IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5315 OF 2024

Bhupendra C. Dalal .. Petitioner

Versus

The Chief Commissioner of
Income Tax (Central) -2 .. Respondents

Mr. *Rafique Dada Senior Advocate, a/w Mr. Vipul Joshi, Mr. Prashant Ghumare, i/b. Ms. Sruti Kalyanikar*, Advocates for the Petitioner.

Mr. Vipul A. Bajpayee, Advocate for the Respondents.

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE: SEPTEMBER 8, 2025

P. C.

1. The above Writ Petition is filed *interalia* challenging the impugned order dated 20.07.2023 passed by the Chief Commissioner of Income Tax (Respondent No. 1) rejecting the application filed by the Petitioner under Section 220(2A) of the Income Tax Act, 1961 seeking a waiver of interest levied by the Income Tax Department. At the time when impugned order was passed, the interest levied on the Petitioner was approximately Rs. 25.52 Crores. It transpires that after the passing of this order, this interest amount has been reduced to Rs. 19.13 Crores pursuant to a rectification order passed by the Deputy Commissioner of Income Tax

dated 13.08.2024. After hearing the parties, we found several infirmities in the impugned order. The impugned order proceeds on the basis that the conditions as set out in Section 220(2A) of I. T. Act have not been fulfilled. Section 220(2A) stipulates that notwithstanding anything contained in Section 220(2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner may reduce or waive the amount of interest paid or payable by an Assessee under Section 220(2) if he is satisfied that (i) payment of such amount has caused or would cause genuine hardship to the assessee ; (ii) default in the payment of the amount on which interest has been paid or was payable was due to circumstances beyond the control of the assessee ; and (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for recovery of the amount due from him. According to Respondent No. 1, none of these conditions have been fulfilled by the Petitioner. One of the main reasons for this finding is that the Petitioner has not co-operated in the assessment and therefore does not fulfill the condition as more particularly set out in Section 220 (2A) (iii). The other reason given for rejecting the application is that since this money would be paid out by the Custodian under the provisions of the *Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992*, it cannot be said that this was a circumstance beyond the control of the assessee as contemplated under Section 220 (2A) (ii) of the IT Act.

2. We find that on both these grounds, at least *prima facie*, the first Respondent has committed an error. Firstly, from the record, we find that the assessee has written several letters (Page 239 to 303) demanding the seized documents and computer data (by the Income Tax Department) so as to enable him to co-operate in the assessment proceedings for the assessment years which form the subject matter of the waiver application. Despite this, the impugned order records that *"there is no evidence furnished by the assessee suggesting that he had asked for the copies of the documents which were not given to him"*. This apart, we fail to understand how the condition stipulated in Section 220 (2A) (ii) have not been complied merely because the money would be payable directly by the Hon'ble Special Court while distributing the assets in terms of Section 11 (2) of the *Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992*. After perusing the impugned order, we were inclined to remand the matter back to the 1st Respondent for a fresh consideration. However, the learned Advocate appearing on behalf of the Revenue sought time to take instructions on this aspect from the concerned Officer.

3. Acceding to the request of the Advocate for the Revenue, we now placed this matter on 22.09.2025.

4. We trust and hope that necessary instructions would be forthcoming on the next occasion failing which we will remand the matter back to the concerned authority for deciding the application of the Petitioner for waiver of interest afresh, after giving him an opportunity of a hearing as well as placing on record all material that has also transpired after the passing of the impugned order.

5. Stand over to 22.09.2025.

6. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**

Santosh Chabukswar- Court Steno.