IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18761 of 2020
and W.M.P.No.23315 & 23318 of 2020

Thiruchendhoorar Financiers,
No.100, Vaiyapuri Nagar, Covai Road,
Karur 639 002.
Represented by its Partner A.Natarajan ... 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 2017-2018 and quash the order of the first respondent in PAN AAHFT4900F in DIN & Letter No.ITBA/COM/F/17/2020-21/1028465799(1), dated 03.11.2020 for the

Assessment Year 2017-18 and direct the first respondent to waive the interest under Section 234B and 234C.

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 partnership firm was subjected to a search under Section 133-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 10.08.2017. At the time of the search, a sum of Rs.85,70,000/- was recovered.

2. Although, the petitioner was required to file a regular Return by September 2017, the petitioner failed to file a regular return by the due date under Section 139 of the Income Tax Act, 1961 for the Assessment Year 2017-19. By communication dated 08.09.2017, the petitioner requested the respondent/Income Tax Department to adjust a sum of Rs.27,15,530/- recovered adjusted and appropriated towards the Advance Tax for the Assessment Year 2018-2019 against their PAN AAHFT4900F. After the

issuance of letter dated 08.09.2017, the petitioner filed a belated returns of income on 30.03.2018 declaring the total income of Rs.17,61,570/- and assessed the tax payable as Rs.6,20,540/-.

3. Eventually, a notice was issued to the petitioner on 03.07.2019 pursuant to which, the petitioner filed a revised Return on 07.08.2019 reiterating the position in the Return filed on 30.03.2018.

4. However, in the Returns, the petitioner declared a sum of Rs.6,98,260/-. After the petitioner had filed the revised Returns on 07.08.2019, an assessment order was passed on 30.12.2019 under Section 153-A read with Section 143 (3) of the Income Tax Act, 1961, wherein the total income of the petitioner was re-determined as follows:-

	(Amount in Rupees)
Total Income Assessed	*57,05,100*
Tax on income assessed including cess @ 3%	*1762876*
Interest u/s.234A/B/C	*985298*
Total Tax Payable	*27,48,170*
Total Tax Paid	
Balance Tax Payable	*27,48,170*

5. Under these circumstances, the petitioner filed a petition under

Section 154 of the Income Tax Act, 1961 on 04.03.2020 for rectification of the Assessment Order dated 30.12.2019 passed under Section 143 of the Income Tax Act, 1961.

6. In the petition, the petitioner requested for reduction of income tax and also the interest imposed on the petitioner under Section 234-A, 234-B and 234-C of the Income Tax Act, 1961.

7. The application filed by the petitioner under Section 154 of the Income Tax Act, 1961 was partially allowed. The income of the petitioner was re-computed and the interest was accordingly levied as below:-

"***<u>INCOME TAX COMPUTATION SHEET</u>***

<table>
<tr><td colspan="2"></td><td>(Amount in Rupees)</td></tr>
<tr><td colspan="2">Total Income Assessed</td><td>57,05,100</td></tr>
<tr><td colspan="2">Tax on the total income</td><td>17,11,530</td></tr>
<tr><td colspan="2">Add: Surcharge</td><td>-</td></tr>
<tr><td colspan="2">Add: Education Cess</td><td>51,346</td></tr>
<tr><td colspan="2">Total Tax Payable</td><td>17,62,876</td></tr>
<tr><td colspan="2">Add: Interest u/s.234A</td><td>1,24,906</td></tr>
<tr><td colspan="2">Add: Interest u/s.234B</td><td>5,10,273</td></tr>
<tr><td colspan="2">Add: Interest u/s.234C</td><td>26,178</td></tr>
<tr><td colspan="2">Total Tax and Interest Payable</td><td>24,24,233</td></tr>
<tr><td>Less:Advance Tax</td><td>-</td><td></td></tr>
</table>

		(Amount in Rupees)
TDS	-	25,970
Self Assessment Tax	-	6,62,290
Balance Tax Payable		17,35,973
Rounded off		**17,35,970**

8. Meanwhile, the petitioner has discharged the tax liability on 03.06.2020 by paying a sum of Rs.11,66,505/- and partially by way of adjustment from the cash that was recovered on 10.08.2017 pursuant to the letter of the petitioner.

9. Although, the petitioner had requested an adjustment of Rs.6,15,530/- by their letter dated 31.03.2018 and the balance towards the Advance Tax liability of the petitioner for the succeeding Assessment Year 2018-2019, the petitioner's entire tax liability was Rs.17,11,530/- was paid by cash on the following two heads, as is evident from TDS/TRACES Form 26 AS.

Sr. No	*Major head*	*Minor head*	*Tax*	*Sur -charge*	*Education Cess.*	*Others*	*Total Tax*	*BSR Code*	*Date of Deposit*	*Challan Serial Number*	*Remarks ***
1	0021	400	1166505.00	0.00	0.00	0.00	1166505.00	0007639	03-Jun-	00022	-

Sr. No	Major head	Minor head	Tax	Sur -charge	Education Cess.	Others	Total Tax	BSR Code	Date of Deposit	Challan Serial Number	Remarks **
									2020		
2	0021	400	662290.00	0.00	0.00	0.00	662290.00	0001176	31-Mar-2019	00021	-

10. The petitioner had requested for waiver of interest under Sections 234-A and 234-B of the said Act, which has been rejected by the first respondent vide impugned order.

11. The learned Junior Standing Counsel for the respondents/ Income Tax submitted that the order rejecting the request for waiver of interest cannot be interfered, as the amount that was seized on 10.08.2017 ought to have been adjusted if not earlier, pursuant to letter dated 08.09.2017 or at least pursuant to letter/ request dated 31.03.2018, wherein the petitioner had requested for a partial adjustment of the amount towards the tax liability, as was declared by the petitioner in the Income Tax Returns filed on 30.03.2018 and the balance towards the advance tax liability for the Assessment Year 2018-2019.

12. The learned Junior Standing Counsel for the petitioner submitted that the instances given in the Circular/Instructions dated 26.06.2006 are only

illustrative. In this connection, reference was made to the decision of a Division Bench of this Court in ***M/s.Sri Saravana Spinning Mills PVt., Ltd., Vs ACIT*** reported in ***2019 (4) TMI 1620.*** The learned Junior Standing Counsel for the respondents submitted that the petitioner is not entitled for waiver of interest, as admittedly, there is delay not only in filing the Returns, but also in paying the advance tax that was due and payable by the petitioner. It is submitted that but for the search that was conducted in the premises of the petitioner's business on 10.08.2017, the income would that have gone unnoticed. That apart, it is submitted that the petitioner has also not filed Returns in time and in the revised return also there was suppression of income.

13. The income that was declared by the petitioner was only Rs.17,61,569/-, which is almost the tax that has been determined by the Assessing Officer under the order passed under Section 153-A read with 143(3) of the Income Tax Act, 1961 on 30.12.2019.

14. Therefore, it is not a fit case for granting waiver, apart from the fact that the petitioner has also not satisfied the requirements of the above Circular/Instructions dated 26.06.2006 of the Board.

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

16. The question of petitioner getting waiver from payment of interest under Section 234-A and 23-4B of the Act cannot be countenanced, as the petitioner had either not filed the Returns in time, nor in the Returns that was filed by the petitioner on 30.03.2018 also, there was an correct declaration of the income by the petitioner. It is not a fit case for granting waiver of interest to the petitioner. Consequently, the Writ Petition filed by the petitioner is liable to be dismissed and accordingly the same is dismissed.

17. This Writ Petition dismissed. 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

gba

To

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,
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2.The Assistant Commissioner of Income Tax,
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C.SARAVANAN, J.

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