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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-6288-2001 (O&M)
DECIDED ON: 02.09.2024**

SANT LAL AND ORS.**.....PETITIONERS**

VERSUS

**THE INCOME TAX SETTLEMENT COMMISSION AND OTHERS
.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH.**

Present: Mr. Sunil K. Mukhi, Advocate, and
Mr. Iqbal Roshan, Advocate,
for the petitioners.

Ms. Gauri Neo Rampal Opal, Advocate,
Senior Standing Counsel,
for the respondent – Income Tax Department
(through video conferencing mode).

SANJEEV PRAKASH SHARMA, J (ORAL)

1. Present writ petition has been preferred by the petitioners, assailing the order passed by the Income Tax Settlement Commission, to the extent that the Commission has ordered to charge the interest @ 50% under Section 234-A of the Income Tax Act, 1961 (for short, 'the Act'), and also directed for the interest under Section 234-B of the Act for the assessment year 1989-90, and similarly, it has also imposed interest under Section 234-C, with respect to the five applicants before it.

2. Learned counsel for the petitioners submits that the Settlement Commission has fallen in error, in imposing the interest upto 50% under Section 234-A of the Act, and similarly, has erred in imposing the interest under Section 234-B and 234-C of the Act, as it has agreed with the



contentions raised by the applicants/petitioners that for the assessment years 1986-87, 1987-88, 1988-89, when the re-assessment orders were issued under Section 148, no interest was chargeable under Section 139(8), and the interest under Section 234-A could have been charged on the ground that the returns had been filed on 12.02.1991 after delay, for the Assessment Year 1989-90.

It is the contention raised by learned counsel for the petitioners that the petitioners were prevented from filing the returns in time, as the copies of the seized papers were not given to the petitioners by the Department, in spite of various letters and requests made by the applicants/petitioners.

It is further contended that once, the Department agreed with the contention raised by the applicants/petitioners, no reasons have been assigned for reducing the interest to 50% only, and in fact, the entire interest ought to have been waived.

3. Counsel for the petitioners relied upon the judgment passed in the case of **Jyotendrasinhji v. S.I. Tripathi and others** [1993] 201 ITR 611 (SC), to submit that the writ petition would be maintainable in relation to the orders of the Settlement Commission.

He also relied upon the judgment passed in the case of “***Smt. Harbans Kaur vs. Commissioner of Wealth Tax*** [1997] 224 ITR 418 (SC), to submit that discretion has to be exercised by the Commissioner, by applying the judicial mind.

He further relied upon the judgment passed by this Court in the case titled as ***Income-Tax Officer and others vs. R.P. Handa*** [1994] 206



ITR 537, to submit that the petitioners had reasonable grounds for not submitting their returns within time. He also relied upon the judgment passed by this Court in the case titled as *Jaggiwan Kumar vs. Commissioner of Income Tax/Wealth Tax and others* [1997] 228 ITR 229, to submit that if the Commissioner has been satisfied then the only option available was to waive of the penalties.

Learned counsel has further relied upon the judgment passed by this Court in the case titled as “*Baso Devi and others vs. Central Board of Direct Taxes through its Chairman and others*”, decided on 22.02.2024.

4. Learned counsel for the petitioners has also relied upon the press release/CBDT Circular dated 23.05.1996 (Annexure P-6), on waiver of the interest, as issued by the Department in relation to Section 234-A, B and C, to submit that if the returns were not filed for the reasons beyond the control of the assessee, the interest ought not to be charged.

5. *Per contra*, learned counsel for the respondents – Revenue have supported the order passed by the Income Tax Settlement Commission.

6. She has raised the preliminary objection that once the report of the Settlement Commission has been accepted by the petitioners, they cannot choose to challenge part of the said report which goes against them.

Counsel for the respondents further submits that the assessee-petitioners approached the Income Tax Settlement Commission under Section 245-C(1) for disposing off their settlement petitions filed under Section 245-D(4) of the Act and the order is passed finally under Section 245-D, which deals with all the aspects relating to the concerned assessment.



It does not lie wrong for the petitioners to turn around and challenge the same on the aspects which cannot be controverted by them.

She has supported the order passed by the Income Tax Settlement Commission and submits that there is no indiscretion on the part of the Settlement Commission. They have applied their mind fully to the facts of the case and reduced the interest by 50%, in terms of Section 234-A of the Act. However, complete interest has been charged under Section 234-B and similarly interest has also been charged under Section 234-C of the Act.

It is pointed out that the Settlement Commission has after due deliberation, waived the interest under Section 220(2) of the Act. Thus, she submits that there has been a complete application of mind on the part of Settlement Commission and, thus this Court ought not to interfere with the said orders.

7. Learned counsel for the respondents/Revenue further submits that insofar as the judgments cited by the petitioners are concerned, it would have their application to the facts of the concerned case(s) alone and have no application to the present case.

8. We have carefully gone through the order passed by the Income Tax Settlement Commission under Section 245-d(4) of the Income Tax Act, 1961.

The petitioners had filed the applications for settlement of their income-tax and wealth tax under Section 245-C of the Act, and after considering all the aspects, the Settlement Commission passed the orders. It also granted immunity for the prosecution and at the same time, it reduced



the interest chargeable under Section 234-A by 50%, while interests in terms of Section 234-B and C of the Act were directed to be charged from all the five applicants. However, interest under Section 220(2) was waived.

9. The question regarding maintainability of the present writ petition against the order of the Income Tax Settlement Commission is no more *res integra*, in view of the law as settled by Hon'ble the Supreme Court in the case of **Jyotendrasinhji v. S.I. Tripathi and others [1993] 201 ITR 611 (SC) (supra)**, wherein Hon'ble the Supreme Court while following its earlier judgement rendered in the case of ***R.B. Shreeram Durga Prasad and Fatechand Nursing Das vs. Settlement Commission (I.T. and W.T.)* [1989] 176 ITR 169**, held as under:-

“It is true that the finality clause contained in section 245-1 does not and cannot bar the jurisdiction of the High Court under article 226 or the jurisdiction of this court under article 32 or under article 136, as the case may be. But that does not mean that the jurisdiction of this court in the appeal preferred directly in this court is any different than what it would be if the assessee had first approached the High Court under article 226 and then come up in appeal to this court under article 136. A party does not and cannot gain any advantage by approaching this court directly under article 136, instead of approaching the High Court under article 226. This is not a limitation inherent in article 136; it is a limitation which this court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. May be, there is also some force in what Dr. Gauri Shankar says, viz., that the order of the Commission is in the nature of a package deal and that it may not be possible, ordinarily



speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above, viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (audi alteram partem) has been incorporated in section 245D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by the High Court under article 226 or by this court under article 136 is also the same-whether the order of the Commission is contrary to any of the provisions of the Act and if so, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category, has it prejudiced the petitioner/appellant.”

10. In view of the above, objection raised by learned counsel for the respondents regarding non-maintainability of the present writ petition, is rejected.



11. So far the question that whether the discretion exercised by the Settlement Commission of reducing the interest by 50% in terms of the interest chargeable under Section 234-A of the Act is concerned, we would have to examine the provisions of Section 234-A of the Act for the purpose, which provides for charging of interest for defaults in furnishing return of income, interest for defaults in payment of advance tax and for interest for deferment of the advance tax, respectively.

12. On reading and examining the said provision, it has been noticed that the provisions of imposing the interest is automatic, and if there is a default, interest is liable to be paid.

However, by the various judgments passed by Hon'ble the Supreme Court as well as by this Court as reproduced supra, the Courts have taken a view that in circumstances which are beyond the control of the assessee in filing of the return in time, the interest can be waived.

13. In the present case, the Income Tax Settlement Commission accepted the version of the petitioners that the returns for the Assessment Year 1989-90 could not been filed in time, and were delayed on account of the fact that the seized papers were not available with them, and were lying with the Department. The Settlement Commission has also noticed that the letters and requests were made by the applicants/petitioners to the Department and looking into the said circumstances, interest had been reduced.

14. We find that while exercising the discretion by the Settlement Commission, no reasons have been assigned as to why the interest has been



reduced by 50% only, and as to why the complete interest has not been waived off for the assessment year 1989-90.

15. We, accordingly, accept the present writ petition, and waive the interest charged, in terms of Section 234-A of the Act.

16. As far as the interest chargeable under Section 234-B and 234-C are concerned, keeping in view that the advance tax was required to be paid, wherein there has been a default, in terms of the judgment passed in the case of **Gulraj Engineering Construction Co.**, reported as [1995] 215 ITR (AT), we do not propose to waive the interest under Section 234-B and 234-C of the Act.

17. We are also not impressed by the arguments raised by learned counsel for the petitioners in terms of the circular on waiver of interest (Annexure P-6) that the interest under Section 234-B and 234-C should be waived, as depositing of advance tax has nothing to do with the seizure of the books of accounts or during the course of proceedings for search, or seizure of cash.

18. In the case of ***Shelly Mehta v. Commissioner of Income tax, Central Circle, Ludhiana and another***, this Court has taken a view that the cash seized during the seizure cannot be a ground for waiver of advance tax or payment of tax for the subsequent year. In view thereto, we do not accept the contentions made by counsel for the petitioners and the present writ petition is allowed in part.

Pending miscellaneous application(s), if any, also stand disposed of.



19. After the case was heard at length and judgment was dictated in the Court, learned counsel for the petitioners complained of having not been heard.

20. We have already recorded conclusions in detail on all aspects as well as merits of present petition, therefore, no further arguments are required to be heard.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

02.09.2024
Lavisha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>