

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2009

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NOs.7041 and 7042 of 2003

V.AKILANDESWARI

Petitioner in both the petitions

Vs.

The Chief Commissioner of
Income Tax,
67-A, Race Course Road,
Coimbatore-641 018.

Respondent in both the petitions

These writ petitions have been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the respondent in PCCCIT/CBE/1433(103) 2002-2003, dated 19.12.2002 and to quash the same and consequently, to direct the respondent to delete the interest levied under Sections 234B and 234C of the Act for the assessment years 1991-92 and 1992-93.

For Petitioner : Mr.K.Radhakrishnan

For Respondent : Mr.T.Ravikumar

ORDER

Heard both sides.

2.The petitioner has filed these petitions seeking to challenge the order of the respondent, dated 19.12.2002 and to direct the respondent to delete the interest levied under Sections 234B and 234C of the Act for the assessment years 1991-92 and 1992-93. These two matters were came to be posted before this court on being specially ordered by the Hon'ble the Chief Justice, vide order, dated 20.4.2009.

3.The petitioner was a minor during the assessment year 1991-92 and 1992-93. A return of income was filed voluntarily on 31.12.97 declaring a taxable income of Rs.1,13,440/-. The said return was processed under Section 143(1)(a) on 29.9.2000 determining the tax liability at Rs.1,09,979/-. Interest under Sections 239A and 234B and 234C of the IT Act was levied after giving credit to to pre-assessment tax paid. Balance of Rs.70,520/- was directed to be paid. The intimation under Section 143(1)(a) was served on the petitioner after a period of 2 years. For the assessment year 1992-93, the

return of income was filed voluntarily on 31.12.97 declaring a taxable income of Rs.2,97,790/- and agricultural income of Rs.10,000/- was declared. After processing the return under Section 143(1)(a) on 29.9.2000, the tax liability was fixed at Rs.1,80,618/- after giving credit to the pre-assessment tax of Rs.1,30,724/-. The balance was arrived at Rs.49,894/-. For these two assessment years, taxes have been paid and the balance tax of arrears payable related to interest levied under Sections 243A, 243B and 243C of the IT Act.

4.The interest levied for both the assessment years are as follows:

	Asst. Year 1991-92	Asst. Year 1992-93
234A	30,096	19,536
234B	42,980	25,406
234C	621	2,066
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Total	73,687	47,008
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5.Aggrrieved by the levy of interest, a petition to waive the interest was filed before the respondent, i.e. Chief Commissioner of Income Tax, Coimbatore. The reason pleaded by the petitioner as found in para 6 of the affidavit may be extracted below:

"6. ... the above return was filed voluntarily and my Father was expired on 28.2.99 leaving my mother Smt.Sri Devi Venkataswami, house wife to look after the affairs of the family and business matters for my father. Being a house wife my mother took considerable time to acquaint with the matter in finalising the accounts and also at that time I was a minor. Further after the death of my father my mother become the Director of M/s.Venkateswara Spinners Pvt. Ltd. along with the other Directors and my mother had looked after the day to day affairs of the textile mills. Later the Company Venkateswara Spinning Mills Pvt. Ltd. was demerged and new company was floated. When my mother become the only person responsible for running the company. Due to unavoidable circumstances, I am not able to file a return and pay the advance tax and then later my mother approached a tax consultant and the return was filed voluntarily and paid the tax. In earlier years and subsequent years we have filed the returns in time and paying the tax regularly."

6.However, not accepting the plea of the petitioner, the respondent, by the impugned order, dated 19.12.2002, rejected the request. It was stated that the petitioner's father died only on 28.3.1991 and the petitioner had not paid any advance tax for the assessment year 1991-92, but paid the amount of Rs.52,500/- as advance tax for the assessment year 1992-93, since there was no addition to the total income on account of any judicial decision, the plea of the petitioner was not accepted.

7.Aggrrieved by the said impugned order, the present writ petitions were filed. Pending the writ petition, this court granted interim stay in both the writ petitions. On notice from this Court, the respondent has filed a counter affidavit, dated 24.3.2003. In para 4 of the counter, the petitioner's plea was countered, which is as follows:

"4.I further State that as per the petition for waiver of interest the petitioner's father died on 28.3.1991 (though as per the affidavit filed with the writ petition he died on 28.2.1999), and the advance tax payments would have become due and payable in his

life time itself for the assessment year 1991-92. In fact, the petitioner who did not pay advance tax for the year in which the father was alive, has paid an amount of Rs.52,500 for the subsequent year after his death. It is thereby clear that non payment was not due to the death of the father."

8. Heavy reliance was placed upon the circular issued by the Department in Circular No.400/234/95-IT(B), dated 23.5.96, authorizing the Chief Commissioner to grant waiver. Para (e) of the said circular reads as follows:

"e) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer.

The Chief Commissioner of Income Tax/Director General of Income Tax may order the waiver or reduction of interest under sections 234A, 234B and 234C under this order with reference to the assessment year 1989-90 or any subsequent assessment year. ..."

9. A Division Bench of this Court, while considering the plea for waiver of interest and the scope for judicial interference in such matters, in a decision in *Kanchipuram Silk Handloom Weavers' Co-operative Marketing Society Ltd. Vs. Commissioner of Income-Tax and others* reported in (2008) 296 ITR 63 (Mad), in page No.69, had observed as follows:

"It is a fairly settled proposition of law that granting waiver is a matter of discretion, yet, the exercise of discretion under the rules referred to above is conditional upon the satisfaction of the authorities concerned as to the existence of the appropriate circumstances alone. Hence, the conclusion as to whether the circumstances exist or do not exist will ordinarily be a finding of fact. In exceptional circumstances, the High Court would exercise its writ jurisdiction to find out whether the view of the authorities below is sustainable and supported by any evidence or based upon the view of facts which could never be reasonably entertained. The jurisdiction to interfere is a very restrictive one that High Court will not interfere or reverse the finding of the authorities if the conclusion for rejection of waiver plea or reduction of the liability on interest is found to be a possible conclusion drawn from facts.

In the case on hand, the petitioner has projected the reasons for granting waiver, taking a considerate view. The first respondent herein has stated that there is no whisper of any facts and circumstances which compelled the inaction on the part of the assessee. The perusal of the order shows that the first respondent has not considered the various circumstances projected in its petition and the explanations offered on the question of its financial difficulties and hardships faced."

10. The very same Division Bench had an occasion to consider the circular of the CBDT, dated 23.5.96 referred to above, vide decision in *M.Ganesan Vs. Vice-Chairman, Settlement Commission (IT and WT)* and another reported in (2008) 299 ITR 456 (Mad). It is necessary to refer to the following passage found in page 459, which reads as follows:

"The perusal of the Board's order dated May 23, 1996, lists out the circumstances under which a reduction or waiver of interest under section 234A, 234B or 234C can be considered. Given this power of waiver and the circumstances under which it could be considered, the authority before whom a petition is made, is bound to consider the

circumstances warranting a rejection or a reduction. Devoid of reasons indicated for reduction, it is difficult to uphold the order of the first respondent."

11. After following the judgment in T.N.Arumugam's case, this Court allowed a writ petition on the ground that the Commissioner did not consider the circumstances under which an assessee was unable to pay the tax earlier and the order passed by the Chief Commissioner was bereft of reason vide its decision in T.N.Arumugam Vs. Chief Commissioner of Income Tax and another reported in (2009) 308 ITR 216 (Mad).

12. Applying the ratio of this court noted above, it is seen in the present case that the petitioner has paid the tax voluntarily and has also pleaded a good and sufficient reason for the non payment of tax on time. The fact of the death of petitioner's father who was looking after the business, and as well as the petitioner's mother and guardian was an house wife unfamiliar with such transactions, is not denied by the respondent. On the contrary, he has given some logical interpretation for overruling the claim made by the petitioner. In the present case, the entire tax amount for the years 1991-92 and 1992-93 have been paid by the petitioner. She has also paid some extra amount. The claim made by the petitioner is bona fide and genuine and the respondent has not exercised his discretion in terms of law.

13. In the light of the above, the writ petitions will stand allowed and the impugned order insofar as levying interest under Sections 234A, 234B and 234C is set aside and it is declared that the petitioner need not pay any interest for those two assessment years. At the same time, if any excess amount had been paid, she is also not entitled to seek refund of the same. However, there will be no order as to costs.

To
The Chief Commissioner of
Income Tax,
67-A, Race Course Road,
Coimbatore 641 018