

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 9<sup>TH</sup> DAY OF JUNE, 2009

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

WRIT PETITION No 10896 OF 2006 (T-IT)

BETWEEN

- 1 M/S POLYFEX (INDIA) PVT LTD  
116, BOMMASANDRA INDUSTRIAL AREA,  
ANEKAL TALUK,  
BANGALORE 562 158,  
REPRESENTED BY ITS MANAGING DIRECTOR  
SRI U N BALRAM, AGED ABOUT 64 YEARS,

... PETITIONER.

(By M/S K R PRASAD, ADV, )

AND

- 1 THE DIRECTOR GENERAL OF INCOME TAX(INV)  
CENTRAL REVENUE BUILDING,  
QUEEN'S ROAD,  
BANGALORE 1.
- 2 THE DEPUTY COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE 2(1) IV FLOOR  
CENTRAL REVENUE BUILDING  
ANNEXE, QUEEN'S ROAD,  
BANGALORE 1.

... RESPONDENTS.

(By Sri ARAVIND, ADV. FOR  
SRI M V SESHACHALA CGSC. )

THIS W.P. FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION, PRAYING TO QUASH THE IMPUGNED ORDER DT. 17.3.2006 IN ANNEX.R. OF THE FIRST RESPONDENT AND FURTHER DIRECT THAT THE ENTIRE INTEREST U/S.220(2) AND/OR IN THE ALTERNATIVE AND WITHOUT PREJUDICE A SUBSTANTIAL PORTION OF IT BE WAIVED ASP ER THE PROVISIONS OF SECTION 220(2A) OF THE ACT.

QUASH THE ORDER OF THE SECOND RESPONDENT IN LETTER DT. 19.3.1991 IN ANNEX.B. TO THE EXTENT IT LEVIES INTEREST UNDER SECTION 234B.


QUASH THE ORDER OF THE SECOND RESPONDENT IN LETTER DT. 20.1.2003 VIDE ANNEX.L. TO THE EXTENT IT LEVIES INTEREST U/S 220(2) AND 234B.

QUASH THE ORDER OF R2 DT. 24.11.2004 VIDE ANNEX.P. TURNING DOWN THE PLEA FOR RECTIFICATION AND IN NOT DELETING THE INTEREST U/S.220(2) AND 234B OF THE ACT; AND TO DIRECT BY AN APPROPRIATE WRIT OR ORDER THE REFUND OF THE INTERESTS PAID U/S.234B AND 220(2).

THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

### ORDER

In this writ petition the petitioner assessee is questioning the levy of interest under section 234B and 220(2) of the Income Tax Act, 1961 (for short 'the Act'). The assessment year is 1989-90. Pursuant to the same, the Assessing Officer has refused to waive the interest.



2. There was a regular assessment for the assessment year 1989-90, pursuant to the order dated 31.3.1990 by invoking the provisions of Section 115 of the Act. Suffice it to say that the proceedings were initiated again under section 154 of the Act proposing to rectify the assessment for the reasons stated therein. On receipt of the order the assessee filed an application on 1.4.1991 before the second respondent seeking cancellation of the rectification made by him for the reasons stated therein. It is stated that the rectification application has not been disposed of till date in spite of reminders. In the mean time, the appeal before the Commissioner of Income-Tax (Appellate) deleted both the accounts; thus restored the original assessment. On appeal, the Tribunal has upheld the same. This court on appeal by the department reversed the decision of the Tribunal following the decision of the Allahabad High Court. The matter was taken to the Apex Court and the Apex Court has confirmed the order passed by this court. Thus status quo ante was restored, in as much as, rectification order stood revived. It is the case of the petitioner that notice of demand



was issued coupled with interest leviable under section 220(2) and 234B of the Act. The reply was filed, however it was not entertained. Hence this writ petition.

3. Learned counsel appearing for the petitioner submits that the very reading of section 220(2A) of the Act would contemplate waiver of interest in three circumstances. Her specific case is that those three circumstances have not been considered by the concerned authority while levying interest on the unpaid tax. She further submits that the authority was also not justified in imposing tax on belated payment of advance tax as under section 234(B) of the Act. In support of her contention she would rely on a circular issued on 23.5.1996 to buttress her contention that interest is also not leviable under section 234B of the Act.

4. Mr. Arvind, learned counsel appearing for the respondent Revenue submits that to the notice of demand issued to the petitioner for which the assessee has given its reply. Hence, he submits that it is not open for the



petitioner to contend that the demand notice was not issued. In so far as levy of interest is concerned, he submits that the fact that since the demand notice was served and that having not been paid the provisions of section 220 of the Act would be applicable, in as much as, when the tax has become due and the assessee is a deemed defaulter, the question of applicability of section 220(2A) of the Act would not arise. In so far as interest payable under section 234B of the Act is concerned, he submits that the authorities have relied on the old circular and indeed the circular which is required to be looked into is the one issued on 23.5.1996. The sum and substance is that the impugned order is just and proper and not liable to be interfered with.

5. I have given my anxious consideration to the submissions made by the learned counsel appearing for the petitioner as well as the respondents.

6. To better appreciate the contentions of both the parties, it is necessary to refer to the relevant provisions. In



so far as levy of interest is concerned, that would stem from section 220 of the Act. Waiver of interest under section 220(2A) of the Act which would read as under:

“(2A) Notwithstanding anything contained in sub-section (2) the Chief 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 –

(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 under the said sub-section 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 the recovery of any amount due from him.

7. Indeed the exemption fell for consideration before the Apex Court in the case of B.M. Malani vs. Commissioner of Income-Tax and another, reported in (2008) 306 ITR 196 (SC). The Apex Court while dealing with identical situation with reference to the phrase “genuine hardship” was of the view that “genuine hardship” would inter alia mean a genuine difficulty. That per se would not lead to the conclusion that a person having much assets would never be



in difficulty as he can sell those assets and pay the amount of interest levied.

8. The commissioner no doubt has discretionary power not to accede to the request of the assessee, but that discretion has to be judiciously exercised. Indeed he has to arrive after due satisfaction that the three conditions laid down in section 220(2A) of the Act has been satisfied. The said conditions have already enumerated earlier. Indeed it is to be noticed that the ingredients of genuine hardship must be determined by the dictionary meaning thereof and the legal conspectus attending thereto. Having regard to the fact that the authorities have not addressed themselves to the scope of the exemption as contemplated under section 220(2A), I am of the view that the said question regarding levy of interest is required to be considered afresh. Indeed the same view is taken by this court in the case of M.V. Amar Shetty vs. Chief Commissioner of Income-Tax and another, reported in (2009) 309 ITR 93 wherein the Division Bench of this court having regard to the scope of section 220(2A) has



observed that the three conditions under section 220(2A) need not co-exist before waiver. A perusal of the impugned order does not disclose that the authorities have bestowed their attention on this aspect of the matter.

9. In so far as interest leviable under section 234B of the Act it would deal with interest for default in payment of advance tax. The said provision would also invite payment of interest if there is default in payment of advance tax. In this case the authorities have proceeded to consider the said provision having regard to the earlier circular issued by the Board wherein a decision inter se between the assessee and the department is only required to be looked into. But however the subsequent circular dated 23.5.1996 has made things easy for the assessee, in as much as, the said circular would indicate any decision of the High Court or the Apex Court in support of the said provision is to be looked into. Indeed the said circular would speak about the income which was not chargeable to the tax on the basis of any order passed in the case of an assessee in whose jurisdiction





he is assessable to income tax. Further pointing out the decision of the Apex Court in his own case , in the event which has taken place after the end of any such previous year, in assessment or reassessment proceedings the advance tax paid by the assessee during the financial year.

The relevant extract of the circular reads as under:

“(d) Where any income which was not chargeable to income-tax on basis of any order passed in the case of an assessee by the High Court in whose jurisdiction he is assessable to income tax, and as a result, had not pay income-tax in relation to such income in any previous year subsequently, in consequence of any retrospective amendment of law as the case may be, the decision of the Supreme Court in his own case, the event has taken place after the end of any such previous year, in assessment or reassessment proceedings the advance tax paid by the assessee during the financial year immediately proceeding the relevant assessment year is found to be less than the amount of advance tax payable in his current income, the assessee is chargeable to interest under section 234B or section 234C and the Chief Commissioner or Director-General is justified that is a fit case for reduction or waiver of such interest.”



10. Having regard to what is stated above, I am of the view that the impugned order passed by the Assessing Authority cannot be sustained.

11. Consequently, the following order is passed.

Petition is allowed. Annexure-R passed by the first respondent is quashed and the matter stands remitted to the first respondent for fresh adjudication.

Rule made absolute.

Sd/-  
Judge

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