IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.A.Nos.2243 & 2245 of 2022
and
C.M.P.No.17025 of 2022

Shri Ghisulal Kothari ...Appellant in W.A.No.2243 of 2022

Shri Shanthilal Kothari ...Appellant in W.A.No.2245 of 2022

Versus

1. The Principal Commissioner of Income Tax,
   Central-1,
   No.46, Nungambakkam High Road,
   Chennai – 600 034.

2. The Tax Recovery Officer,
   Central-1,
   Room No.321, III Floor,
   No.46, Nungambakkam High Road,
   Chennai – 600 034. ... Respondents in both the Appeals

Writ Appeals filed under Clause 15 of the Letters Patent against the common order passed by the learned single Judge in W.P.Nos.11477 & 11481 of 2019 dated 30.06.2022.

For Appellants in both the Appeals	:	Mr.M.A.Mudimannan
For Respondents in both the Appeals	:	Mr.A.P.Srinivas, Senior Standing Counsel

COMMON JUDGMENT

The appellants have come forward with the present Writ Appeals challenging the common order dated 30.06.2022 passed in W.P.Nos.11477 & 11481 of 2019. By the impugned order, the learned Single Judge of this Court has dismissed the writ petition with the following observation:

> *"7. Had such refunds been paid in time, he submits that the same would have been utilized by them to settle their tax demands earlier and in time. This submission would hold no water in the present case, seeing as the demand of tax has been made on the admitted income offered by the petitioner to tax in the returns of income.*
>
> *8. Had it been a case where the tax demand had arisen on account of additions/ disallowances to the admitted income, the position may have been viewed differently. However, seeing that the tax demand in the present case arises entirely from admitted income and the order of has assessed and attained finality, there is*

no merit in these writ petitions. The impugned orders are confirmed and these writ petitions, dismissed. Connected writ miscellaneous petitions are closed. No costs.”

2. According to the appellants, the Department has levied interest on interest and that they have sought for waiver of the said interest in terms of Section 220(2A) of the Income Tax Act, 1961.

3. The main contention of the appellants is that consequent upon the assessment, the appellants have paid the tax including penalty and interest as demanded by the Department and therefore, levy of interest invoking Section 220(2) of the Income Tax Act, 1961, was not only harsh but also amounts to interest on interest, as interest computed under Sections 234(A), 234(B) and 234(C) of the Income Tax Act, 1961 has been paid.

4. Learned counsel for the appellants would submit that the appellants were Directors of M/s.Kamatchi Industries Limited. The Income Tax Department was required to refund amount to the said company and if the amount was refunded in time to the said company, the appellants would have

discharged their tax liability and interest in time. In any event, the tax and interest has been paid though belatedly and therefore, the appellants are entitled for waiver.

5. The learned counsel for the respondents would submit that there is no dispute that pursuant to a search conducted, tax was admitted by the appellants and the amount was paid and the assessment was completed and it has attained finality. The appellants have paid the entire amount including the penalty together with interest belatedly. There is no question of any interest on interest. Interest was consequential. It is submitted that in terms of Section 220(2A), if the authority is not satisfied with any of the conditions stipulated thereunder, he is empowered to reject the request of an assessee for waiver, as has been done in the present case.

6. Heard the learned counsel for the appellants and the learned Standing Counsel appearing for the respondents.

7. There is no dispute on facts. The appellants are under an erroneous

belief that they have been wrongly foisted with interest on interest by the respondents under Section 220(2) of the Income Tax Act, 1961.

8. A reading of the provision of the Income Tax Act, 1961, makes it very clear that non submission of returns and non-payment of tax in time, attracts penalty and interest. To be eligible for the benefit of waiver under Section 220(2A) of the Income Tax Act, 1961, the appellants have to satisfy the requirement of the said provision.

9. For the sake of convenience, Section 220(2A) is extracted below:

> *(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.

10. The authority has rightly come to the conclusion that the appellants have not satisfied the requirement of Section 220(2A) of the Income Tax Act, 1961. Therefore, the appellants are liable to pay the amount demanded by the Department. The appellants cannot blame the income tax department for the delay in refund of the amounts to the company of which the appellants are directors. The appellants and the company are two separate and distinct assessees. Further, the amount was demanded based on search conducted. None of the limbs of Section 220(2A) of the Income Tax Act, 1961 has been

satisfied by the appellants to claim waiver.

11. We find that there is no error apparent on the face of record in the order passed by the learned single Judge while rejecting the request of the appellants.

12. We are therefore, inclined to dismiss the appeal as we find no merits to entertain the same. According, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N., J.) (C.S.N., J.)
18.10.2022

Internet : Yes
Index : Yes / No
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Note:
Registry is directed to return the original impugned orders provided the xerox copy of the same is made available in the typed set of papers.

To

1. The Principal Commissioner of Income Tax,
   Central-1, No.46, Nungambakkam High Road, Chennai – 600 034.

2. The Tax Recovery Officer,

Central-1, Room No.321, III Floor,
No.46, Nungambakkam High Road, Chennai – 600 034.

S.VAIDYANATHAN,J.
AND
C.SARAVANAN,J.

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