

IN THE HIGH COURT OF DELHI AT NEW DELHI

09.09.2009

**Present: Mr. K.R.Manjani, Advocate for the petitioner.
Mr. Sanjeev Sabharwal, Advocate for the respondent.**

**W.P.(C) No. 10148/2009 GURNEET SINGH SIKKA
Vs. COMMISSIONER OF INCOME TAX**

**The Assessing Officer had passed the orders under Section 154 charging interest under Section 234B of the Income Tax Act as it is omitted while framing the assessment. This fresh assessment was framed after giving notice to the petitioner under Section 148 of the Income Tax Act pursuant to the survey which took place in the premises of Sikka Automobile Pvt. Ltd. and Sikka Overseas Pvt. Ltd. The petitioner had challenged the charging of this interest by filing appeal before the CIT(A) which was dismissed on 14.11.2008. He took up the matter before the Income Tax Appellate Tribunal which appeal was also dismissed by the Tribunal. Thereafter, petitioner moved application before the Commissioner of Income Tax for waiver of interest which was rejected by the CIT vide orders dated 7.8.2008 stating that there is no power with the Commissioner to waive such interest. Now the petitioner has filed this writ petition seeking quashing of the orders whereby the Commissioner has refused to waive the interest. Following prayer is made in this behalf:
?In view of the above, it is humbly prayed that this Hon?ble Court may kindly be pleased to quash the orders refusing to waive the interest and also grant any other relief including cost as may be deemed fit and proper by the Hon?ble Court.?**

As noted above the Commissioner in his order dated 7.8.2008 has stated that he is not empowered to entertain any request for waiver of interest u/s 234-B and 234C of the Income Tax Act. With this position, learned counsel for the petitioner was not able to give satisfactory answer namely whether any

power

with the commissioner in this behalf exists or not. His only submission is that during survey while surrendering the amount income in question, the

petitioner

had categorically stated that no answer to question no.11 was only given on the

condition that no penal interest, penalty or prosecution would be launched against him. However, there was no assurance given by the department in

this

behalf, we have our reservations as to whether any such assurance has been given

or not or now could it be otherwise given against the statutory provisions.

Mr.

Manjani has relied upon the two judgments, one of those Hon?ble Supreme Court

and one of this Court namely CIT Vs. Anand Prakash 219 DTR 222 and 20 CTR 259

respectively. Both these judgment have no application to the facts of this case.

Dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

September 09, 2009

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