IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18766 of 2020
and W.M.P.No.23322 & 23323 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 2018-2019 and quash the order of the first respondent in PAN AAHFT4900F, dated 03.11.2020 in DIN &

Letter No.ITBA/COM/F/17/2020/21/1028466135(1) for the AY 2018-19 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 had challenged the order dated 03.11.2020 in W.P.No.18791 of 2020 for the Assessment Year 2017- 2018. The petitioner had challenged a similar order passed by the first respondent for the Assessment Year 2018-2019.

2. By the impugned order, the 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"). Relevant portion of the impugned order reads as follows:-

> ***"8.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 liability. Further, Sec 132B of the Income Tax Act, stipulates for appropriation of seized cash only against "existing liability". Hence, the demand of Rs.6.87 lakhs was raised by CPC on processing of return u/s.143(1) of which the adjustment against seized***

cash was made, to the extent of Rs.6.87 lakhs on 31.03.2019.

9.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 charged 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.

10.Further, the assessment in this case for the A.Y.2018-19, was made with an addition of Rs.62,33,40/- to the returned income of Rs.21,42,690/- and hence the liability of interest charges u/s.234B has increased.

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 evidence on record indicate that the petitioner had filed the regular return of income tax for the Assessment Year 2018-2019 on 24.07.2018. In the return that was filed by the petitioner, the petitioner had declared the taxable income as Rs.21,42,689/- and had undertaken to pay a sum of Rs.6,87,920/- as tax. An intimation Assessment Order was passed

under Section 143(1) on 29.06.2019, by accepting the return that was filed by the petitioner. Thereafter, an Assessment Order came to be passed under Section 143 (3) of the Income Tax Act, 1961 on 30.12.2019 pursuant to the notice issued under Section 143(2) of the Income Tax Act, 1961.

4. By the aforesaid order, the taxable income of the petitioner was enhanced to Rs.83,76,030/- from Rs.21,42,689/-, that was declared in the returns filed by the petitioner on 24.07.2018. Consequently, the tax payable by the petitioner was recomputed and enhanced Rs.27,88,330/- from Rs.6,87,920/- vide order, dated 29.06.2019 passed under Section 143(1) of the Act.

5. The aforesaid amount of Rs.27,88,330/- was partly reduced to Rs.23,75,910/- by the second respondent vide order dated 04.03.2020 passed under Section 154 of the Act.

6. It is the specific case of the petitioner that the impugned order passed by the respondents denies the petitioner's benefit of waiver of interest under Circular/Instructions dated 26.06.2006, bearing Reference No.F.No.400/129/2002-IT(B) of the Central Board of Direct Taxes.

7. That apart, it is submitted that a sum of Rs.6,87,920/- out of the

amount of R.23,75,910/-, was to be adjusted. It is submitted that the petitioner would have earned interest on the amount that was not allowed to be adjusted out of Rs.21,00,000/- which seized during search and hence, submits that the petitioner is entitled for waiver of interest.

8. Per contra, the learned Junior Standing Counsel for the respondents would submit that the impugned order is well-reasoned and it does not require any interference. He further submitted that the contentions raised by the petitioner in para 8, 9, 10 and 11 of the petition are untenable. It is submitted that the case of the petitioner does not fall under any of the four situations enumerated in CBDT's Order in F.No.400/129/2002-IT(B), dated 26.06.2006, for waiver of interest u/s.234A, 234A and 234C of the Act.

9. The petitioner in para 4 of his petition has stated that 'a letter was filed before the DDIT (Inv) Coimbatore for adjustment of the seized cash towards Advance Tax Liability. The claim of the petitioner is not acceptable because under Sec.132B of the Income Tax Act, appropriation of seized cash is permissible only against the "existing liability". The demand of Rs.6.87 lakhs was raised by Central Processing Centre on processing of return u/s.143(1) of the Act for which the adjustment against seized cash was made, to the extent of Rs.6.87 lakhs on 31.03.2019. Hence, no further adjustment

against the seized cash was made as there was no existing tax liability.

10. The learned Junior Standing Counsel further submitted that the assessee firm filed return of income on 24.07.2018 admitting income of Rs.21,42,690/- The search assessment proceedings were initiated with the issue of notice under Section 143(2) of the Act for the A.Y.2018-19 on 03.07.2019.

11. The assessment was completed u/s.143(3) of the Act read with Section 153A on 30.12.2019 determining the total income as Rs.83,76,030/- with an addition of Rs.62,33,340/- and Demand notice under Section 156 for Rs.27,48,170/- was issued to the assessee. As there was a mistake in computation of tax, rectification order under Section 154 was passed and the total demand payable was reduced to Rs.25,88,193/-.

12. It is because of the addition to the total income, the liability of interest u/s.234B of the Act was increased. Further, the petitioner has failed to pay the Tax at the time of filing of the waiver petition on 05.03.2020. It is submitted that the Hon'ble Bombay High Court in the case of ***De Souza Hotels (Pvt.) Ltd., Vs CCIT (2012)*** reported in ***2017 253 C TR 541***, has held that unless the assessee's case comes within the ambit and scope of

Circular dated 26.06.2006, the Chief Commissioner would have no power to reduce or waive interest u/s.234A, 234B and 234C of the Act.

13. The computation of tax and the interest payable by the petitioner pursuant to the order passed by the second respondent under Section 154 of Act on 30.06.2020 is as under:-

INCOME TAX COMPUTATION SHEET

		(Amount in Rupees)
Total Income Assessed		83,76,030
Tax on the total income		25,12,809
Add: Surcharge		-
Add: Education Cess		75,384
Total Tax Payable		25,88,193
Add: Interest u/s.234A		-
Add: Interest u/s.234B		4,75,043
Add: Interest u/s.234C		31,857
Total Tax and Interest Payable		30,95,093
Less:Advance Tax	-	
TDS	-	31,258
Self Assessment Tax	-	6,87,920
Balance Tax Payable		23,75,915
Rounded off		**23,75,920**

14. The petitioner has already paid a sum of Rs.28,16,245/- as is evident from TDS/TRACES in Form 26 AS is detailed below:-

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	198815.00	0.00	0.00	0.00	198815.00	0007639	03-Jun-2020	00023	-
2	0021	400	153610.00	0.00	0.00	0.00	153610.00	0027390	03-Feb-2020	00002	-
3	0021	400	260900.00	0.00	0.00	0.00	260900.00	0027390	30-Jan-2020	00002	-
4	0021	400	845000.00	0.00	0.00	0.00	845000.00	0027390	28-Jan-2020	00001	-
5	0021	400	670000.00	0.00	0.00	0.00	670000.00	0027390	24-Jan-2020	00001	-
6	0021		.00	0.00	0.00	500.00	500.00	0510075	07-Dec-2019	12798	-
7	0021	400	687920.00	0.00	0.00	0.00	687920.00	0001176	31-Mar-2019	00020	-

15. Thus, a sum of Rs.21,00,000/- out of Rs.27,15,530/- remains with the Department after the cash was seized on 10.08.2017. Both the counsel for the petitioner and the learned Junior Standing counsel for the respondents are unable to confirm whether the balance has been adjusted against the tax liability of the petitioner against the succeeding year or has been refunded back to the petitioner since the petitioner has paid the amount

on above mentioned dates. By letter dated 31.03.2018, the petitioner categorically had requested the respondents to allow the adjustment of Rs.21,00,000/- against the advance tax due for the Assessment Year 2018-19.

16. It is a case where, the petitioner's amount of tax that was assessed was available with the Department. Since, the amount was already with the Department and but was not appropriated earlier against the previous Assessment Year 2017-18, it has to be construed that the petitioner has paid the tax in advance in time. Therefore, the petitioner should have been granted waiver.

17. In any event, since, there is some confusion as to the correct date of appropriation of the balance tax after adjusting a sum of Rs.6,87,920/-. The Officer concerned is therefore, directed to re-do the exercise after due compliance and pass appropriate orders on merits.

18. This Writ Petition stands allowed by way of remand. 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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