BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.3512 of 2020
and
W.M.P.(MD)No.2980 of 2020

The Chandrasekarapuram Co-op. Whole Sale
Stores Limited,
No.66, Nageshwaran North Street,
Kumbakonam – 612 001,
Rep. by its Managing Director,
PAN: AAALT 0356N ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax,
Income Tax Department,
No.44, Williams Road,
Cantonment,
Tiruchirappalli.

2.The Principal Commissioner of Income Tax – 1,
Income Tax Department,
No.44, Williams Road,
Cantonment,
Tiruchirappalli.

3.The Joint Commissioner of Income Tax – 1,
Income Tax Department,
No.44, Williams Road,
Cantonment,
Tiruchirappalli.

4.The Deputy Commissioner of Income Tax,
Circle – 2,
Income Tax Department,
No.44, Williams Road,
Cantonment,
Tiruchirappalli. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent to quash the impugned order dated 13.11.2019 C.No. 932(1)/CCIT/TRY/2018-19 for the Assessment Years 2005-06, 2007-08, 2008-09 and 2009-10 and direct the first respondent for waiver of interest charged under Sections 234A, 234B and 234C to the Income Tax Act, 1961 on the grounds stated in the present Writ Petition.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

O R D E R

The petitioner is aggrieved by the impugned order dated 13.11.2019, passed by the first respondent – Chief Commissioner of Income Tax, partly rejecting the prayer of the petitioner for waiver of interest under Sections 234A, 234B and 234C of the Income Tax Act, 1961.

2. The dispute in the present case pertains to the following Assessment Years:-

Assessment Year	Due date for filing return of income	Due date for getting accounts audited	Date of Audit Report	Return filed on
2005-06	31.10.2005	31.10.2005	14.07.2009	03.08.2009
2007-08	31.10.2007	31.10.2007	18.12.2009	31.12.2009
2008-09	31.10.2008	31.10.2008	10.03.2011	31.05.2011
2009-10	31.10.2009	31.10.2009	30.04.2011	02.04.2012

3. By the impugned order, the first respondent has granted partial waiver of interest insofar as interest under Section 234A of the Income Tax Act, 1961, for the Assessment Years 2005-2006 and 2007-2008. However, for the Assessment Years 2008-2009 and 2009-2010, the first respondent has concluded that the petitioner has filed the return belatedly long after the receipt of statutory audit by the Audit Department of the State Government.

4. The learned counsel for the petitioner has filed copies of the Audit Reports for the Assessment Years 2008-2009 and 2009-2010. The learned counsel for the petitioner would submit that there is only a partial delay in filing the returns, inasmuch as the Audit Reports were received by the Office of the petitioner for the Assessment Years 2008-2009 and 2009-2010 on 22.03.2011 and on 31.01.2012 and the returns were filed immediately thereafter on 31.05.2011 and on 02.04.2012, respectively.

5. It is submitted that the reasons for dropping the interest under Section 234A of the Income Tax Act, 1961 for the Assessment Years 2005-2006 and 2007-2008 should apply for the Assessment Years 2008-2009 and 2009-2010. Therefore, the rejection of the prayer for waiver of interest under Section 234A of the Income Tax Act, 1961 for the Assessment Years 2008-2009 and 2009-2010 is liable to be interfered with favourably in the light of the CBCT Circular, dated 26.06.2006, bearing reference No.400/129/2002-IT(B).

6. As far as interest under Sections 234B and 234C are concerned, the learned counsel for the petitioner would submit that on 17.03.1995, due to the financial stress faced by the Stores, more than 60 employees were deputed / transferred to other Co-operative Institutions. That apart, it is submitted that the employees' dues of about 1.40 Crores payable to the retired / deputed / transferred employees were still pending as on 31.03.2019. It is further submitted that a loan of Rs.16 Lakhs due to the Tamil Nadu Government was still pending from the year 2001. It is further submitted that statutory funds of Rs.70 Lakhs as prescribed by the Tamil Nadu Co-operative Societies Act, 1983, such as Co-operative Education Fund, Co-operative Development Fund payable to the Co-operative Union was still pending and therefore, it is submitted that the first respondent should have exercised the discretion vested with him in terms of CBCT Circular No.400/129/2002-IT(B), dated 26.06.2006.

7. In this connection, the learned counsel for the petitioner has also drawn the attention of this Court to the decision rendered by this Court in **Tvl.Sanmac Motor Finance Ltd. vs. Chief Commissioner of Income Tax, Chennai**, [2020] 271 Taxman 51 (Madras) : AIRONLINE 2020 MAD 866, wherein this Court has exercised the discretion in favour of the petitioner therein.

8. The learned counsel for the petitioner would submit that the case of the petitioner deserves a similar treatment, as the petitioner is a Co-operative Society, which is solely owned by the State Government. It is further submitted that although it is intended to make profit, it serves the needs of the Society by implementing Part-IV of the Constitution of India.

9. Opposing the prayer, the learned Senior Standing Counsel for the respondents would submit that there is no merit in the present Writ Petition. It is submitted that the first respondent has exercised the discretion correctly in the impugned order by applying Circular No. 400/129/2002-IT(B), dated 26.06.2006 of the Central Board of Direct Taxes, issued under Section 119(2)(a) of the Income Tax Act, 1961.

10. It is further submitted that the Board has clarified that insofar as interest under Sections 234B and 234C are concerned, they will not be governed by the clarification in Paragraph 2(d) of the said Circular. The learned Senior Standing Counsel for the respondents also would refer to the decision relied by the learned counsel for the petitioner in **Tvl.Sanmac Motor Finance Ltd. case** [cited supra].

11. The learned Senior Standing Counsel for the respondents has also placed reliance on the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala**

and others, 2002 (1) SCC 633. Particularly, a reference was made to Paragraph 33 of the said judgment. The learned Senior Standing Counsel for the respondents has also placed reliance on the decision of the Bombay High Court in **De Souza Hotels (P.) Ltd. vs. Chief Commissioner of Income Tax**, [2012] 207 Taxman 84 (Bombay) : [2012] 253 CTR 541 (Bombay), which was affirmed by the Hon'ble Supreme Court in **C.C.No.13729 of 2012, dated 21.08.2012** [(2012) 25 Taxmann.com 553 (SC)].

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have perused the decisions cited by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the content of CBCT Circular No. 400/129/2002-IT(B), dated 26.06.2006.

13. The Hon'ble Supreme Court in **Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others** [cited supra], has held as under:-

"33. It is then contended that if it is to be

construed that the Commission has no power of waiver or reduction of interest then the entire purpose of Chapter XIX-A would be defeated since a person making an application to the Commission would not be in any way better off than pursuing his remedy otherwise provided in the Act. We are unable to accept this argument advanced on behalf of the respondents because the persons who approach the Commission under Chapter XIX-B are admittedly the persons who had not declared their true incomes to the income tax authorities as required under the Act. In spite of this default, Section 245-C comes to the aid of such assessees by providing a way out of the statutory implications of their default. The object of the legislature in introducing this section is to see that the protracted proceedings before the authorities or in courts are avoided by resorting to settlement of cases. In this process, an assessee cannot expect any reduction in amounts statutorily payable under the Act. While the Settlement Commission arrives at the taxable income of the assessee on the basis of records available before it, it has to levy the mandatorily chargeable tax on such income arrived at by it and wherever interest is due under the mandatory provisions like Sections 234-A, 234-B and 234-C, it has to include the said interest also in the settlement. But, at the same time, the assessee who because of his non-disclosure would otherwise have been liable for various penal actions, gets an opportunity of getting immunity from penal proceedings. It is to be seen that under Section 245-H the Commission has the power to grant immunity to the assessee from prosecution and penalty. This immunity is not confined only to the penal provisions of the Act but it is also available, if granted by the Commission, to offences under the Penal Code, 1860 or under any other Central Act for the time being in force and also get the benefit of waiver or reduction in the imposition of penalty under the Act with *respect to the cases covered by the settlement. Therefore, it is futile to contend that merely because the Settlement Commission has not been vested with the power of waiving or reducing the interest, Chapter XIX-A would either become otiose or would not serve any purpose. Hence, this argument has to be rejected."*

14. The above said view has been followed by the Bombay High Court in **De Souza Hotels (P.) Ltd. vs. Chief Commissioner of Income Tax** [cited supra] and the S.L.P. against the said order has been dismissed by the Hon'ble Supreme Court. This Court had also an opportunity to consider the applicability of the Circular in the context of a Company, which was ordered to be wound up in **Tvl.Sanmac Motor Finance Ltd. case** [cited supra]. In the said case, it was observed as under:-

"19. From a reading of the above circular, it is evident that the case of the petitioner is not specifically covered by any of the situation contemplated in the above notification. Therefore, no fault can be found with the impugned order of the 1st respondent as the 1st respondent is bound by the above notification though the petitioner company was ordered to be wound up by an order dated 18.06.2001 in C.P.No.323 of 1998.

21. Though the notification has not considered the above situation, I am of the view that the petitioner is entitled for a partial relief for the above reason dehors the above notification. The date of winding up dates back to the date of petition and during the aforesaid period, there was a legal disability to pay the tax by the company as the official liquidator obtained leave of the company *court under the Companies Act, 1956.*

22. Since the 1st respondent has no power to grant waiver of interest in the light of the specific instruction of the Central Board of Direct Taxes, the Court in the exercise of its power under Article 226 of the Constitution of India can order waiver applying the legal principles applicable in the case of winding up of a company.

34. As the petitioner was under a legal disability during the period between 18.06.2001 and 27.10.2006, during the subsistence of winding up order and since the petitioner company was under the control of this court and the official liquidator, I am of the view, this is a fit case for granting partial relief to the petitioner."

15. In my view, the stand of the petitioner that the petitioner was entitled for waiver of interest under Section 234A of the Income Tax Act, 1961, for the Assessment Years 2008-2009 and 2009-2010 on similar for the Assessment Years 2005-2006 and 2007-2008 deserves to be accepted, as there is only marginal delay in filing the returns after the Audit Report was received by the petitioner from the Office of Joint Director of Co-operative Audit on 22.03.2011 for the Assessment Year 2008-2009 and on 31.01.2012 for the Assessment Year 2009-2010. The returns for these years were filed by the petitioner on 31.05.2011 and 02.04.2012, respectively. Therefore, to the extent of rejection of waiver of interest under Section 234A of the Income Tax Act, 1961 is concerned, I am of the view that the impugned order warrants interference, by granting waiver to the petitioner. Therefore, the interest under Section 234A of the Income Tax Act, 1961, deserves to be waived and therefore, this Writ Petition deserves to be allowed to that extent.

16. As far as the interest under Sections 234B and 234C of the Income Tax Act, 1961 are concerned, they pertain to belated payment of advance tax under Section 210 within the stipulated period under Section 211 of the Income Tax Act, 1961. In my view, no case is made out by the petitioner for waiver of interest notwithstanding the reason stated by the petitioner in the affidavit. CBCT Circular No.400/129/2002-IT(B), dated 26.06.2006, does not specifically deal with waiver of interest under Sections 234B and 234C of the Income Tax Act, 1961.

17. There were no impediments operating against the petitioner from paying the advance tax within the time line under Section 211 of Income Tax Act, 1961. The decision of this Court in **Tvl.Sanmac Motor Finance Ltd. case** [cited supra], which was relied by the learned counsel for the petitioner as also by the learned Senior Standing Counsel for the respondents, has not given a complete waiver of interest under any of the provisions although partial waiver was allowed as it evident from reading of Paragraph 35 of the order, which reads as under:-

> *"35. Under these circumstances, I am of the view that there should be a waiver of interest under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961 for the period between 18.06.2001 and 27.10.2006 alone."*

18. That apart, the payment of interest on the tax that was payable on the date specified in Section 211 of the Income Tax Act, 1961 is axiomatic in the sense it has to be paid by the due date prescribed under the Statute and therefore, there cannot be any waiver either on the ground of equity or on a reading of the above Circular dated 26.06.2006, bearing reference No.400/129/2002-IT(B) or on a reading of the decision of this Court in **Tvl.Sanmac Motor Finance Ltd. case** [cited supra] or on a reading of the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others** [cited supra].

19. In fine, this Writ Petition is partly allowed to the extent indicated above. Accordingly, there shall be a waiver of interest under

Section 234A of the Income Tax Act, 1961 for the Assessment Years 2008-2009 and 2009-2010. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/ No 15.04.2024
Neutral Citation: Yes / No
Speaking order / Non-speaking order
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C.SARAVANAN, J.

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