IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5971 of 2020
and
W.M.P.No.7012 of 2020

Alagesan ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax-3,
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

2.The Principal Commissioner of Income Tax-8,
Income Tax Department,
BSNL Building, Tower II-C Wing,
No.6, Greams Road,
Chennai - 600 006.

3.The Tax Recovery Officer-8,
Income Tax Department,
BSNL Building, Tower II-C Wing,
No.6, Greams Road,
Chennai - 600 006.

4.The Income Tax Officer,
Ward-I, Thiruvannamalai,
Income Tax Department,
No.2, Barracks Cross Street,
Officers Lane,
Vellore - 632 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent to quash the impugned order dated 08.11.2019 C.No.41/CCIT3/WAIVER/2019-2020 for the Assessment Year 2003-2004 and direct the first respondent for considering the plea of waiver of interest charged under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961 on the grounds stated in the present writ petition.

For Petitioner : Mr.S.Sridhar
For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a certiorarified mandamus, to quash the impugned order dated 08.11.2019 of the first respondent and to further direct the first respondent to consider the plea of waiver of interest charged under Section 220(2) and under Rule 5 of the Second Schedule to the Income Tax Act, 1961 on the grounds stated in this writ petition.

2. The impugned order has been passed pursuant to order dated 24.07.2017 (wrongly mentioned as 18.07.2017 in W.P.No.98094 of 2017).

3. Relevant portion of the impugned Assessment Order reads as under:-

> ***"8. While discussing as above, the then CCIT-3, Chennai passed the order dated 19.09.2016 clearly distinguishing each of the case-laws relied upon by the assessee in his representation, from the instant case and passed a speaking order rejecting the plea of the assessee.***
>
> ***9. At this present juncture, taking into consideration the overall perspective of the case read with the conditions for waiver of interest u/s 220(2A) laid down in the Income-tax Act and the applicability in the assessee's case is summarised as under:-***
>
> > ***(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:***
> >
> > ***Applicability - No such hardship was demonstrated with documentary evidences excepting oral submissions.***
> >
> > ***(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:

Applicability - The assessee had paid only Rs.25,000/- as against the regular demand of Rs.22,01,424/-. As per the reports of the lower authorities having jurisdiction in this case, no such circumstances has been exhibited for the failure of payment of taxes.

(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:

Applicability - From the records available and the reports from the lower Income-tax Authorities vested with the jurisdiction of the case, it comes to light that the assessee had not cooperated both in the assessment proceedings as well as various proceedings in spite of giving adequate opportunities to present his case.

10. The fact remains that the assessee has not brought in any new submissions and material in any form for taking a stand contrary to the decision taken by the then CCIT-3, Chennai. Interest u/s 220(2A) can be waived only in case of very special circumstances which is absent in the instant case. In view of the above discussion and the fact that there has been no new documentary evidences to reconsider the decision taken by the then Chief Commissioner of Income Tax, Chennai-3, I am of the considered opinion that the assessee's case for waiver of interest u/s 220(2A) and Rule 5 Interest lack merits and deserves to be rejected.

11. Accordingly, the assessee's plea for waiver of interest u/s 220(2A) and Rule 5 interest is rejected."

4. Earlier, the petitioner had filed an application/petition for waiver of interest under Sections 220(2), 234A, 234B, 234C and under Rule 5 of the Second Schedule to the Income Tax Act, 1961 (hereinafter referred to as IT Act, 1961) on 29.06.2016 before first respondent. The said application dated 29.06.2016 for waiver of interest came to be rejected by the first respondent herein by an order dated 19.09.2016 bearing C.No.CCIII/8(13)/Waiver/2013-2014.

5. Thus, the petitioner challenged the aforesaid order in W.P.No.18094 of 2017. This Court by its order dated 24.07.2017 had given a partial relief to the petitioner in the aforesaid writ petition in so for as rejection of the petitioner's request for waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the IT Act, 1961 and remitted the case back to the first respondent for fresh consideration. Relevant portion of the order reads as under:-

> ***"5. Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondents, on instructions submitted that it is true that the Chief Commissioner, who offered opportunity of personal hearing to the petitioner on 21.03.2016 and on 24.03.2016 is not the Chief Commissioner, who has passed the impugned***

order. The legal principle is that the person who hears must decide. Therefore, by applying the said principle to the case on hand, the only conclusion that can be arrived at is to send back the matter for fresh consideration before the first respondent, on the plea for waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961.

6. Accordingly, the writ petition is partly allowed and the impugned order in so far as rejecting the petitioner's request for waiver of interest under Section 220(2) and Rule 5 of the Second Schedule to the Income Tax Act, 1961, alone is set aside and the matter is remitted to the first respondent for fresh consideration, who shall afford opportunity of personal hearing to the petitioner and decide the matter afresh on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed."

6. Pursuant to the aforesaid order, the impugned Assessment Order dated 08.11.2019 has been passed by the first respondent.

7. The dispute pertains to the Assessment Year 2003-2004. The petitioner had suffered an adverse order on 17.02.2006 under Section 144 of the IT Act, 1961.

8. It appears that the petitioner had neither filed any returns nor participated in the proceedings properly before the Assessing Officer namely the fourth respondent herein.

9. The petitioner had filed an appeal in ITA.No.468/05-06 before the Commissioner of Income Tax (Appeals). The appeal filed by the petitioner was allowed by the Commissioner of Income Tax (Appeals) vide order dated 13.12.2007.

10. Against the aforesaid order, the fourth respondent/Revenue filed an appeal before the Income Tax Appellate Tribunal in I.T.A.No.338/Mds/2008. Since, there was no representation on behalf of the petitioner, the departmental appeal was allowed by the Income Tax Appellate Tribunal by its order dated 23.10.2008.

11. Thereafter, the petitioner filed a miscellaneous petition to recall the aforesaid order in M.P.No.153/Mds/2010. The Income Tax Appellate Tribunal by its order dated 11.02.2011 dismissed M.P.No.153/Mds/2010 filed by the petitioner.

12. The petitioner filed a separate appeal against the Income Tax Appellate Tribunal's order disposing the appeal as also the miscellaneous petition in TCA.No.259 of 2011 and TCA.No.162 of 2012. By two separate order dated 09.11.2011 and 09.07.2012, these appeals were dismissed. Further appeal of the petitioner to the Hon'ble Supreme Court were also dismissed.

13. The petitioner has paid the tax as confirmed in the Assessment Order dated 17.02.2006. The petitioner has also paid interest under Sections 234A, 234B and 234C of the IT Act, 1961. By an order dated 05.09.2023, the petitioner was directed to pay a sum of Rs.2,42,154/- being the interest payable under Section 220(2) of the IT Act, 1961. Against the aforesaid order, the petitioner had filed W.A.No.2066 of 2023. The petitioner had also paid the amount of Rs.22,01,424/-

14. Since the Hon'ble Division Bench of this Court was not inclined to admit the appeal, the petitioner withdrew the appeal against the order dated 05.09.2023 passed by this Court.

15. The learned counsel for the petitioner submits that the petitioner is an uneducated agriculturalist, who had attempted to secure a loan for the purpose of modernizing the agricultural activities undertaken by him.

16. It is submitted that payment of interest under Rule 5 of the Second Schedule of the IT Act, 1961 would cause genuine hardship to the petitioner and therefore the petitioner is entitled for waiver.

17. It is submitted that the petitioner has sufficient documents to substantiate genuine hardship will be caused to him, if he is saddled with interest under Rule 5 of the Second Schedule of the IT Act, 1961.

18. The learned Senior Standing Counsel for the respondents on the other hand would submit that the earlier interim order of this Court dated 05.07.2023 is categorical. It is submitted that thereafter, by a separate order dated 05.09.2023, the order was modified by asking the petitioner to pay the interest under Section 220(2) of the IT Act, 1961.

19. It is further submitted that there are no records based on which, waiver can be granted to the petitioner under Rule 5 of the Second Schedule of the IT Act, 1961. It is further submitted that the impugned Assessment Order is well reasoned and does not require any further interference.

20. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

21. Order dated 19.09.2016 was passed by the first respondent rejecting the request of the petitioner for waiver of interest under various provision were reflected. By an order dated 24.07.2017, this Court remitted the case back to the respondents to consider the case afresh.

22. In the *de novo* proceedings, the petitioner was represented by his Chartered Accountant. Thus, the petitioner was heard. It is noticed that the petitioner has not furnished any documents to substantiate that the payment of interest would cause genuine hardship to the petitioner.

23. The only submission made by the petitioner before the first respondent is as follows:-

> ***"The assessee is not an educated person/illiterate and is leading his life in the rural part of the Thiruvannamalai in running a rice mill with a limited capacity. The assessee based on professional advice wanted to expand the business especially for installing modern machines in the said rice mill had prepared the balance sheet for the Assessment Year 2003-2004 for raising bank finance and the attempt of the assessee was not independent, fully influenced by the auditor who happened to be the income tax practitioner. The bonafide attempt of the assessee for modernizing the rice mill in the said rural area had triggered the income tax proceedings for the Assessment Year 2003-2004 while the attempt to raise bank finance went futile."***

24. In paragraph 6 of the impugned Assessment Order, the respondents had also stated that the petitioner has not produced any fresh documentary evidence for the respondents to exercise the discretion in favour of the petitioner under Section 220(2A) of the IT Act, 1961.

25. The petitioner appears to be a rustic person with rural background deriving income from rice mill. Since the petitioner has paid interest under Section 220(2A) of the IT Act, 1961, pursuant to the direction of this Court, the Court is of the view that the petitioner deserves one more chance to substantiate the case for waiver of interst, subject to the petitioner depositing a sum of Rs.5,00,000/- as a condition for re-doing the said exercise for waiver of interest under Rule 5 of the Second Schedule to the IT Act, 1961 within a period of two months from the date of receipt of a copy of this order.

26. The petitioner shall file all the contemporary documents before the respondents to establish that payment of interest under Rule 5 of the Second Schedule to the IT Act, 1961 at this stage will cause genuine hardship to the petitioner. Thereafter, the first respondent shall consider the case of the petitioner afresh and pass a fresh order on merits.

27. Needless to state, the amount to be paid will be subject to final appropriation and/or adjustment and subject to final outcome of the order to be passed by the first respondent.

28. This Writ Petition is partly allowed in favour of the petitioner with the above condition. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

19.09.2023

Index: Yes/ No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

arb/rgm

C.SARAVANAN, J.

arb/rgm

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