

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF DECEMBER 2009

PRESENT

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

WRIT APPEAL NO.841/2006

BETWEEN:

The Commissioner of Income Tax
Bangalore-1
C.R.Building
Queens road
Bangalore.

...APPELLANT

(By Sri K.V.Aravind for Sri M.V.Seshachala, Adv.)

AND:

M/s.Sunil Exports
Rep. by its Partner
Sri Sunil Gupta
L-370, 5th Main
Sector VI
H.S.R.Layout
Bangalore-34.

...RESPONDENT

(By Sri S.Parthasarathi, Adv.)

This appeal is filed u/S.4 of the Karnataka High Court Act praying to set aside the order passed in the Writ Petition No.20709/2004 dated 12.4.2006.

This appeal coming on for hearing this day, ARAVIND KUMAR J. delivered the following:-

J U D G M E N T

This writ appeal is filed assailing the order dated 12.4.2006 passed by the learned Single Judge in Writ Petition No.20709/2004.

2. The respondent was levied with interest u/S.220(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity) due to default committed by him in payment of tax within the stipulated time. The respondent herein filed an application under sub Section 2(A) of Section 220 of the Act before the Commissioner of Income Tax for waiver of interest. The Commissioner of Income Tax, after affording an opportunity to the respondent-assessee and considering the submissions made by him, has rejected the petition by an order dated 16.9.2003. Aggrieved by the same, the assessee filed W.P.No.20709/2004 before this Court. This Court by an order dated 12.4.2006 allowed the writ petition in



part and granted partial relief namely to an extent of 50% interest levied was waived by arriving at a conclusion that the tax in default was made on installments and the default in payment of tax on which interest was levied was due to the circumstances beyond the control of the assessee. It is this order which is now questioned by the Revenue before this Court.

3. We have heard Sri K.V.Aravind, learned Counsel appearing for the appellant-Revenue and Sri S.Parthasarathi, learned Counsel appearing for the respondent.

4. Sri Aravind, learned Counsel would submit that the Commissioner or Chief Commissioner, as the case may be, is empowered to either reduce or waive the interest payable by an assessee only in accordance with sub Section 2(A) of Section 220 of the Act only if the three ingredients mentioned in the sub Section are satisfied. He would elaborate his submissions by contending that the assessee in the instant case has



failed to prove that the default in payment of admitted tax amount due on which interest has been levied was due to circumstances beyond his control and as such, the order of the learned Single Judge where 50% of the interest has been waived has to be set aside.

5. Per contra, Sri S.Parthasarathi, learned Counsel for the respondent would submit that the order of the learned Single Judge is just and proper and does not call for interference and the conclusion was arrived at by taking into consideration the hardship that the assessee faced in paying the tax in default that too all installments and this itself would come within the ambit of Clause (ii) of Section 220(2A) which has been now pressed into service by the appellant - Revenue is erroneous and accordingly prays that the appeal be dismissed.

Before considering the rival contention of the respective parties, it is necessary to extract Section 220 of the I.T. Act, 1961:



220. When tax payable and when assessee deemed in default.-(1) 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:

Provided that, 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.

(2) 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

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of the period mentioned in sub-section (1) and ending with the day on which the amount is paid:

Provided that, where as a result of an order under Section 154, or Section 155, or Section 250, or Section 254, or Section 260, or Section 262, or Section 264, or an order of the Settlement Commission under sub-section(4) of Section 245-D the amount on which interest was payable under this section had been reduced the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

Provided further that in respect of any period commencing on or before the 31st day of March, 1989 ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent for every month or part of a month.

(2-A) Notwithstanding anything contained in sub-section (2) the Chief Commissioner or Commissioner may reduce or waive the amount of interest paid or

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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 cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(3) Without prejudice to the provisions contained in sub-section(2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payments by instalments, subject to such conditions as he may

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think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under Section 246 (or Section 246-A) the Assessing Officer may, in his discretion, and



subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired as long as such appeal remains undisposed of.

- (7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation: For the purposes of this Section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the

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purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

6. Having considered the submissions made at the Bar and perused the judgment impugned herein, we find that in the order dated 16.9.2003, the Commissioner of Income Tax while adjudicating the claim of the assessee for waiver of interest has taken into consideration all the relevant aspects and has arrived at a conclusion that levy of interest would cause hardship to the assessee. The relevant paragraph reads as follows:

"It is not disputed that payment of the interest will cause some hardship to the assessee. The material on records also indicates that the assessee has co-operated in the proceedings for assessment as well as recovery. However, it is not entirely convincing that the default in the payment of the amount on which interest is chargeable was due to the circumstances beyond the control of the assessee."

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However, having accepted this fact the Commissioner has proceeded that the default in payment of the amount is not convincing in its entirety without amplifying as to what the same is. This aspect has been considered by the learned Single Judge of this Court and it was found that one of the partner had made major payment towards the amount of tax in default and the balance of the tax is recovered from the salary of second partner who sought employment in another firm consequent to the dissolution of the petitioner-firm and this aspect though being available before the Commissioner of Income Tax did not find favourable result was accepted by the learned Single Judge of this Court considering the extreme hardship that the assessee would face in the event of interest being charged and has accepted the plea of the writ petitioner and granted remission of payment of interest to an extent of 50% of the amount, so determined by the Assessing Officer.

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7. In view of the fact that the Commissioner herself having arrived at a factual finding that the levy of interest would result in hardship to the assessee and also having held that the assessee has co-operated in the proceedings for assessment as well as recovery, we find that the order of the learned Single judge does not call for any interference and accordingly, the contentions raised by the appellant-Revenue is hereby rejected and the order of the learned Single Judge passed in W.P.No.20709/2004 dated 12.4.2006 is hereby confirmed.

8. Writ petition is dismissed. No costs.

Sd/-
JUDGE

Sd/-
JUDGE