IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **09.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.34902 and 34905 of 2022
and
W.M.P.Nos.34326 and 34332 of 2022

Fuaad Musvee ... Petitioner
In both W.Ps.

Vs.

1.The Principal Commissioner of Income Tax,
Income Tax Department,
Room No.301, Wanarpathy Block II Floor,
Wanaparthy Block No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner / Deputy Commissioner of Income Tax,
Non-Corp Range-3,
Chennai - 600 034.

3.The Commissioner of Income Tax,
Centralized Processing Center (ITR),
Post Bag No.1, Electronic City Post Office,
Bangalore - 560 100. ... Respondents
In both W.Ps.

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in PAN AAGPM1199J for the assessment years AY 2009-10 and AY 2011-12 and quash the impugned order u/s. 220 (2A) of the Income Tax, 1961 passed by the 1st respondent in DIN and Letter Nos.ITBA/COM/F/17/2021-22/1042404459(1) and ITBA/COM/F/17/2021-22/1042405236(1) both dated 31.03.2022 for A.Y.2009-10 and A.Y. 2011-12 and direct the respondents to waive interest u/s. 220 (2) and also impose cost on the respondents.

For Petitioner
In Both W.Ps. : Mr.G.Vardini Karthik

For Respondents
In Both W.Ps. : Mr.V.Mahalingam
Standing Counsel

COMMON ORDER

These Writ Petitions have been filed challenging the impugned orders both dated 31.03.2022 passed under Section 220 (2A) of the Income Tax Act, 1961, for the assessment years 2009-10 and 2011-12, granting a waiver of 20% of the interest levied under Section 220 (2) of the Income Tax Act, amounting to Rs.2,44,076 and Rs.1,63,036/- respectively to the petitioner, eventhough the petitioner had sought for full waiver in his petitions both dated 25.02.2021.

2. The brief facts leading to the filing of these Writ Petitions are as follows:

a) The petitioner is an individual assessee who has filed his Tax Returns for the assessment years 2009-10 and 2011-12, declaring a total taxable income of Rs.88,37,380/- and Rs.87,10,242/- respectively. The petitioner also filed a return of income for the assessment years 2009 -10 and 2011-12 for his minor son, separately.

b) According to the petitioner, it was done by way of abundant caution. The declared income of the petitioner included income of Rs.33,46,321/- and Rs.35,13,860/- of his minor son Master Imaad Musvee (PAN No.AAAPI4751J) and the petitioner also claimed credit of prepaid taxes of Rs.21,27,450/- and Rs.25,41,037/- (including advance tax and TDS) paid on account of his minor son in his return of income.

c) The petitioner had included the income of his minor son Master Imaad Musvee as envisaged under Section 64 of the Income Tax Act in his return. He had paid the advance tax on the said minor's income in the PAN number of the minor and also by way of abundant caution filed a return for the minor son showing the same amount in his hands also.

d) The second respondent had raised tax demand on the petitioner under Section 143 (1) of the Income Tax Act on 14.03.2011 and on 29.12.2012 for the assessment years 2009-10 and 2011-12 without considering the payment of advance tax paid by the petitioner for the same income in the PAN number of his minor son. The second respondent had also informed the petitioner that credit cannot be given for the amount paid under different PAN numbers and advised the petitioner to file a rectification petition under Section 154 of the Income Tax Act in the case of his minor son Master Imaad Musvee and obtain refund and once again pay the tax in the PAN number of the petitioner.

e) Since the petitioner had already paid the tax amounts, he sought for total waiver of the interest amount of Rs.12,20,380/- and Rs.8,15,179/- under Section 220 (2) of the Income Tax Act for the period 29.12.2012 to 25.11.2018 as he has paid the taxes in the year 2011 itself albeit in his minor son's PAN number. According to the petitioner, the Income Tax Department had the tax amounts with them through all these years and therefore, there is no basis for the demand of interest. However, under the impugned orders both dated 31.03.2022, the first respondent has granted only partial waiver of interest viz., 20% and has directed the petitioner to pay the balance 80%. Aggrieved by the same, the petitioner has filed these Writ Petitions.

3. The petitioner has raised the following grounds for challenging the impugned orders:

a) The impugned orders have been passed contrary to law beyond the Jurisdiction and in violation of the principles of natural justice and they are also non speaking orders;

b) The first respondent ought to have seen that the waiver of interest levied under Section 220 (2) has to be awarded if the assessee fulfills or satisfies all the conditions under Section 220 (2A) of the Income Tax Act and the impugned orders rejecting the waiver petitions are silent on the same;

c) The petitioner submits that the wrong tax demands generated by the third respondent without giving credit to the advance tax paid by the petitioner in the name of his minor son Master Imaad Musvee and delay in passing the rectification order dated 30.01.2018 and 12.11.2018 and 18.12.2018 by the second respondent are the reasons behind demand of interest under Section 220(2) for the period 2009-10 and 2011-12 respectively;

d) The first respondent ought to have seen that there is no deliberate lapse on the part of the petitioner in the payment of his taxes and he has also not committed any wilful default and there is no such allegation against the petitioner in the impugned orders also;

e) The first respondent ought to have seen that if the taxes deposited under the petitioner's minor son account were duly credited to the petitioner's account immediately on the date of remittance, the petitioner would not be made liable for any tax on interest under Section 234 A, B, C and under Section 220;

f) The first respondent ought to have seen that the petitioner once again paid the taxes of Rs.13,26,540/- and Rs.11,48,990/- in his own PAN number on 12.11.2018 and 11.12.2018 respectively and the refund of Rs.16,27,220/- and Rs.13,08,490/- (including interest under Section 244A) on 26.11.2018 and 01.01.2019 respectively;

g) The first respondent ought to have seen that the hardship undergone by the petitioner was due to the erroneous action of the second and third respondents in not giving credit to the Advance Tax paid;

h) The first respondent ought to have seen that the interest under Section 220 (2) has been levied eventhough the taxes have been paid in 2009 and 2011 itself on the income of the minor son and the same had been included in the return of the petitioner as envisaged in Section 64 of the Act;

i) The first respondent ought to have seen that it is well settled law that interest is compensatory in nature, and when the tax amounts have been with the Department from 2011 onwards, the question of levying interest will not arise. The petitioner's payment of taxes in his own PAN number was even before the refunds were granted to his son, thus resulting in the Department having the benefit of the taxes twice over for a short period;

j) The first respondent failed to appreciate that it was the petitioner who was made to run from pillar to post approaching various authorities on account of the technical glitch in the computer / software applications of the Department and the petitioner cannot be penalized for such technical issues.

4. Learned counsel for the petitioner reiterated the contentions of the petitioner during the course of her submissions. In support of the petitioner's contentions, she also relied upon the following authorities:

a) A Judgment of a learned Single Judge of this Court in the case of ***Madras Race Club Vs. Commissioner of Income Tax, Chennai - III*** reported in ***2017 (88) taxmann.com 319 (Madras);***

Relying upon the aforesaid Judgment, learned counsel for the petitioner would submit that the impugned orders have not given reasons as to why the petitioner is not entitled for waiver of interest and therefore, the impugned orders are non speaking orders. According to the petitioner, the conditions required for waiver of interest under Section 220 (2A) of the

Income Tax Act have been satisfied, but, despite the same, the respondents have only granted partial waiver of interest.

b) A Division Bench Judgment of the Delhi High Court in the case of ***Court on its Own Motion Vs. Commissioner of Income Tax*** reported in ***2013 (352) ITR 273 (Delhi)***.

Relying upon the aforesaid decision, learned counsel for the petitioner would submit that filing of application under Section 154 i.e., application for rectification and correction by the assessee would entail substantial expenses on the part of the assessee who would be required to engage a counsel or advocate or make repeated visits to the Income Tax Office for the said purpose. This would defeat the main purpose behind computerization i.e., to reduce involvement of human element. Therefore, she would submit that only due to the said fact an application under Section 220 (2A) of the Income Tax Act was filed by the petitioner seeking waiver of interest.

5. Per contra, learned Standing Counsel appearing for the respondents would reiterate the contents of the impugned order and would submit that the petitioner had not approached the Assessing Officer for rectification with

regard to shortfall of credit, instead, separate returns on the hands of his son were filed which resulted in total refund of Rs.16,85,870/- and Rs.13,08,490/- (including interest under Section 244A). He would also submit that the Assessing Officer has stated that the assessee had paid total demand of Rs.13,26,540/- and Rs.11,48,990/- and hence, there is excess refunds of Rs.3,59,300/- [Rs.16,85,870/- (-) Rs.13,26,540/-] and Rs.1,59,500/- [Rs.13,08,490 (-) Rs.11,48,990/-] causing loss to the Department. According to him, only based on the materials available on record, the respondents have partially allowed the waiver applications filed by the petitioner under Section 220 (2A) of the Income Tax Act by granting waiver of 20% of the interest amounting to Rs.2,44,076/- and Rs.1,63,036/- and directed the petitioner to pay the balance 80% interest amounting to Rs.9,76,304/- and Rs.6,52,143/- by 30.04.2022. According to him, there is no infirmity in the impugned orders.

Discussion:

6. Section 220 (1) of the Income Tax Act, 1961 provides that any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under Section 156 shall be paid within thirty days of the

service of the notice at the place and to the person mentioned in the notice. Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

7. Section 220(2) of the Act provides that if the amount specified in any notice of demand under Section 156 is not paid within the period limited under Sub-Section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in Sub- Section (1) and ending with the day on which the amount is paid.

8. Section 220 (2A) of the Income Tax Act provides that notwithstanding anything contained in Section 220 (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-

a) payment of such amount has caused or would cause genuine hardship to the assessee;

b) default in the payment of the amount on which interest was payable under the said Sub-Section was due to circumstances beyond the control of the assessee; and

c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

9. Before passing an order under Section 220 (2A) of the Income Tax Act, 1961, the respondent must satisfy himself that none of the conditions adumbrated under Section 220 (2A) of the Income Tax Act did exist and only thereafter he can reject an application under Section 220 (2A) of the Income Tax Act, 1961.

10. In the case on hand, excepting for stating that the assessee had not approached the Assessing Officer for rectification with regard to shortfall of credit, instead a separate return in the hands of the minor son was filed

which resulted in total refund of Rs.16,85,870/- and Rs.13,08,490/- (including interest under Section 244A) which compelled the respondents to pay an excess refund of Rs.3,59,300/- and Rs.1,59,500/- to the petitioner, the contentions of the petitioner as raised in the petitions filed under Section 220 (2A) of the Income Tax Act both dated 25.02.2021 have not been considered.

11. The respondents before rejecting the petitioner's applications have not taken note of the following undisputed facts:

a) The wrong tax demand generated by the third respondent without giving credit to the advance tax paid by the petitioner in the name of his minor son Imaad and there was delay in passing the rectification order dated 30.01.2018 and 12.11.2018 and 18.12.2018 by the second respondent are beyond the control of the petitioner;

b) There is no lapse on the part of the petitioner in the payment of his taxes and he has not committed any default;

c) The taxes deposited under the petitioner's minor son's account were duly credited to the petitioner's account immediately on the date of remittance;

d) The petitioner has once again paid the taxes of Rs.13,26,540/- and Rs.11,48,990/- in his own PAN number on 12.11.2018 and 11.12.2018 and the refund of Rs.16,27,220/- and Rs.13,08,490/- (including interest under Section 244A) was made by the respondents only on 26.11.2018 and 01.01.2019 respectively;

e) The hardship undergone by the petitioner due to the erroneous action of the second and third respondents in not giving credit to the Advance Taxes paid by the petitioner have not been given due consideration in the impugned orders;

f) The interest under Section 220 (2) of the Income Tax Act has been levied eventhough the taxes has been paid in 2009 and 2011 itself on the income of the minor son and the same had been included in the return of the petitioner as envisaged in section 64 of the Act;

g) The interest is compensatory in nature and when the tax amounts have been with the Department from 2011 onwards, there is no warrant to levy interest. The petitioner's payment of taxes in his own PAN number was even before the refunds were granted to his son, thus resulting in the Department having the benefit of the taxes twice over for a short period;

h) The first respondent in the impugned order has failed to appreciate that the petitioner has been approaching various authorities on account of the technical glitch in the computer / software applications of the Department for which the petitioner cannot be penalized.

12. The decisions relied upon by the learned counsel for the petitioner referred to supra also supports the case of the petitioner.

13. For the foregoing reasons, the petitioner has certainly suffered genuine hardship and for no fault of his, interest cannot be levied under Section 220 (2) of the Income Tax Act when the advance taxes were infact paid on time though mistakenly in the petitioner's minor son's PAN number. It is also not the case of the respondents that the petitioner did not cooperate in any enquiry relating to the assessment or any proceedings for the recovery of amount due from him. The first respondent under the impugned order has granted partial waiver of interest to the petitioner at 20% without giving any reason as to how they arrived at that rate. When the first respondent has granted partial waiver at 20%, this Court is of the considered view that too

when there is no finding given by the first respondent under the impugned orders that the petitioner has not satisfied the three conditions required for waiver of interest under Section 220 (2A) of the Income Tax Act viz.,

a) payment of such amount has caused or would cause genuine hardship to the assessee;

b) default in the payment of the amount on which interest was payable under the said Sub-Section was due to circumstances beyond the control of the assessee; and

c) the assessee has not cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him;

the first respondent ought to have granted full waiver of the interest to the petitioner, but, instead, erroneously has granted only 20% waiver by passing non speaking orders.

14. However, this Court will also have to take note of the fact that the petitioner has already got the benefit of interest while the respondents had refunded a sum of Rs.3,59,300/- and Rs.1,59,500/- under Section 244A of the Income Tax Act. Certainly that amount has to be adjusted from and out of the waiver of interest under Section 220(2A) of the Income Tax Act. The

petitioner had sought for waiver of Rs.12,20,380/- and Rs.8,15,179/- under Section 220 (2A) of the Income Tax Act which has been partially allowed by granting 20% waiver to the petitioner under the impugned orders which work out to Rs.2,44,076 and Rs.1,63,036/- and the balance 80% amount is Rs.9,76,304/- and Rs.6,52,143/- respectively. This Writ Petition is partly allowed by modifying the impugned order by granting full waiver of interest to the petitioner under Section 220 (2A) of the Income Tax Act and by directing the petitioner to pay a sum of Rs.3,59,300/- and Rs.1,59,500/- respectively which he has received towards refund of interest under Section 244A of the Income Tax Act from the respondents within a period of four weeks from the date of receipt of a copy of this order.

15. In the result, these Writ Petitions are partly allowed in terms of the aforementioned directions. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

09.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1.The Principal Commissioner of Income Tax,
Income Tax Department,
Room No.301, Wanarpathy Block II Floor,
Wanaparthy Block No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

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ABDUL QUDDHOSE. J.,

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