereafter, the petitioner was issued with a notice dated 31.03.2014 under Section 148 of the Income Tax Act, pursuant to which, the petitioner filed revised return, wherein, the aforesaid amount of Rs.3,20,00,000/- was included into taxable income of the petitioner. The scrutiny was completed. Eventually, the Assessment Order was passed by the respondent Assessing Officer on 30.01.2015, wherein, the interest under Sections 234A, 234B & 234C of the Income Tax Act, 1961 for the belated payment of tax due on the revised return filed by the petitioner was demanded. The details of the tax assessed by the respondent are as under:-

Income originally returned	: Rs. 1,57,410/-
Income returned as per revised return	: Rs.3,21,57,410/-
Income assessed	: Rs.3,21,57,410/-
Tax payable	: Rs. 95,97,223/-
Add: Surcharge @ 10%	: Rs. 9,59,722/-
Education Cess @ 2%	: Rs. 2,11,139/-
Tax payable	: Rs.1,07,68,084/-
Less: Advance Tax paid	: Rs. 5,000/-
Tax payable	: Rs.1,07,63,084/-
Add: Interest u/s 234A	: Rs. 23,67,860/-
Interest u/s 234B	: Rs.1,01,17,220/-
Interest u/s 234C	: Rs. 196/-
Tax payable	: Rs.2,32,48,360/-
Less : Self assessment tax paid	: Rs.1,07,63,080/-
Balance tax payable	: Rs.1,24,85,280

4. The petitioner was also issued with a Demand Notice dated 30.01.2015 under Section 156 of the Income Tax Act, 1961, wherein, the petitioner was called upon to pay a sum of Rs.1,24,85,280/-. It appears that the petitioner had approached the competent authority, namely, Chief Commissioner of Income, Trichy for waiver of interest under the provisions of the Income Tax Act, 1961 vide Waiver Application dated 06.04.2015. Meanwhile, the petitioner was also issued with another demand notice dated 02.08.2016 calling upon the petitioner to pay the aforesaid sum of Rs.1,24,85,280/- which was challenged before the Madurai Bench of this Court in W.P.(MD) No.16001 of 2016. The said Writ Petition was disposed on 26.08.2016 by directing the Chief Commissioner of Income Tax, Tirchy to consider the Waiver Application dated 06.04.2015 filed by the petitioner for waiver of interest demanded in the Assessment Order.

5. Pursuant to the aforesaid order, an order dated 28.12.2016 came to be passed by the Chief Commissioner of Income Tax, Trichy. By the aforesaid order, the request of the petitioner for waiver of interest under Section 234A, 234B & 234C of the Income Tax Act, 1961 was rejected. The petitioner accepted the aforesaid order and paid a sum of Rs.1,24,85,280/- on various dates, i.e. 03.02.2017, 08.03.2017, 20.03.2017, 23.03.2017 & 24.03.2017.

6. Having received the interest belatedly on the above dates, the respondent Income Tax Officer, Ward 1(4), Salem also issued a notice dated 30.01.2018 bearing reference C.No. CHE231W4 /403 / ACGPD9374E and called upon the petitioner to pay a further sum of Rs.28,61,596/- as interest under Section 234A, 234B & 234C of the Income Tax Act, 1961. The petitioner therefore sent a representation dated 12.02.2018 to the respondent.

7. However, the respondent attached the Bank Account of the petitioner vide Notice dated 26.03.2018 bearing reference PAN No.ACGPD9374E/W-1(4)/SLM under Section 226(3) of the Income Tax Act, 1961. The petitioner challenged the same before this Court in W.P.No.9899 of 2018 which came to be finally disposed by an order dated 30.08.2018 by directing the respondent to consider the representation dated 12.02.2018 of the petitioner for waiver of further interest as the petitioner has already paid interest quantified in the Assessment Order dated 30.01.2015.

8. However, the petitioner failed to file a waiver petition. The respondent posted the case for filing fresh waiver petition to 12.12.2018. Thereafter, the petitioner had filed a fresh waiver petition dated 30.11.2018 which was rejected by the Principal Commissioner of Income Tax, Salem vide order dated 14.02.2019 under Section 220(2A) of the Income Tax Act, 1961. Since the said waiver petition was rejected, the respondent issued a Demand Notice dated 21.02.2019 and demanded the aforesaid amount of Rs.28,61,596/- from the petitioner.

9. It also appears that the petitioner had filed an appeal before the Income Tax Appellate Tribunal against the order dated 14.02.2019 passed by the Principal Commissioner of Income Tax, Salem under Section 220(2A) of the Income Tax Act, 1961 in ITA Nos.1041/Chny/2014. The said appeal was also dismissed vide order dated 18.12.2019 with liberty to obtain an alternative remedy since the appeal was not maintainable and order under Section 220(2A) of the Income Tax Act, 1961 was not an appealable order before the Income Tax Appellate Tribunal. Subsequently, the respondent issued the impugned notice dated 24.01.2020 demanding the aforesaid sum of Rs.28,61,596/- as interest from the petitioner.

10. The learned counsel for the petitioner submits that the petitioner is entitled for waiver of interest on interest as the petitioner has not only paid the tax determined by the respondent Assessing Officer pursuant to the notice issued under Section 148 of the Income Tax Act, 1961 but also paid the interest demanded under Section 234A, 234B & 234C of the Income Tax Act, 1961 on various dates as mentioned above.

11. The learned Junior Standing Counsel for the respondent submits that the petitioner had delayed in paying the interest under Sections 234A, 234B and 234C of the Income Tax Act, 1961. It is submitted that the Demand Notice was issued under Section 156 of the Income Tax Act, 1961 along with the Assessment Order dated 30.01.2015, wherein, it was clearly stated that if the petitioner fails to pay the amount within the specified period, the petitioner shall be liable to pay simple interest at 1.5% for every month or part of a month from the date commencing after end of the period aforesaid in accordance with Section 220(2) of the Income Tax Act.

12. The learned counsel for the petitioner submits that even for paying the aforesaid amount of interest, the petitioner had approached the respondents for waiver and filed a writ petition

and thus the amount was belatedly paid by the petitioner after an order came to be passed on 09.12.2016, pursuant to the direction of this Court in W.P.(MD).No.16001 of 2016 of the Hon'ble Madurai Bench of this Court vide its order dated 26.08.2016.

13. The Junior Standing Counsel for the respondent submits that the interest is consequential and in terms of Section 220(2) of the Income Tax Act, 1961 and therefore, the petitioner is required to pay the interest, particularly, in the light of the fact that the request of the petitioner for waiver of interest was rejected by an order dated 14.02.2019 earlier. The Junior Standing Counsel for the respondent further submits that the fact that challenge to the order dated 14.02.2019 in ITA Nos.1041/Chny/2014 was also withdrawn as the appeal was dismissed on 18.12.2019.

14. The learned Junior Standing Counsel for the respondent further submits that after the Assessment Order was passed on 30.01.2015, a notice was issued under Section 156 of the Income Tax Act, 1961, wherein, it has been clearly stated that if the petitioner does not pay the the amount within the period specified above, the petitioner will be liable to pay simple interest at the rate 1.5% for every month or part of a month from the date of commencing after the end of the period in accordance with Section 220(2) of the Income Tax Act, 1961.

15. The learned Junior Standing Counsel for the respondent submits that this Writ Petition is not maintainable as there is no scope for further waiver, once the order has attained finally on 28.12.2016. It is further submitted that the payment of tax and interest under Section 234A, 234B & 234C of the Income Tax Act, 1961 by the petitioner after the notice under Section 148 of the Income Tax Act, 1961 was issued is consequential. It took about three years and therefore, the impugned notice issued the respondent cannot be challenged in this Writ Petition. It is therefore submitted that the present Writ Petition is liable to be dismissed.

16. The learned Junior Standing Counsel for the respondent submits that the application for waiver of interest was rejected by the Principal Chief Commissioner of Income Tax by an order dated 28.12.2016. There was an inordinate delay in payment of the Income Tax Act and interest thereon under Sections 234A, 234B and 234C of the Income Tax Act, 1961 and the aforesaid amounts were paid only after the application was rejected by an

order dated 28.12.2016. After the aforesaid amount was paid, the respondents thus issued yet another notice under Section 220(2) of the Act by calling upon the petitioner to pay a sum of Rs.28,61,596/-.

17. It is submitted that the impugned order which has been passed pursuant to the order of this Court is well reasoned and requires no interference. It is further submitted that the petitioner has not shown that the payment of amount would have cause genuine hardship to the petitioner or any of the situation of Section 220(2A) of the Income Tax Act, 1961 was attracted.

18. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the orders.

19. The petitioner seeks waiver of interest on account of the fact that the petitioner has paid the tax and the interest under Sections 234A, 234B & 234C of the Income Tax Act, 1961.

20. Section 220(2A) of the Income Tax Act, 1961 reads as under:-

> When tax payable and when assessee deemed in default.
> 220. (1) ....
>
> (2)...................
>
> (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.

21. Sub Section (2A) is an exception to Sub Section (1). The facts of the case are not in dispute. The petitioner had made an incorrect declaration in his Income Tax Returns for the Assessment Year 2007-2008 and thus, the assessment was sought to be reopened on 31.03.2014. An Assessment Order dated 30.01.2015 came to be passed, pursuant to which, a Demand Notice dated 30.01.2015 was issued under Section 156 of the Income Tax Act, 1961 to the petitioner. As per the Demand Notice, the petitioner was required to pay a sum of Rs.1,24,85,280/- as detailed above.

22. The Demand Notice under Section 156 of the Act also stipulated that if the petitioner failed to pay the aforesaid amount within the period of thirty days from the date of the service of the Demand Notice, the petitioner will also be liable to pay a simple interest at 1.5% for every month or part of a month from the date commencing after the end of the period of 30 days in accordance with Section 220(2) of the Income Tax Act, 1961.

23. The petitioner, however, failed to pay the interest in time. Instead, the petitioner filed an application under Section 220 of the Income Tax Act, to waive the interest of Rs.1,24,85,280/-. The said application was dismissed on 28.12.2016. It is only thereafter the petitioner paid the amount quantified in the Demand Notice dated 30.01.2015 issued under Section 156 of the Act.

24. As the petitioner failed to pay the amount in time, the petitioner is liable to pay the interest. Therefore, there is no merit in this present Writ Petition and is liable to be dismissed.

25. Therefore, this Writ Petition is dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The Income Tax Officer,
Ward I (4) Salem,
Room No.306, 3rd Floor,
New Building, No.3,
Gandhi Road, Salem - 636 007.

+1cc to Mr.R.Lakshmi Ratan, Advocate Sr.24733
+1cc to Mr.A.P.Srinivas, Advocate Sr.24475

W.P.No.21058 of 2021 and
W.M.P.Nos.22319 & 22321 of 2021

sv[co]
srg 27/04/2022