IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.19340 and 19349 of 2020
and
W.M.P.Nos.23936, 23937, 23941 and 23942 of 2020

Thiruchendhoorar Enterprise,
No.100, Vaiyapuri Nagar,
Covai Road,
Karur – 639 002.
Rep by its Partner A.Natarjan. ... Petitioner in both W.Ps.

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 in both W.Ps.

Prayer in W.P.No.19340 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, to call for the 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 AAHFT4899H in DIN and Letter No.ITBA/COM/F/17/2020-21/1028466307(1) dated 03.11.2020 for the Assessment Year 2017-2018 and direct the first respondent to waive the interest under Section 234B and 234C as requested by the petitioner.

Prayer in W.P.No.19349 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, to call for the 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 AAHFT4899H in DIN and Letter No.ITBA/COM/F/17/2020-21/1028466973(1) dated 03.11.2020 for the Assessment Year 2018-2019 and direct the first respondent to waive the interest under Section 234B as requested by the petitioner.

For Petitioner (in both W.Ps)	: Ms.N.V.Lakshmi
For Respondents (in both W.Ps)	: Mr.A.N.R.Jayaprathap Junior Standing Counsel and Mr.A.P.Srinivas Senior Standing Counsel

COMMON ORDER

In W.P.No.19340 of 2020, the petitioner has challenged the impugned order dated 03.11.2020 passed by the first respondent for the Assessment year 2017-2018. The impugned order has been passed by the first respondent, whereby, the request for waiver of interest under Section 234A and 234B has been rejected by the first respondent.

2.The facts on record indicates that a sum of Rs.26,82,360/- was seized pursuant to a search conducted on 10.08.2017. The petitioner had immediately sent a letter on 08.09.2017 and had requested the second respondent to appropriate the cash seized towards the tax liability of the petitioner for the Assessment year 2018-2019. For the relevant Assessment year 2017-2018, the petitioner had not filed the return in time by 07.11.2017. A belated return was filed by the petitioner on 31.03.2018. In the return, the petitioner return the taxable income as Rs.22,63,457/- wanton the respondents to appropriate a sum of Rs.8,36,470/- towards tax.

3.A similar representation was sent by the petitioner on 31.03.2018 with a request for appropriation of the aforesaid amount of Rs.26,82,360/- towards Self Assessment Tax for the Assessment year 2017-2018 and the balance towards advance tax for the following Assessment year namely 2018-2019 as detailed below:-

	A Y	***Amount – Rs.***
Self-assessment tax	2017-18	8,82,360/-
Advance tax	2018-19	18,00,000/-
Total		26,82,360/-

4.Based on the belated returns filed by the petitioner on 31.03.2018, an intimation under Section 143(1) was issued on 17.12.2018, whereby, on the return income, the petitioner was taxed at Rs.8,98,140/-. This amount was also appropriated from and out of Rs.26,82,360/- seized on 10.08.2017. Meanwhile, the Department had issued a notice under Section 153C of the Income Tax Act, 1961 to the petitioner on 25.09.2019.

5.The petitioner had filed a revised on 26.11.2019 which was similar to the return filed by the petitioner on 31.03.2018, a similar order came to be passed on 30.12.2019, whereby, the income of the petitioner was re-determined to Rs.83,26,600/- from Rs.22,63,457/- as declared in the return dated 31.03.2018 and also revised return dated 26.11.2019.

6.The petitioner was assessed the Income Tax of Rs.25,72,911/- and interest under Sections 234A, 234B and 234C. In all, the petitioner was required to pay a sum of Rs.42,98,050/- as detailed below: -

Assessed Income	Rs.83,26,600
Tax on Assessed Income	Rs.25,72,919
Interests	Rs.17,255,126
Total	Rs.42,98,050

7.Under these circumstances, the petitioner had filed an application under Section 154 of the Income Tax Act, 1961 on

04.03.2020, which culminated in an order, whereby, the amount of Rs.42,98,050/- was re-quantified to Rs.35,57,942/-.

8.In this background, the petitioner has filed an application before the 1st respondent seeking to waiver of interest on 04.03.2020 in terms of circular/guidelines issued by Central Board of Direct Taxes under Section 119(2) of the Income Tax Act, 1961.

9.Meanwhile, as mentioned above, an order came to be passed under Section 154 of the Income Tax Act, 1961. The details of the income and the tax assessed and the interest that was imposed on the petitioner at the time of Assessment order dated 30.12.2019, order under Section 154 of the Income Tax Act, 1961 and the waiver of interest as prayed for by the petitioner under Section 154 of the Income Tax Act, 1961.

10.It is the submission of the petitioner that the cash seized should be appropriated against the outstanding tax liability as per assessment order. However the first respondent erred and dismissed the petition stating that the principal component of tax was not paid, without realising that the cash seized that was available with the department. He further submits that the CBDT circular is illustrative only as held by this Court in Sri Saravana Spinning Mills.

11.Defending the stand of the respondents, the learned counsel for the respondents on the other hand would submit that the petitioner had requested for appropriation of seized cash for a sum of Rs.26,82,360/- only to the extent of Rs.8,98,140/- for the Assessment year 2017-2018. Therefore, there is no justification in asking for waiver of interest under Sections 234A and 234B of the Act.

12.On the other hand, it is the contention of the petitioner that the amount was always lying with the Department and has against the total income assessed for a sum of Rs.25,72,919/-, the Department had the cash amounting to Rs.26,82,360/- even before the petitioner was required to file return.

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

14.As far as waiver of interest in this case is concerned, the request of the petitioner cannot be acceded as the petitioner has restricted the appropriation of the seized cash only to the extent of Rs.8,98,140/- vide communication dated 31.03.2018 out of Rs.26,82,360/- seized on 10.08.2017.

15.The department has appropriated only a sum of Rs.8,98,140/- pursuant to the Assessment under section 143(1) of the Income Tax Act, 1961. Therefore, the prayer of the petitioner for waiver of interest under the respective provisions of the Income Tax cannot be countenanced. Therefore, W.P.No.19340 of 2020, is liable to be dismissed.

16. After adjusting a sum of Rs.8,98,140/- for the Assessment Year 2017-2018 out of Rs.26,82,360/- balance of Rs.17,84,220/-was available. A sum of Rs.26,82,360/- seized on 10.08.2017 from the premises of the petitioner, a sum of Rs.8,98,140/- was appropriated towards the tax liability of the petitioner for the Assessment year 2017-2018 which was subject matter of the writ petition in W.P.No.19340 of 2020.

17.As far as the Assessment year 2018-2019 is concerned, the petitioner has filed a return in time on 24.07.2018. The department declared a taxable income of Rs.14,90,443/-. A sum of Rs.4,64,400/- was appropriated on 31.03.2019 out the seized cash from the balance of Rs.17,84,220/- after adjustment of the tax liability of the petitioner in W.P.No.19340 of 2020, leaving a balance of Rs.13,19,820/- for being appropriated towards the tax liability to be determined at a later point of time.

18.The filed income that was returned was enhanced under an intimation order passed under Section 143(1) of the Income Tax Act, on 07.12.2018, whereby, the tax payable by the petitioner was enhanced to Rs.47,60,150/- as against a sum of Rs.4,64,400/- Later, an Assessment order came to be passed under Section 153 of the Income Tax Act read with Section 144 of the Income Tax Act on 30.12.2019. The income of the petitioner was enhanced to Rs.67,91,450/-. The petitioner was also imposed on interest under Sections 234B and 234C.

19.Under these circumstances, the petitioner paid the differential tax in cash amounting to Rs.19,66,850/- as detailed below:-

Sl.No.	***Date of Deposit***
1	27-Feb-2020
2	24-Feb-2020
3	21-Feb-2020
4	03-Feb-2020
5	30-Jan-2020
6	28-Jan-2020
7	24-Jan-2020

20.The petitioner had filed an application for revision of the order passed under Section 153C read with Section 144 of the Income Tax Act, 1961 dated 30.12.2019 on 04.03.2020. On the same day, the petitioner also filed an application under Section 119(2) of the Income Tax Act for waiver of interest under Section 234B of the Income Tax Act before the first respondent.

21.By the impugned order dated 03.11.2020 the first respondent has rejected the aforesaid application of the petitioner with the following observations:-

> *8. The assessee's contention is untenable. 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 submitted that the assessee has not fulfilled none of the four criteria (a-d) in order to grant waiver of interest under Section 234B as per the CBDT's Notification in F.N.400/129/2002-IT(B), dated 26.06.2006.*
>
> *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.53,01,010/- to the returned income of Rs.14,90,440/- and hence the liability of interest charged under Section 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 234B as per the CBDT's notification in F.No.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.

22.Meanwhile, the application filed by the petitioner under Section 154 of the Income Tax Act, on 04.03.2020 was allowed. On 30.06.2020, the balance amount payable by the petitioner was determined as Rs.20,12,610/-. A sum of Rs.3,91,619/- (out of Rs.20,12,610/-) has been quantified towards interest under Section 234B of the Income Tax Act.

23.In the background of the above case, the petitioner submits that refusal to grant waiver of interest under Section 234B of the Income Tax is un-sustainable as not only an amount of Rs.19,66,850/- has been paid by the petitioner in cash and that a sum of Rs.4,64,400/- was appropriated out of the seized cash. The balance amount of Rs.13,19,820/- from the seized cash is still lying with the department which ought to have been refunded back to the respondent which was now appropriated towards the tax liability of the petitioner for the Assessment year 2017-2018.

24.The learned counsel for the respondents on the other hand would submit that the impugned order is well reasoned and requires no interference. That apart, it is submitted that in case, there is an amount lying with the department, it is for the petitioner to file a suitable application for refund of the amount and therefore submits that the impugned order does not called for any interference.

25.The appropriation of the amount for a sum of Rs.4,64,400/- is only towards part of tax liability out of seized cash after appropriation of Rs.8,98,140/- for the Assessment year 2017-2018. The balance tax liability of the petitioner was to be adjusted from the cash deposited by the petitioner in terms of the request of the petitioner dated 09.09.2017 and 31.03.2018.

26.The facts on record indicates that the petitioner has paid a sum of Rs.19,66,850/- from and out of the total tax liability of the petitioner amounting to Rs.25,11,683/-.

27.Considering the fact that the petitioner's amount was still lying with the department all through the period after the search was conducted and cash was seized, the petitioner cannot be saddled with the interest with liability under Section 234B of the Income Tax Act. Under these circumstances, the impugned order is set aside and the application filed by the petitioner for waiver of interest under Section 234B is allowed.

28.It is open for the petitioner to work out the remedy for refund of the amount that is lying with the department pursuant to the seizure effected on 10.08.2017.

29.Accordingly, W.P.No.19340 of 2020 stands dismissed. W.P.No.19349 of 2020 stands allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

28.08.2023

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

1.The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai – 600 003.

2.The Zonal Revenue Officer,
Zone – VIII,

Corporation of Chennai,
Pulla Avenue, Shenoy Nagar,
Chennai – 600 030.

3.M/s.Ozone Projects Private Limited,
Represented by Vasudevan,
No.63, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.