IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18592 of 2020
and W.M.P.No.23061 & 23062 of 2020

Kumarasamy Palanisamy ... Petitioner

Vs.

1.The Director General of Income Tax (Investigations)
Room No.201, New Building Second Floor,
Investigation Building,
New No.46, Old No.108 Mahatma Gandhi Road,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle - 3, Coimbatore Main Building,
63 Race Course Road, Coimbatore - 641 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for records on the file of the first respondent relating to the application made by the petitioner for the waiver of interest for the assessment year 2016-2017 and quash the order of the first respondent in PAN AFJPP9350C in DIN & Letter No.ITBA/COM/F/17/2020-21/1028463673(1) dated 03.11.2020 for the Assessment Year 2016-17 and direct the first respondent to waive the interest under Section 234B.

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel for
Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order passed by the first respondent in his proceedings dated 29.10.2020 bearing Reference No.F.No.2006(06)/2019-2020.

2. By the impugned order, the first respondent has rejected the request of the petitioner for waiver of interest under Section 234B of the Income Tax Act, 1961 (Hereinafter referred to as the "Act"). The relevant portion of the impugned order reads as follows:-

> ***"8. I have gone through the reply of the assessee's authorized representative and the same is considered in the light of CBDT's instruction and provisions of the Income Tax Act. The observation of the Pr.Commissioner of Income Tax, Central-2, Chennai while forwarding the report of the assessing officer is relevant in th is regard hence the same is quoted below:***
>
> ***"The assessee filed his original***

> ***return of income for the A.Y.2016-17 on 03.12.2016 and returning an income of Rs.9,43,150/- ibkt. The assessee filed the revised return of income under Section 132 of the Income Tax Act. On verification of the return, it was found that no additional tax was paid by the assessee on the returned income of Rs.2,00,58,150/-. Further, the assessee while filing revised return of income on 31.03.2018, has become Self Assessment defaulter and has never filed a communication for adjustment of cas seized for the tax payable against the admitted income. Again, in response to the notice issued under Section 153A, the assessee filed return of income on 16.08.2019, without any modification to the original income returned. For this return also, the assessee has not paid any additional tax on the admitted income, instead he claimed that Rs.81,67,570/- was paid as Self Assessment Tax. After due verification, it was found that the assessee has paid Rs.1,67,570/- only as Self Assessment Tax on 31.03.2018."***

9.The assessee's contention is untenable. As per the CBDT's notification in F.No.400/129/2002-IT(B), dated 26.06.2006, the four conditions stipulated for considering the waiver petition does not contain adjustment of seized cash against advance tax l iability. Further, Sec 132B of the Income Tax Act, stipulates appropriation of seized cash only against "existing liability".

10.The working of the assessee is based on utilization of seized cash for the liability of advance tax, so that the tentative amount of interest charges under Section 234B would be reduced. Since, the claim of appropriation of seized cash against advance tax liability is not acceptable, the working of the assessee is not found relevant.

> ***11.From the above facts, it could be ascertained that the assessee has not fulfilled the first and foremost condition that the assessee has to pay the principal component of demand. Further, it is noticed that the assessee has not fulfilled any of the four criteria (a-d) in order to grant waiver of interest under Section 234-B as per the CBDT's order in F.N.400/129/2002-IT(B), dated 26.06.2006.***
>
> ***12.In the circumstances, the assessee's request for waiver of interest cannot be granted and the petition is accordingly rejected."***

3. The petitioner is a partner of a firm called M/s.Karur KPS Auto Finance. A search was conducted on the premises of the said firm in which the petitioner is a partner on 10.08.2017, a sum of Rs.80,00,000/- was said to have been recovered. After search took place on 10.08.2017, the petitioner filed a revised returns of income on 31.03.2018. In the returns, the petitioner has adjusted the aforesaid sum towards the tax liability. Thereafter, the petitioner had also sent a request for reduction on 13.12.2017 to the respondents to adjust the amount that was seized on 10.08.2017. The amount has also been adjusted to an extent of Rs.40,00,000/-, pursuant to a notice issued under Section 153 A of the Income Tax Act on 30.07.2019. This is culminated in the Assessment Order dated 31.12.2019.

4. The aforesaid Assessment Order was sought to be rectified by the respondents under Section 154 of the Act, 1961 by an issuance of a notice dated 20.02.2020. The petitioner was heard and an Assessment Rectification Order came to be passed on 20.02.2020. The relevant portion of the order is extracted hereunder:-

> "***ORDER***
>
> ***The assessment in this case, for the A.Y.2016-17 was completed u/s 153A r.w.s 143(3) of the IT ACt, 1961 on 31.12.2019 accepting the return of income filed by the assessee in response to notice u/s. 153A, determining the total income at Rs.2,00,58,150/-. Upon perusal of the records, it was found that the demand has been erroneously computed at Rs.0/- vide Demand notice u/s. 156 dated 31.12.2019.***
>
> ***Hence, a hearing notice for Rectification u/s.154 was issued on 20.02.2020. The AR of the assessee Shri.Ramnath, FCA appeared for the hearing notice u/s. 154. The Exact demand after proper computation is Rs.97 ,43,310/-. Hence, rectification under order U/s. 154 is passed and demand notice u/s. 156 dated 20.02.2020 is issued.***
>
> ***Tax calculation is as per computation sheet enclosed."***

5. Pursuant to the aforesaid Assessment Rectification Order dated 20.02.2020, a demand under Section 154 of the Act was also issued on the same day, whereby, the petitioner was called upon to pay the following amount:-

"***INCOME TAX COMPUTATION SHEET***

		(Amount in Rupees)
Total Income Assessed		2,00,58,150
Tax on the total income		58,42,445
Add: Surcharge		7,01,093
Add: Education Cess		1,96,306
Total Tax Payable		67,39,844
Add: Interest u/s.234A		66,203
Add: Interest u/s.234C		2,45,177
Total Tax and Interest Payable		1,00,30,379
Less:Advance Tax	-	25,000
TDS	-	34,500
Self Assessment Tax	-	1,67,570
Balance Tax Payable		97,43,309
Rounded off		97,43,310

6. While computing the payable tax, the amount that was seized on 10.08.2017 was to be adjusted and therefore, it is the case of the petitioner that virtually there will be no tax liability. Under these circumstances, the petitioner has approached the first respondent under Section 119 of the Act for waiver of interest under Section 234B of the Act, which has been rejected on the ground that the petitioner has not satisfied the requirements of the Board Circular/ Instructions dated 26.06.2006, bearing Reference No.F.No.400/129/2002-IT(B).

7. That apart, it is stated that the petitioner has also not paid the tax

and that the tax was adjusted only after the consent was given by the other partners of M/s.Karur KPS Auto Finance. The records indicate that although the partners have given their consent for adjustment of the balance sum of Rs.40,00,000/- (Rupees Fourty Lakhs only), the adjustment has been made by the Income Tax Department for the Assessment Year 2018-2019, as it is evident from TDS/TRACES in Form 26 AS, only a sum of Rs.40,00,000/- (Rupees Fourty Lakhs only) of the petitioner, out of the seized cash on 10.08.2017 has been appropriated towards the tax liability of the petitioner for the Assessment Year 2016-2017 on 27.02.2020, pursuant to the letter dated 16.03.2020.

8. A sum of Rs.40,00,000/- (Rupees Forty Lakhs only) which belong to the petitioner has alone to be adjusted against the tax liability of the petitioner as recomputed pursuant to the order passed under Section 154 of the Act and a balance sum of Rs.40,00,000/- (Rupees Forty Lakhs only) for which, the consent was given by rest of the partners by their communication letter dated 16.03.2020 has been allowed to be adjusted against the petitioner's tax liability for the Assessment Year 2018-2019.

9. The learned counsel for the petitioner would submit that the impugned order that has been passed by the first respondent holding that the petitioner has not satisfied the requirements of Circular/ Instructions dated 26.06.2006 bearing Reference No.F.No.400/129/2002-IT(B) cannot be countenanced as the instances given in Para 2 are only illustrative in nature.

10. In this connection, the learned counsel for the petitioner has drawn attention of this Court to the decision of the Division Bench of this Court in ***M/s.Sri Saravana Spinning Mills PVt., Ltd., Vs ACIT*** reported in ***2019 (4) TMI 1620.*** *S*pecifically a reference is made to Para 10 of the said order, which reads as follows:-

> ***"10.We are of the considered opinion that the present Writ Appeal of the Assessee deserves to be allowed. Undoubtedly, the Guidelines laid down by the Central Board in the Circular dated 26.06.2006 are only illustrative cases where the Designated Authority can grant waiver of interest under Sections 234-B and C of the Act. The claim of the Assessee was that the income is not chargeable to tax on the basis of an order passed by the Gigh Court and the expenditure in question was a revenue expenditure and the same was negatived by the Supreme Court later on only to the extent of it not being deductible as "current repairs". The spirit of the said illustrative examples in para 2(c) of the Circular dated 26.06.2006 is that on the debatable issue, the Assessee had succeeded up to High Court contesting his***

liability to claim particular expenditure as an allowable revenue expenditure and therefore, it will not be an 'income chargeable to income tax' in view of Section 234B of the Act, then in our opinion, it would be a fit case to consider for waiver of the interest under Section 234-B of the Act and merely because the Supreme Court held that the expenditure in question could not be allowed as 'current repairs', even though it was revenue expenditure in nature, it would not mean that the levy of interest under Section 234-B of the Act for the failure to pay advance tax, is automatically attracted and the waiver in such cases, may not be granted by the Competent Authority. As is clear that the issue was highly debatable and therefore, liability of paying advance tax to that extent, treating as admitted liability could not arise."

11. That apart, it is submitted that in yet an another decision of the Division Bench of this High Court in ***Tvl.Sanmac Motor Finance Ltd., Vs. CCIT*** reported in ***2020 (2) TMI 1180,*** this Court has held that the Central Board of Direct Taxes (CBDT) has not considered certain situations which incapacitated the assesse from making any payment and therefore had granted relief, although the assesse therein did not come within the purview of four instances given in para 2 of the above Circular/ Instructions dated 26.06.2006.

12. The learned counsel for the petitioner has relied on the following decisions for the proposition that once a request is made for appropriated,

then the question imposition of interest under Section 234 A and B of the Act do not arise.

(i)CIT Vs Ashok Kumar reported in [2011] 334 ITR 355 (Punjab & Haryana).

(ii) CIT Vs Sunil Chandra Gupta - [2016] 76 taxmann.com 372 (Allahabad)

(iii)CIT Vs Sunil Chandra Gupta - [2016] 76 taxmann.com 372 (SC)

(iv)CIT Vs Arun Kapoor - [2011] 334 ITR 251 (Punjab & Haryana)

(v)CIT VsK.K.Marketing - [2005] 278 ITR 596 (Delhi)

(vi)Vishwanath Khanna Vs Union of India [2011] 335ITR 548 (Delhi)

(vii)Gordhanbhai Nagardas Patel Vs DICT - [2017] 398 ITR 307

13. The learned counsel for the respondents on the other hand would submit that the order passed by the first respondent is well-reasoned and does not require any interference. It is submitted that the benefit of the above Circular/ Instructions has to be given strictly in accordance with the situations given in Para 2 (a - d) and therefore, the petitioner's case is not covered by the

decisions relied above.

14. The learned Junior Standing Counsel for the respondents further submitted that a decision of the Division Bench of this Court in ***M/s.Sri Saravana Spinning Mills PVt., Ltd., Vs ACIT*** reported in ***2019 (4) TMI 1620,*** which has been relied upon by the learned counsel for the petitioner cannot be applied to the facts of this case as this case dealt with the situation where the assessment was set aside which was negatived by the Division Bench of this Court and subsequently the Hon'ble Supreme Court had also rejected the request of the petitioner, therein and therefore, the petitioner/assessee therein had paid the tax.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior standing counsel for the respondents.

16. There is no doubt that the petitioner has paid the tax. Although the adjustment has been delayed partly for the same Assessment Year and partly for the Assessment Year 2018-2019, still the amount was lying with the Department and there was a request for adjustment by the petitioner on

13.12.2017. This would satisfy the requirement of Section 132B of the Income Tax Act,1961. Therefore, there is only a delay in paying the advance tax on the enhanced tax liability of the petitioner, pursuant to the search that was conducted on 10.08.2017, pursuant to which, the petitioner had filed a revised return on 31.03.2018 for the Assessment Year 2016-2017. A similar return was filed by the petitioner again on 16.08.2019 pursuant to a notice issued under Section 153 A on 30.07.2019. The Board Instructions that have been given in the Circular/Instructions bearing Reference No.F.No.400/129/2002-IT(B) dated 26.06.2006 are only illustrative. The purpose of the above Circular/Instructions is to give relief to the assesses who are otherwise entitled to waiver from payment of interest, if there is sufficient compliance made by an assessee.

17. In my view, the order passed by the first respondent holding that the petitioner had not paid the tax that was originally adjusted at the time of assessment cannot be countenanced. The petitioner, indeed, is entitled for waiver/ waiver of interest.

18. In the above narrated circumstances, this Writ Petition stands

allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

01.08.2023

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

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To

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C.SARAVANAN, J.

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