

\$~R-36&37.

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) Nos. 5621/2008 & 5649/2010

GEM SANITARY APPLIANCES P. LTD. Petitioner
Through Mr. O.B. Bajpai, Sr. Advocate
with Mr. V.N. Jha & Ms. Manasmini
Bajpai, Advocates.

versus

CHIEF COMMISSIONER INCOME TAX DELHI –IV AND
OTHERS Respondents

Through Mr. N.P. Sahni & Mr. Ruchesh
Sinha, Advocates.

Counsel for Mr. Kamal Sawhney, Sr.
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% **07.02.2012**

These two writ petitions by Gem Sanitary Appliances Private Limited impugn a consolidated order dated 7th April, 2008 passed by the Chief Commissioner, Income Tax, Delhi-IV rejecting their application for waiver of interest under Section 234A of the Income Tax Act, 1961 (Act, for short). The writ petitions relate to assessment years 1993-94 and 1994-95.

2. The impugned order has been passed pursuant to circular/notification dated 23rd May, 1996 under Section 119(2)(a) of the Act passed by the Central Board of Direct Taxes

empowering Chief Commissioner to waive interest under Section 234A, 234B and 234C of the Act in specified cases mentioned in paragraph 2 thereof.

3. The total interest charged under Section 234A for assessment years 1993-94 and 1994-95 is Rs.6,59,946/- and Rs.50,768/-, respectively. For these two assessment years, the due date of filing of the return of income was 31st December, 1993 and 30th November, 1994. The returns of income in fact were filed on 18th May, 1995 and 28th July, 1995. It is an accepted case that the petitioner assessee was searched under Section 132 on 24th/25th August, 1993 (i.e. before the due dates for filing returns) and books of accounts and documents were seized. These included books of accounts and documents pertaining to the two assessment years in question. It is also accepted that account books, documents and material pertaining to 28 related parties were also seized at the time of the said search. Accounts in the case of the petitioner and some other parties had to be audited and an audit report had to be submitted under Section 44AB along with the income tax returns.

4. The Chief Commissioner in the impugned order while

rejecting the request for waiver of interest has recorded as under:-

“ As is evident, the assessee applied for inspection of books and other documents and for supply of photocopies. The assessee was given sufficient opportunity to take photocopies of the seized materials in the first week of September 1993 as is evident from the correspondence between the assessee and the Department. The relevant portion of the letter dated; 23.10.1993 addressed to Shri D C Aggarwal, Dy. CIT(Inv.) Unit-II, Jhandewalan Extn, New Delhi by the AR of the assessee is as under:

“...You were kind enough to give us the photocopy of some of the documents for the current year. You are well aware that we have to file the Balance –sheet and Profit and Loss account with the Income Tax Department alongwith returns as well as we have to file the Balance-sheet with the Registrar of Companies also.....

.....Under the circumstances, we request you to kindly hand over the books of accounts and other relevant documents to the assessee so that audit can be carried out and the account could be finalized for the earlier years....”

Further, the relevant portion of the letter dated:07.10.1994 addressed to the assessee by the Assistant Commissioner of Income Tax, Central Circle-18, New Delhi is as under:

“...it may please be noted that you have already been given enough opportunity to take photo-copies of all the seized

materials and you installed your photo copy machine right from 08.02.1994 to 25.03.1994 to take the photocopies of all the necessary seized materials which are required by you for finalization of your balance-sheet and other connected material...”

In view of the above, it is amply clear that the delay in filing the returns of income for the Assessment Years 1993-94 and 1994-95 is attributable to the assessee as the assessee was given sufficient opportunities right from September 1993 allowing it to obtain photo copies of the seized books of accounts and documents i.e. much before the due dates of filing the returns of income.

As such, the assessee was not prevented to file its returns of income for the AYs 1993-94 and 1994-95 due to non-availability of books of accounts and other documents.”

5. The relevant portion of the circular dated 23rd May, 1996 reads as under:-

“2. The class of income or class of cases in which the reduction or waiver of interest under Section 234A or Section 234B or, as the case may be, Section 234C can be considered, are as follows:

(a) Where during the course of proceedings for search and seizure under Section 132, or otherwise, the books of account and other incriminating documents have been seized and for reasons beyond the control of the assessee, he has been unable to furnish the return of income for the previous year during

which the action under Section 132 has taken place, within the time specified in this behalf and the Chief Commissioner or, as the case may be, Director-General is satisfied having regards to the facts and circumstances of the case that the delay in furnishing such return of income cannot reasonably be attributed to the assessee.”

6. The Chief Commissioner in his order has referred to installation of a photocopy machine at the behest of the petitioner and the fact that photocopies of documents/papers were taken from 1st February, 1994 to 25th March, 1994. It is, therefore, seen that photocopies of documents/material had continued for about 50 days. This period reflects and indicates the number of books/documents which were seized and which were required to be examined and of which photocopying was required before the audit could be completed and the returns of income could be filed. We may note that it is a contention of the petitioner that even then they were unable to complete the photocopying as they were not permitted and allowed to operate the photocopying machine throughout the working hours and that the photocopying machine was allowed to operate for one or two hours each day depending upon the convenience and availability of the officers. The petitioner has placed on record

copy of a chart indicating that the photocopying process had continued from 3rd September, 1993 to 6th July, 1995 in respect of assessment year 1994-95 and from 9th February, 1994 to 4th July, 1995 for the assessment year 1993-94.

7. By 25th March, 1994 the due date for filing of the return for the assessment year 1993-94 had expired on 31st December, 1993. It is not disputed that in the two assessment years in question, the assessee had to get the accounts audited and then only the return of income could have been filed. The very fact that the inspections were permitted and photocopy was allowed to be taken during this period shows that the Assessing Officer/authorities concerned were conscious of the fact, aware and had acknowledged that documents/books of accounts were relevant and required before the petitioner assessee could file or submit their return of income.

8. One more aspect may be noticed that the assessee had initially filed number of applications for waiver of interest before the Director General of Income Tax (Investigation). There was no response and reply to these applications. With effect from 1st January, 2004 the petitioner started writing and made prayer for waiver of interest to the Commissioner of Income Tax (Central).

These applications were disposed of after a long delay vide impugned order dated 7th April, 2008. The said order refers to an application dated 3rd October, 2006. The delay in disposing of the application is not indicated and explained.

9. Learned counsel for the respondents has submitted that the petitioner has not paid the tax due and, therefore, the application of waiver has been rightly rejected. In the counter affidavit it is alleged that as per the records, demand of Rs.40,612/- and Rs.8,918/- was due and payable for the assessment years 1994-95 and 1993-94 respectively. We are not inclined to accept the said contention of the respondents for two reasons. Firstly, this is not mentioned in the impugned order passed by the Chief Commissioner of Income Tax dated 7th April, 2008. The impugned order has to be read and can be defended on the ground and reasons stated therein (Refer ***M.S. Gill versus Chief Election Commissioner***, (1978) 1 SCC 405). Secondly, it is apparent that the petitioner has been making payment to the respondents from time to time. Interest under Section 234A of the Act mentioned in the impugned order for the two years is Rs.6,59,946/- (AY 1993-94) and Rs.50,768/- (AY 1994-95). The amounts paid, it appears have been adjusted

first towards the interest due and then towards the principal amount.

10. At the same time, it is not possible to accept the contention of the petitioner that they have been able to show and establish that the entire delay in filing of the returns can be attributed to failure to permit inspection and photocopy of documents/records. It may be noticed that the audit for the assessment year 1993-94 was completed on 30th March, 1995 and the return of income for the said year was filed after nearly two months on 18th May, 1995. In respect of assessment year 1994-95, the delay has been rather abnormal as the return of income was filed on 28th July, 1995 after more than two months from the date of filing of the return for the assessment year 1993-94. The aforesaid lapses and delay on the part of the petitioner is indicative of the casual and lackadaisical approach. Further, subsequent photocopying of material/records may be for purposes of answering questions raised in the assessment proceedings.

11. We were initially inclined to remit the matter to the Chief Commissioner for fresh adjudication. However, we notice that the matter pertains to the assessment years 1993-94 and

1994-95 and an order of remit at this stage may not be appropriate. It would cause further delay and not subserve cause of justice. In view of the factual matrix, we are inclined to direct that the petitioner will be entitled to waiver of interest to the extent of 30% in the two assessment years. The impugned order to this extent is modified.

The writ petitions are disposed of.

SANJIV KHANNA, J.

R.V. EASWAR, J.

FEBRUARY 07, 2012
VKR